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Ius Laboris

# Economic and Organisational Dismissals

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# Introduction

Employment relationships come to an end for a range of reasons. Some of these are related to the employee as an individual – one example is poor performance; other reasons, such as economic or organisational change are independent of the employee. Dismissal for economic or organisational reasons is variously described as reduction in force, redundancy or more euphemistically as downsizing, rightsizing, delayering or rationalising. Because the end result is that employees lose their livelihood without personal fault or responsibility, many countries provide a level of social protection. This guide explains the processes and matters to be considered if carrying out such dismissals in 38 countries.

The issues that arise on an economic or organisational dismissal, though not universal, have a high degree of consistency. Typically they include:

- How many people should lose their job?
- How are those who are to lose their job identified?
- Are any categories of employees (e.g. workplace representatives or pregnant women) protected against dismissal?
- Is there an expectation that attempts be made to find alternative work?
- Should an employer establish a social plan or other measures designed to reduce the impact of termination?

In many countries, there is a significant distinction between the rules applying on individual redundancies and on large-scale or collective redundancies. In this guide, we cover the rules on individual redundancies in section A and the rules on large-scale redundancies in section B. Rules relating to individual redundancies are determined on a country by country basis and vary substantially – though often covering the matters mentioned above. Although rules on large-scale redundancies also vary, there is greater consistency at least within the European Union. Under European Union law, there is an obligation to provide information to employee representatives and to consult those representatives with a view to reaching agreement on the approach to be taken and measures to avoid or reduce the impact of job-loss.

This guide outlines:

- the circumstances in which dismissals for economic or organisational reasons occur;
- the process to be followed;
- rules on selection;
- the costs of headcount reduction;
- rules on large-scale dismissals;
- when consultation is required;
- legal risks and likely challenges.

For further information on the law in any given state, please contact the relevant Ius Laboris member firm listed above or:

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# Russia

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## A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

### 1. We want to reduce headcount – are we allowed to do it?

Generally, dismissals for economic or organisational reasons can be made where there is a reduced requirement for employees or a business closure. However, economic reasons are not a ground for dismissal. Therefore, employers must consider other legal grounds and use economic or organisational reasons as supporting evidence. The most commonly used ground is redundancy.

### 2. We want to reduce headcount – selection and consultation

#### 2.1 Are there any rules or criteria about who is selected?

In the case of redundancy the employer must carry out a selection process among the employees subject to redundancy. Employees with a higher qualification and work productivity must be given priority to remain at work. If employees have equal qualifications and productivity, priority must be given to employees with dependent family members, employees who have had a workplace injury or professional disease while working, employees doing professional training at the employer's request and disabled war veterans.

#### 2.2 Is it necessary to consult before a decision and what would consultation normally cover?

The employer must obtain an opinion from the trade union for redundancies of union members. The union must be notified two months before the dismissal. It is not necessary to consult individual employees before a decision. However, employees and the State Employment Agency must be notified at least two months before the dismissal. The consultation normally covers a discussion about any affected employees who are trade union members and the grounds for and dates of dismissals. The union must give its opinion within seven working days of notification from the employer. If the union does not agree with the decision on redundancy additional consultation must be carried out.

### 3. How much does it cost to reduce headcount?

#### 3.1 If employment is terminated, what severance or compensation are employees eligible for:

*Notice pay*

Employees have the right to work during the notice period. If the employee agrees to be dismissed before the end of the two-month notice period, payment in lieu of notice of average salary pro-rated for the remaining part of the two-month notice period must be paid.

*A payment because of an economic or organisational dismissal or other set indemnity*

For dismissals for redundancy the employer must pay severance of:

- one month's average salary on the last day of work;
- one month's salary at the end of the second month of unemployment.
- The employer must also pay one month's salary at the end of the third month of unemployment if the employee:
- registered with the State Employment Agency within two weeks of dismissal;

- is unemployed and has not been placed by the State Employment Agency;
- has a report from the State Employment Agency confirming unemployment and the right to this third payment.

Therefore, the maximum severance payment is three months' average earnings.

*Compensation related to loss*

There is no right to compensation for loss. The employee may bring a case for unfair dismissal. If the court decides that the dismissal was unlawful the employee may be eligible for compensation for the period of absence from work, moral damages if claimed and compensation for court-related expenses.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers sometimes offer more than the legal minimum compensation and agree dismissal with employees by mutual consent. In this case, employers need not comply with the requirements on consultation or notification but need to agree the termination with the employee. It is typical to offer employees slightly higher compensation.

### 4. How long does the process take?

From the first notification of dismissal either to the employee or trade union the procedure takes two months at a minimum to complete. However, taking into account the process of drafting the documents related to dismissal it may take, on average, around three months.

### 5. Are any categories of employees entitled to special protection?

The following employees cannot be dismissed for redundancy:

- pregnant women;
- women with children under three;
- single mothers of children under 14 or 18 if disabled;
- individuals bringing up a child under 14 or a disabled child under 18 without a mother;
- sole earners with children under three bringing up three or more minors.

## B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

### 6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules for notice periods for collective redundancies. A severance allowance must be paid as for individual dismissals. The employer must give notice to the union no later than three months before the dismissal. The rules apply to collective dismissals, that is, if a certain number of employees are dismissed within a certain period of time. The thresholds depend on the grounds for dismissal, the size of the organisation, its location and the industry as follows:

- 50 to 199 employees within 30 days;
- 200 to 499 employees within 60 days;
- 500 or more employees within 90 days;
- 1% of the total number of employees within 30 days where the total is
- fewer than 5,000.

## 7. Consultation on large-scale dismissals – what rules are there?

### 7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Russian law does not provide a procedure for consultation with employees with respect to collective redundancy. However, employees must be notified of the proposed collective redundancy at least two months before the dismissal date. After the decision is taken, the employer must obtain an opinion from the trade union for the dismissal of union members for redundancy. Under the law the trade union must be notified three months before the dismissal date.

### 7.2 What information must be disclosed to employees and/or their representatives?

The employer must notify each employee and any trade union of the organisation in writing of the date and reason for the redundancy. The trade union must also be notified of the list of employees who are members of the trade union.

### 7.3 When and how should consultation take place?

The employer must notify existing trade unions three months in advance. The trade union must give its opinion within seven working days of the notice. If the union does not agree with the employer's decision on redundancy, additional consultation within three business days must be carried out. If the employer and union do not reach an agreement, the employer is entitled to dismiss members of the trade union after the three-day consultation period (i.e. ten business days after the notification). However, this does not prevent the trade union from challenging the dismissal with the Labour Inspectorate, or the employee from challenging the dismissal in court.

### 7.4 What must be covered in the consultation?

The consultation normally includes discussion of the list of affected employees who are union members, grounds and dates of dismissals.

## 8. Is there a requirement to notify the government or any third party?

The employer must notify the State Employment Agency, in two stages, of the proposed collective redundancy. The first notification is three months before the dismissal. The second is two months prior. The employer must also provide certain information when making the notification.

## 9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no specific rules or criteria about who is selected for large-scale dismissals apart from rules on selection between employees carrying out a particular role.

## 10. How long does the large-scale process take?

From the first notice of dismissal either to the employee or trade union, the process takes three months at a minimum to complete. However, taking into account drafting the documents related to dismissal it may take an average of around four months to complete.

## C Challenges

### 11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

The employee may report suspected violations of the redundancy procedure, as well as any other provisions of the labour law, to the Labour Inspectorate, which will consider the case and may order the employer to remedy the breach. The employee may also bring a claim for unfair dismissal. If the court decides the dismissal was unlawful (i.e. an unlawful reason or in breach of procedure) the employee should be reinstated (i.e. if the employee requests). Such a court decision will apply with immediate effect. The employee will also be awarded compensation, on request, for the period of absence from work and for any moral harm suffered. Compensation for the period of absence is generally calculated based on the employee's average remuneration for the last 12 months of employment.

### 12. What can the court or tribunal order?

#### 12.1 Can they order compensation?

Russian law does not provide for compensation for loss. In the case of a dispute the employee may be entitled to payments for absence from work or moral damages.

#### 12.2 Can they suspend or stop the process?

Theoretically, if there is a risk of a significant increase in unemployment in the region where the organisation is the key employer, a collective dismissal may be suspended.

#### 12.3 Can they order reinstatement?

If the court decides a redundancy was unlawful and the employee specifically requests reinstatement in his or her claim, the court may grant this.

## D Other important points

### 13. Is there anything else we need to consider?

Under Russian law, in the case of staff redundancy it is mandatory for the organisation to offer employees vacant positions (including those involving lower qualifications or salary) available in the organisation or those that may become vacant during the two-month notice period. If there are no vacant positions in the organisation, the employees must be informed in writing. Therefore, the organisation may terminate employees due to staff redundancy only if it is impossible to transfer the employee to another position.

The procedure for redundancy is considered to have a high risk of disputes, as it is complicated and time-consuming. Employees may argue that the statutory procedure was not observed or that the organisation dismissed employees simply to get rid of them. Therefore, once the redundancy procedure is carried out the organisation should avoid having vacant positions similar to those described as redundant or hiring new employees in other job positions with the same scope of functions and responsibilities as the dismissed employees.

There is a separate ground for dismissal of employees for 'organisational reasons'. Dismissal for this reason is possible only when the employer has changed the terms and conditions of the employee's employment unilaterally and the employee refuses to work or fill vacant positions proposed by the employer.

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