Global HR Lawyers
Ius Laboris

Individual Dismissals Across Europe

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Ius Laboris is a close-knit alliance of leading HR law firms working together in one global group. Ius Laboris offers employers advice on cross-border employment law, employee benefits and pensions issues. The Alliance has over 1,400 lawyers focusing on HR law based in more than 160 cities in over 45 countries.

Ius Laboris delivers labour and employment legal professional services to the highest international quality standards.

For successful management of a multinational workforce, an in-depth knowledge of local HR laws and practices is crucial. Through the best independent local firms, Ius Laboris provides employers with a deep and thorough knowledge of local employment laws, culture and processes.

Why Ius Laboris?

- With over 20% more ranked employment lawyers and recommendations in over 10% more jurisdictions than any other global competitor, Ius Laboris really does offer access to the best HR law experts in one global team.
- "Elite" band one ranking in Chambers' Global Guide 2015.
- Our combination of leading local HR lawyers operating in a seamless global group, means we understand and advise on local employment laws and processes in an international setting.
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- Ius Laboris has a market-leading quality program of continuous assessment, for which it was recognised with an award at The Lawyer European Awards.
- Clients benefit from access to international HR training events, workshops and the online Global HR Law Guide at www.globalhrlaw.com

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Introduction

In order to set up operations and manage human resources, international employers increasingly have a need to understand the key aspects of different national legal systems.

On behalf of Ius Laboris, the Alliance of leading Human Resources law practitioners, we are delighted to introduce the third edition of 'Individual Dismissals Across Europe'. This third print contains the most recent updates on legislative changes and developments in many countries across Europe. The current economic situation has forced a lot of countries to adapt their labour law systems and bring them into line with new societal trends.

This publication explains the essential principles of individual dismissals in numerous European countries and sets out each country's system for protection against dismissal, prior warnings, notice periods, the selection of employees to dismiss, collective requirements, administrative approvals and the legal impact of dismissals. Its purpose is to provide executives and consultants with a comprehensive overview of the national system, without assuming any prior knowledge of the subject.

All authors are lawyers from across the Alliance and have extensive practical experience in advising international clients on employment law. We would like to express our appreciation to all member firms for their contributions and knowledge-sharing.

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

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Russia

1. General protection

In Russia, general protection against dismissal comes from the provisions of the Russian Labour Code of 30 December 2001 as amended and restated, the Federal Law on Employment, the Provision of the Russian Government for Procedures to Assist Employment in Cases of Collective Dismissals, and various regional and industrial agreements.

The Labour Code and other federal laws provide a complete list of circumstances in which the employer is entitled to conduct a dismissal. When dismissing an employee the employer must justify its actions by proving certain legally relevant facts (usually, there are a number of them) and following certain procedures (e.g. relating to notifications and severance payments).

The general principle is that protection is granted to all employees, although certain employees are entitled to special protection against dismissal. Under the Labour Code, the employer can terminate an employee's employment contract on one of the grounds expressly stipulated by law, if it is done in compliance with the relevant procedure.

The law aims to protect employees against wrongful dismissals (i.e. those not based on the grounds provided by law and/or in violation of the procedures provided by law) and to provide them with compensation in the event of redundancy, liquidation of the organisation, or termination of an individual entrepreneur's business activity. In general, all employees have the same level of protection, although general directors (i.e. chief executive officers) have a higher level of protection in terms of compensation. The amount of compensation paid to general directors in the event of a termination of employment in the absence of any wrongful acts or omissions on their part, should not be less than three average months' salary.

In certain cases additional criteria should be considered by the employer. For example, the Labour Code provides that employees with a higher level of efficiency and qualifications should have priority in cases of staff redundancy. When choosing which employees to dismiss, if their efficiency and qualifications are identical, the employer gives preference to employees who:

- have a family, including two or more dependants
- are the sole breadwinner within their family
- have sustained a severe injury at work or suffered an occupational illness while working for the employer
- are disabled veterans
- at the employer's request, are improving their qualifications while continuing to work.

2. Special considerations

2.1 Discrimination

The Labour Code provides for equal opportunities for all to exercise their employment rights. It prohibits any discrimination in the field of employment. During the recruitment process, an employer must only consider a job applicant's professional qualities. Any reason for refusing to hire a job applicant that is not related to his or her professional qualities is deemed to be unlawful. In this respect, a job vacancy with specific requirements in relation to a particular age, sex, place of residence or appearance, is prohibited in law.

Discrimination against a job applicant on the grounds of his or her disability is prohibited. Under the Labour Code, organisations with 100 or more employees must comply with a specific quota for employing disabled persons that is equal to a percentage of the average number of employees in the organisation (but not less than two and no more than 4%).

2.2 Age

The employer can dismiss employees under the age of 18 on its own initiative only with the consent of the relevant state labour inspectorate and commission for juvenile affairs and protection of their rights (except if it is an organisation going into liquidation or an individual entrepreneur whose business activity is terminated).

No other protection exists in relation to age.

2.3 Length of service and fixed-term contracts

During a trial period, each employee on probation enjoys the same rights as other employees, except with regard to termination of employment. Their employment can be terminated with three days' notice and an explanation of the reasons for the dismissal.

A trial period is prohibited for certain categories of employees:

- pregnant women and women with children under the age of one and a half
- those under the age of 18
- those employed after succeeding in a competition for a job, where the competition was conducted in accordance with all legal requirements
- those invited to work with the organisation as a result of a transfer from a different employer, under an agreement between the two employers
- graduates employed for the first time, within one year of graduating in their specialist field
- those elected to elective posts (i.e. certain public sector positions), provided that they receive remuneration
- those working under employment contracts with a maximum term of two months
- any other employees, based on the provisions of the Labour Code, federal acts or collective agreements.

If the employment contract does not contain a trial period, the employee is employed without needing to undergo probation.

As a general rule, the trial period cannot exceed three months. or six months for the heads of organisations, their deputies, and chief accountants and their deputies; heads of branches and representative offices and other subdivisions, unless otherwise provided by federal law.

See section 2.5 below with regard to female employees on fixed-term contracts.

2.4 Part-time work and career breaks

There is no special protection from dismissals for employees on part-time work or career breaks. Part-time work implies that the employee receives remuneration pro rata for the time

he or she has actually worked. Part-time work does not lead to any restrictions of rights of employees with respect to, for example, the length of annual paid leave or the calculation of employment records in comparison with full-time employees.

2.5 Pregnancy and childcare

The Russian Criminal Code provides sanctions for unfair dismissal of a pregnant woman or a woman with a child under three years of age.

An employer cannot dismiss pregnant employees on their own initiative except if the organisation goes into liquidation or the business activity of an individual entrepreneur is terminated.

With regard to a pregnant employee with a fixed-term employment contract that expires during the pregnancy, it should continue until the end of the pregnancy (provided the employer is given an application in writing and a medical certificate confirming the pregnancy) or if childcare leave is granted to the employee – until the end of the childcare leave. However, a pregnant employee can be dismissed before the end of her pregnancy if (i) the employment contract with the pregnant employee was concluded for a fixed term to enable the pregnant employee to cover for an absent employee; and (ii) the pregnant employee refuses to give her consent in writing to transfer to another available job (e.g. a vacant position requiring the same or a lower level of qualifications, or a lower-paid job), which she can perform in her state of health. The employer must offer the employee all the vacancies available in the relevant area which meet the said requirements. The employer must offer vacancies in other areas if there is a provision to this effect in the collective agreement, any other industrial, or regional or other relevant agreement or in the employment contract.

Certain employees cannot be dismissed on the grounds of staff redundancy or reduction, failure to perform the work assigned to them because of insufficient qualification, a change in ownership of the organisation's property, an unjustifiable decision that has resulted in damage to or illegal use of property (if the employee is the head of an organisation, branch or representative office, a deputy or chief accountant). These are:

- female employees who have a child under the age of 3
- single mothers who have a child under the age of 14 (or under the age of 18 if a child is disabled)
- other employees bringing up a child under the age of 14 (or under the age of 18 if they are disabled), if the child has no mother
- a parent (or legal representative of a child) who is the sole provider for a disabled child under the age of 18 or who is the sole provider for a child under the age of three years in a family with three or more young children, in cases where the other parent does not work.

2.6 Carers

There is no protection against dismissal for employees who require leave to care for others, beyond the general protections provided by law.

2.7 Employee representatives

Protection against dismissal exists for members of trade unions and labour dispute commissions. When dismissing a trade union member on one of the specific grounds provided by law, the employer should request the 'motivated opinion' of the elected body of the primary trade union organisation, although its opinion is not binding on the employer.

2.8 Redundancy

Depending on the intended number of employees to be dismissed, the dismissal may be considered as a collective dismissal. The exact thresholds for collective dismissals are provided in agreements that are specifically related to the particular industry sector and/or region. For example, the Tri-Party Agreement between the Moscow Government, the Moscow trade union associations and the Moscow unions of manufacturers and entrepreneurs has established that the following thresholds constitute a collective dismissal:

- dismissal of employees if an organisation with 15 or more employees goes into liquidation
- dismissal of 50 or more employees within 30 days as a result of staff redundancies or reduction
- dismissal of 200 or more employees within 60 days as a result of staff redundancies or reduction
- dismissal of 500 or more employees within 90 days as a result of staff redundancies or reduction
- dismissal of more than 25% of the organisation's staff within one month.

Regional and/or industry sector agreements can stipulate additional criteria for a collective dismissal. For example, some regional agreements require employers to refrain from carrying out collective dismissals for the duration of the agreement.

2.9 Other

The employer cannot terminate at its initiative the employment of an employee who is on sick leave or annual leave (unless the organisation is wound up).

3. Resignation

A resignation can be considered as a dismissal (an unlawful dismissal) when the employee proves in court that he or she was made to resign under pressure (i.e. was not acting of his or her own free will).

4. Avoiding unfair dismissal

4.1 Grounds for dismissal

To avoid unlawful dismissals, employers should comply with the grounds for dismissal and dismissal procedures provided by law.

Under the Russian Labour Code, the employer may lawfully terminate employment on the following grounds:

- liquidation of the organisation or termination of an individual entrepreneur's business activity

- staff redundancies or reduction (if the transfer of an employee to a different job with the employee's consent is not possible)
- the employee's unfitness for the work assigned to him or her, as evidenced by an assessment of the employee's performance, because of insufficient qualifications, provided that it is impossible to transfer the employee (with his or her consent) to another position more suitable to his or her qualifications within the same organisation
- a change in ownership of the organisation's property (in this case, the employer only has the right to terminate the employment contracts of the head of the organisation, the deputy heads and the chief accountant)
- persistent failure by the employee to fulfil his or her duties, if the employee has already been subject to disciplinary procedures during the previous year
- a single gross failure by the employee to perform his or her duties (e.g. truancy, appearing at work under the influence of alcohol, narcotics or other intoxicating substances)
- an employee whose job involves direct contact with the finances, property or other assets of the employer commits a breach of trust, for example, by theft
- an employee who is engaged in an educational role commits an immoral act that is incompatible with that role
- the head of the organisation (or a branch or representative office), the deputies or chief accountant make an unjustifiable decision that results in damage to property, illegal use of property or other damage to the organisation's property
- a single gross failure by the head of the organisation (or a branch or representative office) or his deputies to perform their duties
- an employee submits forged documents to the employer when concluding the employment contract
- situations stipulated by the employment contract with the head of the organisation or members of the collective executive body
- an employee does not prevent conflicts of interests or conceals information about his finances or those of his family, in cases where the employee is a state or municipal civil servant, or an employee of certain state corporations, the Central Bank, the Pension Fund or other federal organisations
- other reasons stipulated by the Labour Code and federal laws.

In some cases, the employer must offer the employee any other vacant position available which corresponds to his or her state of health. Only if there are no such vacant positions or the employee refuses to take the job(s) offered can the employer carry out the dismissal.

4.2 Permissions

The employer must obtain the prior consent of the respective senior elected body of the primary trade union organisation to dismiss the head (or one of the deputies) of (i) an elected collective body of the primary trade union organisation, or (ii) an elected collective body of a trade union organisation of a business unit in the company, if the head or deputy is also required to work as an employee. If no such senior elected trade union body exists, the dismissal procedure takes place in the same way as for ordinary trade union members, i.e. the employer must request the trade union's 'motivated opinion' but will not be bound by it.

Prior to the employer initiating termination of an employment contract with an employee under 18 years of age, it must obtain the permission of the relevant labour inspectorate and the commission for juvenile affairs and protection of their rights.

4.3 Procedures

Depending on the grounds for dismissal, there are specific legal requirements as to the dismissal procedure. For example, if an employer dismisses an employee for failing to fulfil the functions of the job, it must record the failure in writing and any disciplinary actions taken. Also the employer should request a written explanation from the employee and base its decision to apply any disciplinary sanction on the explanation. The explanation should cover whether there is a valid excuse for the failure to perform the job duties or not. If the employer dismisses an employee on the grounds of insufficient qualifications, this fact should be proved by an assessment of his or her performance, and other requirements stipulated by law must be met.

To terminate employment the employer must issue a special order (a standardised form stipulated by law) indicating the grounds for the dismissal which refers to the relevant provision of the Labour Code.

The employee must familiarise himself or herself with the employer's order and sign it. If it is not possible to present the document to the employee, or if he or she refuses to sign it, a special note to this effect must be made on the order.

In all cases, the date of termination of the employment contract is the last day of the employee's work, except if the employee has not actually been working and the job was left open for him or her under the Labour Code or another federal law.

On the day of termination of the employment contract the employer settles accounts with the employee and hands over his or her work labour book (a document recording an employee's employment history, including the grounds for employment termination) as well as copies of other documents related to the job.

4.4 Notification/consultation obligations

As already mentioned, it is necessary for the employer to obtain the 'motivated opinion' of the trade union's elected body if it dismisses a trade union member on the grounds of redundancy, insufficient qualifications or persistent failure to perform his or her duties, provided that he or she has undergone a disciplinary procedure. The opinion of the trade union is not binding on the employer.

The dismissal can take place within one month after the trade union provides its 'motivated opinion'.

In the case of planned redundancies, the employer must submit a written notification of its intention to the trade union's elected body no less than two months in advance, or three months in advance if such redundancies may lead to a collective dismissal.

Under the Provision of the Russian Government for Procedures to Assist Employment in Cases of a Collective Dismissal and the Federal Law on Employment, the employer must also notify state bodies of a planned collective dismissal. It must provide the state employment service with certain information related to every employee who is going to be dismissed, no less than two months in advance. If the redundancy is likely to lead to a collective dismissal, notice to the state employment services should also be made three months in advance (i.e. there will be two notices: one being three months and another being two months, in advance).

4.5 Duration of notice period

Under the Russian Labour Code, the following minimum notice periods must be observed by the employer:

- three days' notice for termination of a fixed-term employment contract because its term is expiring (if the employer does not notify the employee in a timely way and the latter continues to work, he or she is considered to be working under a permanent employment contract)
- three days' notice for termination of the employment contract during a trial period (both on the employer's or employee's initiative)
- two months' notice for liquidation of the organisation or for redundancies. The employer must notify all employees personally by presenting them with written notification. The employees confirm their familiarisation with the notification by signing it. Seasonal workers require seven days' notice in such circumstances and temporary employees (working under an employment contract with a maximum term of two months) require three days' notice.

There is no legal requirement with regard to notice periods for termination of employment on the initiative of the employer other than those described above when dismissing employees working under a permanent contract. Such terms can be provided in the employer's local acts (e.g. the staff handbook), and in the employment contract.

Minimum notice periods to be observed by the employee are:

- two weeks' notice if the employee resigns on his or her own initiative
- one month's notice if the employee is head of the organisation
- three days' notice if the employee is a temporary worker (i.e. works under an employment contract with a maximum term of two months) or a seasonal worker
- three days' notice if the employee leaves of his or her own free will during the probation period

The law also provides for specific notice periods for certain professions and other cases (e.g. sportsmen).

The employee has the right to resign without notice if it is impossible to continue working (e.g. because he or she is retiring or has been admitted to an educational institution) or because the employer has violated labour legislation, local acts, or the employment contract.

The parties may agree to terminate the employment contract before the notice period expires.

4.6 Treatment during notice period

During the notice period, the employer and employee's rights and responsibilities as stipulated in the employment contract remain in force. The employee must perform his or her duties and the employer must remunerate the employee.

If the employee resigns of his or her own free will, he or she reserves the right to withdraw the resignation at any time until the date that the notice period expires. If this happens, the resignation is ineffective unless another employee has been offered and has accepted the job in writing and the employer cannot, by law, refuse to hire him or her.

An employee has the right to stop working upon expiry of the notice period. However, if an employment contract is not terminated when the notice period expires and the employee does not insist on resigning, it remains in force.

4.7 Payment in lieu of notice

In the case of liquidation or redundancies, the employer can terminate an employee's employment contract with his or her written consent before the two-month notice period expires. The employer must pay additional compensation to the employee amounting to his or her average earnings calculated pro rata for the time remaining until the date that the notice period expires.

4.8 Other

The employer must issue a company order upon dismissal of the employee; make all relevant entries in the labour book; and pay all sums due to the employee.

5. Circumstances in which dismissal without notice is permitted

Generally, no notice period is required for dismissals, although certain exceptions exist.

6. Sanctions and enforcement

6.1 Sanctions for unlawful dismissal

As already mentioned, pregnant women and women with children under the age of three can be dismissed on the employer's initiative only if the organisation goes into liquidation. If the employer breaches this provision, it may face criminal liability in the form of a fine of up to RUB 200,000. Alternatively, the individual responsible for the dismissal may face paying a fine amounting up to 18 months' salary (other income may be taken into account), or he or she may be ordered to perform up to 360 hours' compulsory service.

In addition, the dismissal of employees in connection with a collective labour dispute or the calling of a strike, is prohibited. A breach of this kind may result in the imposition of an administrative fine of RUB 4,000 to 5,000.

6.2 Void dismissals

A dismissal can be declared void both by the court and the state labour inspectorate. For a dismissal to be lawful, it must be made on lawful grounds and the relevant party must observe statutory procedures.

6.3 Reinstatement

If the court decides that the dismissal was unlawful, the employee must be reinstated at his or her request. The limitation period for making a claim concerning reinstatement is one month. The employee is awarded compensation for the duration of the period of the forced absence from work (under duress). The amount of this compensation is generally calculated according to the employee's average remuneration for the previous 12 months of his or her employment. The employee can also be awarded compensation for any moral harm suffered, if he or she brought a claim for this.

If the state labour inspectorate finds the dismissal unlawful, it issues the employer with a binding injunction to reinstate the employee in his or her position and pay compensation for the whole period of forced absence from work.

The employee may request the court to limit its decision only to an award of compensation.

At the employee's request the court may decide to change the wording of the grounds for the dismissal to wording that is more beneficial for the employee, for example, depending on the circumstances of the case that could be 'the employee resigned of his or her own will' or 'the employment contract terminated as a result of the expiry of a fixed term' (if the term expires by the date of the court hearing).

7. WAIVER OF RIGHT TO SUE

Any waiver by the employee of his or her right to sue is void. Both the employer and the employee may agree by mutual consent to terminate the employment at any time. The parties can conclude a termination agreement containing provisions relating to both their interests. The agreement on termination of the employment by mutual consent can be revoked only with the parties' mutual consent.

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