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Spain: Staff information and consultation on restructuring plans

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Spain

Phase:

Anticipation

Type: [Staff information and consultation on restructuring plans](#)

Last modified: 10 December, 2021

Native name:

Ley 10/1997, de 24 de abril, sobre derechos de información y consulta de los trabajadores en las empresas y grupos de empresas de dimensión comunitaria; Estatuto de los Trabajadores (ET); Ley 12/2001 del 9 de julio de medidas urgentes para la reforma del mercado de trabajo para el incremento de empleo y para la mejora de su calidad; Real Decreto 801/2011, de 10 de junio, por el que se aprueba el Reglamento de los procedimientos de regulación de empleo y de actuación administrativa en materia de traslados colectivos; Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado de trabajo; Real Decreto ley 11/2013 para la protección de los trabajadores a tiempo parcial y otras medidas urgentes en el orden económico y social

English name:

Law 10/1997 of 24 April on European Works Councils; Statute of workers' rights; Law 12/2001 of 9 July on urgent measures to reform the labour market, to increase employment and to improve its quality; Royal Decree 801/2011 of 10 June that enacts regulation of the procedures of employment regulation and administrative measures in cases of collective relocation; Law 3/2012 of 6 July on urgent measures to reform the labour market; Royal Decree law 11/2013 for the protection of part-time workers and other urgent measures in the economic and social field

Article

Art. 51 Statute of workers' rights (modified by law 12/2001); Art. 18 Law 10/1997; Art. 8, Royal Decree 801/2011; Article 12.4, Law 3/2012; Art. 4, Royal Decree law 11/2013

Description

The European Works Council must be informed and consulted about the financial situation of the company or the group affecting the workers's interests.

Spanish workers' representatives (workers' delegates, working committees or trade unions sections) are also entitled to be informed about the development and prospects of the company's activities regarding employment, especially in the case of subcontracting.

Workers' representatives are also entitled to consultation in the case of restructuring plans. 'Restructuring plan' is not specifically defined in the Spanish legislation. Generally, restructuring plans tend to include the following measures: collective geographic transfer, undertaking transfer and suspension of labour contracts for technical, organisational, productive or economic reasons.

In case of a so-called 'employment regulation' (collective dismissal, temporary dismissal or working time reduction), the employer must provide the labour authority and the workers' representatives with the following documents in the beginning of the consultation process:

- number and professional categories of the workers affected;
- number and professional categories of the workers normally employed during the previous year;
- justification of the measure according to the concurrence of economic, technical, organisation-related or productive causes;
- nominative relationship of workers affected;
- information about the composition of the employees' representative commission;
- in the enterprises with more than 50 employees, an accompanying social plan aiming to mitigate the consequence over the workers affected.

In case of collective transfer, transferor and transferee are required to inform the employees' representatives of the following issues:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees;
- any measures envisaged in relation to the employees.

If there are no employees' representatives, transferor and transferee must give such information to the workers affected.

In case of transfer, information must be provided before the change of the business takes place. The law also regulates right of information in collective dismissals processes. That is: affecting more than five employees if the whole workforce is affected; at least 10 employees in companies with fewer than 100 employees; 10% of the employees in companies between 100 and 299 employees; and at least 30 employees in companies with more than 299 employees in a period of 90 days. In these cases, the law states that the information must be facilitated in a timely manner and with such contents that allows workers' representatives to correctly carry out their functions. That implies to provide the information in the beginning of the consultation process.

The employees' representatives are entitled to express their opinion by means of a report in the cases of restructuring, reduction on employment, total or partial geographic transfer or any modification on the legal status that can have an impact on employment.

In case of collective dismissals, the employer must consult the legal representatives of the workers in the undertaking. The employer must also provide the relevant information as stipulated above as well as the following:

- full names of workers affected;
- in enterprises with more than 50 employees, an accompanying social plan aiming to mitigate the consequence over the workers affected.

Regardless of the type of restructuring, the consultation must be carried out in a 'timely manner' and with such contents, the appropriate level of direction, and in such a way allowing representatives to obtain a justified response to their requests. This consultation process will not be longer than 15 days. In the absence of workers' legal representatives, employees are to establish a commission made up of a maximum of three members who must be workers of the company and are democratically appointed by the employees, or on a commission made up by three members of the most representative unions in the sector.

These regulations are valid for companies with more than 10 employees or more than five for these cases affecting the entire workforce.

Comments

The regulation was modified by Law 3/2012 of 6 July on urgent measures to reform the labour market. This Royal Decree law introduced that in the absence of workers' legal representatives, employees will be able to confer representation on a commission made up of a maximum of three members who are workers of the company and are democratically appointed by the employees, or on a commission made up by three members of the most representative unions in the sector.

In August 2013, Royal Decree 11/2013 clarified how the negotiation committee must be established as well as the documentation that the employer has to provide. This was made in order to reduce legal uncertainty regarding collective dismissal procedures.

After the 2012 reform, an important share of concluded procedures about collective dismissals resulted in court rulings against employers. In most of the cases, the judges ruled that the dismissal procedure was void due to non-compliance of the negotiation procedure. Thus, Royal Decree 11/2013 aimed to address the shortcomings of the new regulation.

In March 2019, Royal Decree-Law 6/2019 amended article 64 of the Workers' Statute to establish the right of workers representatives to receive annual information on the company's implementation of the equality plan and information on salaries to carry out gender pay gap audits.

Cost covered by

Not applicable

Involved actors other than national government

Trade union
Works council

Thresholds

Company size by number of employees:

6

Number of affected employees:

6

Sources


- DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring
- Law 10/1997


 [Statute of Workers' Rights](#)

 [Law 12/2001](#)

 [Royal Decree 801/2011](#)

 [Law 3/2012](#)

 [Ius Laboris \(2009\), Collective Redundancies Guide, Brussels](#)


 [Alpha Consulting \(2003\), Anticipating and Managing Change - A dynamic approach to the social aspects of corporate restructuring, European Commission, Brussels](#)

 [Eurofound \(2010\), EMCC legal framework of restructuring, Dublin](#)

 [OECD \(2013\), the 2012 labour market reform in Spain: a preliminary assessment, OECD Publishing, Paris](#)

 [Royal Decree 1/1995](#)

 [ILO EPLex - Substantive requirements for dismissals](#)

 [Royal Decree 6/2019](#)

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