

In a constantly changing economy, companies often face the need to adjust their workforce, sometimes resorting to drastic measures such as the collective dismissal process. According to Romanian labor legislation, the process of collective dismissal entails following a rather laborious procedure, aiming to protect both employers and employees in order to prevent abuses and ensure a smoother transition in restructuring situations.

As the reason behind collective redundancies may be related to economic difficulties or technological developments that render certain positions within the company redundant, in essence, collective dismissal refers to the termination of employment contracts of a large group of employees at the employer's initiative, within a 30-day period, for reasons unrelated to them.

Essentially, the starting point for companies in the case of collective dismissals entails the preparation of a restructuring report that encompasses a thorough analysis of the general context for the preparation of the redundancy plan, the current organizational structure, the reasons for applying the envisaged measures, as well as its objectives.

The Concept of Redundancy – The Real and Serious Cause

As the concept of redundancy is based on the company's decision to eliminate jobs, Romanian law states that the suppression of jobs must be effective and the result of a real and serious cause. In this sense, the real and serious reason refers to the company's need to eliminate the jobs in question for objective business reasons that are serious enough to justify such a measure, whilst the effective suppression of the position implies that the said positions have become redundant and must be eliminated from the organizational chart (i.e., no new similar/identical positions are created at the same time and no new employees are recruited for such positions).

In other words, the employer must rigorously justify why the activity in question is no longer relevant to the company. Otherwise, there is a major risk that in the event of disputes, the dismissals would be deemed groundless by courts. If that happens, the dismissal decisions are annulled and the employees are reinstated within the previously suppressed positions, upon their request.

Requirements on Consultations with Trade Unions and Notifying Labor Authorities

In the case collective redundancies are intended, the employer is obliged to initiate, in a timely manner and for the purpose of reaching an agreement, consultations with trade unions/employees' representatives. These consultations should concern at least the methods and means of avoiding collective dismissals and reducing the number of employees to be dismissed. They should also aim to mitigate the consequences of dismissal by resorting to social measures which include, inter alia, support for the professional reorientation of the dismissed employees.

At the same time, in order to allow trade unions/employees' representatives to make mitigation proposals, the company is obliged to send them, as well as to the labor authorities, a written notice. This notice should comprise information regarding aspects such as the number and categories of employees to be affected by the collective redundancy measure and the envisaged criteria for establishing the priority order for dismissal.

At a later stage, following consultations with trade unions/employees' representatives, in case the company decides to implement the collective dismissal measure, a new written notice must be transmitted to them and labor authorities at least 30 days prior to the issuance of the dismissal decisions.

Selecting Employees for Collective Redundancy Measures

If there are more employees occupying the same positions to be made redundant and not all of them would be affected by dismissal, the company must proceed to the selection of the employees to be dismissed. In principle, the main criterion to be applied is the one related to professional performance (the results of the latest professional evaluation). The employer may apply subsequent criteria only if such criterion does not suffice in order to set the priority for dismissal among employees (employees have the same results in the latest performance evaluation). Such subsequent criteria might include length of service with the company or social-related criteria.

Considering that collective redundancies also have a great impact/exposure in the press, companies need to cautiously assess the link of causality between the business rationale and the need to implement reorganization measures, such that employees' rights are fully observed.

This article was originally published in Issue 11.10 of the CEE Legal Matters Magazine