

# Global LEL Strategic Topics

Workforce Restructuring

2018 Edition #2





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## Workforce Restructuring

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# Editorial

In today's globalized and digitalized economy, the "new normal" is constant change.

Domestic and multinational companies must now constantly transform their business operations to compete in national and global markets. As a result, the day-to-day job of HR professionals focuses on not only routine HR matters, but more importantly, managing the constant transformation of business operations, and the workforce, as well.

Labor and employment law issues are of paramount importance in workforce restructuring. In multi-country global transformations, labor and employment laws differ from jurisdiction to jurisdiction, each with separate process requirements, all of which can make global restructuring projects challenging and complex.

Diligent planning and compliance with HR laws and regulations are key to designing and implementing a successful restructuring process to achieve the desired transformed business.

In this issue, we look at workforce restructuring laws in 28 countries around the world.



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## Albania



Soena Foto

Workforce restructuring, known in Albania as collective redundancy, is regulated by Article 148 of the Albanian Labor Code.

The regulations are applied when the employer decides on terminating employment relationships for reasons that are not related to the employees and when the number of employees dismissed within a time frame of 90 days is:

- ▶ At least 10 employees for enterprises with up to 100 employees
- ▶ At least 15 employees for enterprises with over 100 and up to 200 employees
- ▶ At least 20 employees for enterprises with over 200 employees

Collective redundancy procedures are also followed in case of a merger or acquisition of companies requiring a transfer of workforce.

### Flexible measures

Prior to starting the termination procedures associated with the collective redundancy, the employer must notify the trade union organization in writing – or the employees if there is no union.

The notice should contain the following elements:

- ▶ The reasons for the collective redundancy
- ▶ The number of employees to be dismissed
- ▶ The number of employees normally employed
- ▶ The time during which such dismissals are expected to happen

The employer holds consultations with the trade union or employees, in order to reach an agreement and to take potential measures to avoid or reduce the collective redundancies and mitigate their consequences. Such consultations shall take place for a period of not less than 30 days, starting from the date of the notice mentioned above, unless the employer agrees to a longer duration.

Albanian legislation does not address the obligation of the employer to set up a social plan for the employees made redundant that would contribute to a smoother process. However, the employer and the trade union or employees might come to such arrangements through the agreement they reach.

### Collective dismissal

Based on the Albanian Labor Code, the employer performs a collective dismissal only in situations that require changes in the employment plan. Such situations could relate to:

1. Economic issues
2. Changes in technology
3. Company reorganization
4. Closure of business

Some of the employer's liabilities associated with the collective dismissal are as follows:

- ▶ Compliance with the notice period for each employee, which may vary from two weeks to three months
- ▶ Termination indemnity in case of failure to comply with the termination procedure

- ▶ Compensation for unused annual leave, if any
- ▶ Seniority compensation, if any
- ▶ Coverage of all mandatory social insurance and health insurance contributions during the notice period

Further, the Albanian Labor Code stipulates that in case the employer decides to rehire workers and is looking for employees with similar qualifications, it must give priority to recruiting previous employees made redundant for reasons that were not related to the employee.

### Litigation risks

A breach or violation of the collective dismissal procedures by the employer can be the basis for possible litigation, and employees can take their claims to the Albanian court system.

Such claims are brought before the Regional First Instance Courts – or the Arbitration Court, if the latter is provided for in the collective agreement as the responsible court.

The Albanian legislation does not provide for suspension of the collective redundancy procedures due to the start of litigation.

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## Argentina

### Workforce restructuring

#### Applicable legislation

Workforce restructuring, also referred to as “crisis prevention procedure,” is governed by Article 98-105 of the National Employment Law (Law No. 24,013) and Decree No. 265/02.

#### Collective dismissals

It is worth noting that the Employment Contract Law (ECL – Law No. 20,744) in Argentina does not distinguish between a single layoff and a collective one. Regarding this, if the termination indemnity is fully paid, in general, no special procedure is required.

However, for large-scale redundancies or suspensions for reasons that can’t be controlled or economic or technological reasons, if the number of affected workers in the company exceeds the percentage of the provision established by law, the action must be substantiated through the crisis prevention procedure provided by Law No. 24,013 prior to the communication of these measures.

The ECL establishes that if dismissal is due to circumstances beyond the company’s control, or lack or reduction of workload, the worker should get severance pay equal to 50% of the seniority severance pay.

For purposes of the law, a collective dismissal occurs when the employee plans to dismiss:

- More than 15% of its employees in companies with less than 400 employees
- More than 10% of its employees in companies with 400-1,000 employees
- More than 5% of its employees in companies with more than 1,000 employees

#### Flexible measures

The procedure is designed to be preventive, so it would not apply to dismissals or suspensions already communicated, without prejudice to the application of the corresponding sanctions for non-compliance.

A prohibition on the application of dismissals or suspensions is in effect from the time the Labor Ministry is notified until the procedure’s conclusion.

The presentation of an employer that has more than 50 employees and initiates the procedure must clarify how the company proposes to overcome the crisis or mitigate its effects. In addition, it has to indicate what types of measures it proposes and whether the proposal includes reductions in the personnel plant, and it must quantify the compensation offer offered to each of the affected workers.

Within 48 hours after the initial application, the Labor Ministry will schedule an administrative hearing and initiate the negotiation process, which takes a maximum of 10 working days. If the employer negotiated a collective

bargaining agreement with the unions, the labor authorities have 10 days to decide on its approval. If the labor authorities fail to respond within the abovementioned time frame, the approval will be granted.

The employer must do everything possible to minimize the negative impact of the collective redundancy on the employees. All such measures are included in a proposal.

Companies with more than 50 employees must propose a compensation plan. Proposing a severance indemnity is advisable, though not mandatory.

It is not always easy to get an agreement between the company and the unions involved, which is why the procedure is not use often in Argentina.

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## Austria



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Digitalization and the introduction of new technologies and automated processes often lead employers to restructure their workforce. This is often done either by terminating employment relationships that have become redundant due to new technologies or by changing the duties, positions or conditions of the employees.

### Termination in general

There are three major types of termination of employment agreements under Austrian law: termination by mutual consent, ordinary termination and immediate dismissal for good cause.

An ordinary termination generally does not require any reasons. Only notice periods and termination dates as stipulated by law, the applicable collective bargaining agreement or the employment contract have to be observed. Special rules apply to protected employees, such as disabled employees, works council members, pregnant employees, and employees on maternity or paternity leave, and apprentices. Termination of these employees requires a pre-approval of the court/special authorities and a good cause.

If a works council exists, it must be informed about all terminations at least one week in advance and can either approve, acquiesce or object to the termination within a period of one week. The reaction of the works council

is relevant for the possibility to contest the ordinary termination. Even though the works council cannot prevent the termination, failure to inform the works council voids the termination.

### Mass redundancy

Special rules apply if the employer wants to terminate a bigger number of employees (the number depends on the total number of employees employed by the company at the time of termination) within a period of 30 days. The 30-day period refers to the date of notice of termination, not the actual date of the end of the employment relationship. Not only does the employer have to inform the works council with enough time to allow for consultations between the employer and the works council, but the employer also has to inform the Public Employment Service at least 30 days prior to issuance of the first notice of termination. A breach of notification duty toward the Public Employment Service as well as toward the works council leads to legal ineffectiveness of the terminations.

In the case of a mass redundancy, the works council can demand the conclusion of a social plan to help the employees affected and to prevent hardships. A prerequisite for such a demand is that the company employs more than 20 employees. Even though the works council can enforce the conclusion of a social plan,

the negotiations on the conclusion of a social plan do not impede the termination of employment relationships per se.

### Flexible measures

As an alternative to terminations, the employer can amend the conditions stipulated in the employment contracts or change the field of duty of the employees. In general the employer is required to get the consent of the concerned employee, especially if the proposed changes deteriorate the working conditions. The employer can, however, enforce the consent by linking the offer to amend the contract to a termination, which becomes valid if the employee does not accept the change ("*Änderungskündigung*"). If the working conditions are changed to the detriment of the employee and are made for a period of more than 13 weeks, the employer has to obtain the consent of the works council. If the works council refuses to consent, the court can consent. The court will consent only if the changes are objectively justified.

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## Belgium

### General overview of workforce restructuring

Companies are regularly faced with the necessity to reshape their workforce for various reasons, such as to optimize productivity and to adapt to evolving competition.

#### Collective dismissal

In cases where a collective dismissal is considered, it may trigger an application of multiple sets of rules. The legal definition of a collective dismissal is not singularly defined, so the application of the rule sets may include varying definitions of the same concept. These cases depend on the number of employees impacted, the total number of employees of the company and the existence of employee representatives.

Among these rules, there are specific ones regarding the information and consultation obligations of the employer as well as an obligation to set up a redeployment unit. If a collective dismissal is also a closure, specific rules will apply.

Collective redundancy provisions regarding information and consultation are triggered when a certain number of employees are made redundant for reasons that are unrelated to the employees personally, within a period of 60 days as follows:

- ▶ At least 10 employees in companies with more than 20 employees and less than

100 employees

- ▶ At least 10% of the employees in companies with at least 100 employees and less than 300 employees
- ▶ At least 30 employees in companies with 300 or more employees

The number of redundancies is assessed at the technical unit or division level.

Other rules may apply at the level of the company (CBA or other legal sources) or at the level of the sector or industry to which the employer belongs on the basis of his or her activity (in French "Commission Paritaire"/in Dutch "Paritaire Comité" or "JC").

The steps that an employer will have to follow in the case of a collective dismissal are strictly regulated. These will include specific notification requirements to various authorities. These steps will also include an information and consultation process that must be carried out with employee representatives (and in certain cases, with employees directly) before taking any (factual or legal) decision on the dismissal. Failure to comply with this triggers administrative or criminal sanctions and can have severe financial consequences.

The works council technically has the authority to determine the criteria for selecting the employees to be dismissed in a collective dismissal. Selection criteria

can also be determined within the JC to which the employer belongs. In all cases, selection cannot be discriminatory JC.

Once a decision is made to proceed with a collective dismissal and is in accordance with the law, a 30 days' waiting period begins, during which the employer cannot take any steps to proceed with the collective dismissal (this 30-day period can be extended or reduced in some cases). During this time, parties will often negotiate a social plan.

The content of the social plan will depend on the social climate within the company, the demands of the employees and previous dismissals. The social plan will very often include benefits or indemnities, in addition to the legal dismissal entitlements.

#### Flexible measures

The flexible measures that might be considered – in the context of restructuring as an alternative to dismissals or a means of reducing its impact – include:

- ▶ Payment of a premium to encourage voluntary departures
- ▶ Decrease of working time
- ▶ Payment of a premium to encourage intercompany moves or even intragroup moves
- ▶ Training to allow redeployment
- ▶ Part-time work or time credit

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## Canada



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### Employment standards are provincially governed

Almost all employment standards are individually legislated by each of Canada's provinces and territories in which an employee works (the federal government legislates only employment matters in industries that are deemed "federal undertakings"). While there are nuances between the jurisdictions, much of the high-level elements discussed below will be the same.

### Overview of collective dismissals

All Canadian jurisdictions, with the exception of Prince Edward Island, have specific legislative requirements for collective dismissals. Depending on the number of employees being dismissed in a prescribed time period, there may be a requirement to provide the relevant Ministry of Labour notice of the dismissals and enhanced statutory notice to the affected employees. In addition, as always, employers must comply with common law and/or contractual notice of dismissal requirements, which typically greatly exceed the statutory notice.

### Overview of flexible workforce structures

Given the lengthy notice that employers may be required to give, below is a summary of employer strategies that enhance the flexibility of a workforce while limiting liability for notice.

### Termination provisions

While all provinces have statutes governing the minimum notice of dismissal that employers are required to give employees, common-law reasonable notice will often greatly exceed the minimum notice requirements. Employers cannot contract out of the statutory minimums, but they can contract for any notice requirement equal to or greater than such minimums.

It is common for employers to insert termination provisions into their employment agreements. But for these provisions to be enforceable, employers must comply with very specific requirements that differ among jurisdictions.

### Fixed-term employees

Unless expressly stated otherwise, employment agreements are typically deemed to be of indefinite duration and can generally only be terminated without cause by providing reasonable notice. However, an employer may insert an end date in an employment agreement at the outset of the employment relationship if an employer only requires an employee for a set period of time.

### Agencies and temporary workers

Employers may hire temporary employees through employment agencies. While the service agreement between the employer and the agency may be terminated

pursuant to that agreement, temporary agency employment relationships must still comply with the applicable employment standards legislation. Furthermore, notwithstanding that the termination of the service agreement between the employer and the agency may be governed by contract, certain jurisdictions have minimum notice requirements for temporary agency employees. Such notice requirements, though, are generally less cumbersome than for traditional employees.

### Part-time employees

Employers may hire part-time employees who work on flexible schedules to accommodate fluctuating labor requirements. However, some jurisdictions have employment standards that provide additional protections for such employees, including, but not limited to, minimum call-in/on-call pay and compensation for last-minute shift cancellation.

### Independent contractors

Unlike employees, independent contractors are not subject to minimum employment standards, including minimum notice of termination. However, courts will look past the form and at the substance of the relationship when determining whether it is one reflecting a commercial agreement or an employment agreement.

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# Chile

## Workforce restructuring: collective dismissals

In Chile, there are no special rules for collective dismissals or layoffs.

A reduction in force, layoffs or collective dismissals are not legal causes for dismissal nor have any specific regulation. In the case of company restructuring or reorganization, the employer must apply general labor rules.

A generic cause would be the one established in Article 161, paragraph 1 of the Chilean Labor Code, named "company's needs." It stipulates that an employer can terminate an employment contract on grounds relating to the economic situation of the company, establishment or service that triggers the need to lay off one or more workers.

There is no specific threshold triggering additional requirements when terminating employees for reasons related to the economic situation of the company, establishment or service. The same rules will apply for termination of a single employee or a significant number of employees.

The employer may terminate any employment contract as may be required by "company's needs" based on economic reasons of the company defined in the Labor Law, as the following:

- ▶ Rationalization
- ▶ Modernization
- ▶ Low production
- ▶ Changes in market
- ▶ Changes in economic conditions or in the local or global economy

▶ Any other reasonable business reason  
These reasons need to be clearly stated in the dismissal letter and should be able to be proved in court if the employee files a claim.

There is another legal ground for dismissal in Article 161, paragraph 2 of the Chilean Labor Code, named "unilateral termination of employment by the employer," which applies in cases of employees with authority to represent the employer (i.e. managers, attorneys and agents) and employees working in confidential capacities. For these employees, the employer does not have to cite any facts to justify the dismissal.

In Chile, there is no legal obligation for the employer to consult or require prior or subsequent authorization to dismiss workers from the union of the company or other trade union organizations.

However, the termination of the labor relationship must follow a formal procedure, respecting both legal norms and the dignity of the worker. If a labor contract is terminated on one of the legal grounds above, the employer must follow these procedures:

- ▶ The employer must give a written formal dismissal letter to each impacted employee informing him or her of the termination, including the legal grounds for the termination and the payment of legal indemnities. A copy of this written communication must also be sent to the labor authority.
- ▶ In Chile, it is a leading practice to provide a termination settlement (*finiquito*), which is a document stating the notice of termination, the conditions of the

termination notice, the reasons for the termination, and the itemization of the social benefits to be received by the employee as part of the termination.

Approval of the labor authority (Labor Directorate) or other government authorities is not required for collective redundancy. However, the employer must notify the labor authority of the termination by sending it a copy of the written dismissal letter sent to the employees.

Labor law provides a special protection to some employees against dismissal.

Further, the following employees are protected against dismissal:

- ▶ Employees who are pregnant.
- ▶ Some labor union members.
- ▶ Members of the Health and Safety Parity Committee.

These employees may be dismissed only by the labor court order based on specific enumerated legal grounds.

Therefore, in Chile there are no special rules for collective dismissals or layoffs; the employer must apply general labor rules for collective dismissals in cases of company restructuring or reorganization.

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## Mainland China



Jane Dong

### Flexible measures

Workforce restructuring in Mainland China generally occurs as an intra-company and inter-company workforce transfer or termination.

For intra-company workforce transfers, which are mainly due to department reshufflings, service line restructurings, etc., an employee's position as well as work duties may need to be adjusted accordingly. Based on Article 35 of the People's Republic of China Employment Contract Law (ECL), the adjustment of a work position and work duties shall be subject to a written bilateral agreement concluded during a consultation with the employee.

There are numerous causes of inter-company workforce transfers. Such causes include corporate division, mergers or other types of strategic arrangements between companies. Under PRC laws of employment, an employment relationship is considered a protected individual right granted to employees and may not be "transferred" without their consent.

Moreover, there is no concept of direct transfer of employees from one legal entity in Mainland China's legal ecosystem. Thus, for an employee's transfer to another employer to be possible, the original employment relationship with the former employer first must be terminated. Then, a new employment contract should be signed by the employee with the new employer to establish a new employment relationship. In accordance with the ECL, the former employer shall pay severance to the employee if the former employer proposes the termination of, and terminates, the

employment contract pursuant to the mutual consultations and agreement with the employee. That is the case unless the new employer is willing to take over the employee's service period for the former employer and the employee agrees.

If the employee does not consent to the changes made to the work duties or to be transferred, and the employer fails to terminate such employee via mutual consultation, the employer will have to unilaterally terminate the employee based on the ground of a "major change in objective circumstances" under the ECL. Under this case, the employer has the burden to prove that the employment contract can no longer be performed in part or whole as a result of objective circumstances. Severance and a one-month prior notice (or payment in lieu of notice) is required for such termination.

However, the recognition of a major change is, in practice, mostly at the discretion of an arbitrator or judge. If the employer's case cannot be confirmed as a major change case, it will face illegal termination situation.

### Collective dismissals

Collective dismissals can be practiced in several ways under the provisions of PRC labor-related laws.

Article 41 of the ECL provides a definition of the economic retrenchment as follows: (1) the scale of the dismissal should be "over 20 employees" or "less than 20 employees but accounting for 10% or more of the total number of employees"; (2) the cause of the dismissal includes the employer's bankruptcy restructuring, severe operational difficulties, production

switch, business model change, significant technological innovation, business adjustment, or that the material change of the conclusion basis of the employment contract means that the contract can no longer be performed; (3) the procedure includes a 30-days-prior statement to all employees and trade unions, consideration of the opinions from employee or trade union, and filing of a workforce-reduction plan (including the corresponding severance) with the labor administration authority.

During the economic retrenchment, the employees who have signed employment contracts for relatively longer or un-fixed terms, or who are the sole income earner in a family with dependent family members including elderly people or minors, shall be retained in priority.

In addition, if an employer retrenches employees as mentioned and hires new employees within six months, notice shall be given to the employees who were laid off; and all other circumstances being equal, such persons shall be given hiring priority.

However, because the procedures of economic retrenchment are tedious, in practice, many employers tend to collectively terminate employees by mutual consultation, which in turn is more flexible and time-efficient. If the employer fails to terminate employees via mutual consultation, the employer may only consider unilaterally terminating the employees based on a "major change in objective circumstances" under the ECL, as mentioned above.

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## Colombia

### Workforce restructuring

As the world evolves, companies are challenged to transform the way they manage their people. The gig economy, mergers, acquisitions and business strategies for doing things more efficiently are some reasons for reorganizing the workforce.

In a workforce restructuring, the employer will be able to dismiss employees without fair cause; terminate the contracts by mutual consent; and enter into additional covenants.

#### Dismissal without fair cause

Under this option, the employer will terminate the contract by paying an indemnity to the employee and compensating him. The amount of the indemnity will depend on the type of contract.

#### Collective dismissal

Pursuant to Colombian Labor Law, an employer who wishes to collectively dismiss its employees will require authorization from the Ministry of Labor. A collective dismissal is determined by the percentage of dismissed employees in a period of six months, depending on the size of the company. The employer will face a collective dismissal if it lays off:

Percentage of dismissed employees (%)	Size of the Company (Number of employees)
30	11-49
20	50-99
15	100-199
9	200-499
7	500-999
5	1000 or more.

To request authorization from the Ministry of Labor, the employer must submit a letter explaining the reasons for the dismissal. The employer must show that there is an objective need for the restructuring plan. Once the request is submitted, the Ministry of Labor will take three to four months to grant the authorization.

A collective dismissal without the approval of the Ministry of Labor is illegal. This entity is able to impose penalties of up to 5,000 minimum salaries (approximately US\$1.395.075 for year 2018). An illegal collective dismissal invalidates redundancies so employees will receive their salaries and labor payments from the date of the illegal layoff, as well as reinstatement to their positions.

#### Termination by mutual consent

Both, employer and employee can terminate the labor contract by mutual consent. In this scenario, the employee is not entitled to receive an indemnity. However, for the purpose of avoiding future claims, the parties could enter into a settlement or transaction agreement to ratify their will of terminating the contract freely and voluntary. Normally, the employer pays a settlement or transaction amount that is equivalent to an indemnity for termination without fair cause.

As settlement and transaction agreements have the effect of *res iudicata* and terminations are not counted for the average of collective dismissal, terminating contracts by mutual consent is the most common practice in a workforce restructuring.

#### Employees with special protection

In Colombia, some employees have special protection, which means their contracts cannot be terminated without the authorization of a labor authority. The employees covered by employment stability are pregnant and lactating women; spouses or permanent companions of dependent pregnant women; some unionized employees; employees who have special

health conditions; and employees who will reach their age of retirement in less than three years.

#### Amendment of labor contracts

Employers and employees are able to modify contracts by mutual consent by entering into additional clauses. Job positions, activities to be performed, location and salaries can be mutually modified by the parties.

#### Change of employer

Workforce restructuring will not always lead to the termination of contracts. According to Labor Law, the change of employer does not extinguish or suspend the labor contracts. The substitution or change of employer takes place whenever the following conditions are met:

- ▶ Change of employer by any cause
- ▶ The business conditions remain the same
- ▶ The labor contract remains in force

The law applies to the substitution or change of employer, which means that the employee's consent is not needed. Under this scenario, the employee keeps his seniority and the former and new employer are jointly responsible for the obligations and claims that may arise before the substitution. General labor conditions will remain the same unless the parties agree to any additional changes in the contract.

The new employer must report the novelty of entry and the employer's change to the Social Security entities through the Integrated Table of Payroll Contributions. In the case of foreign employees, they must change their visas before the Ministry of Foreign Affairs within 30 days after the change of employer.

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## Costa Rica



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### Workforce restructuring: tread carefully

Collective dismissals can be a delicate matter in a country where employees have tightly guarded rights by law. So how should employers approach a workforce restructuring?

The Labor Code does not specifically regulate workforce restructurings or collective dismissals. Therefore, in the absence of specific rules, the collective redundancy process will be governed by the rules set forth for individual termination. Consequently, employers only have to cite Article 85, paragraph d, of the Labor Code in the dismissal letter. The provision establishes that an employer can terminate the employment relationship at its sole discretion. In this case, there is no need to consult previously with employees and/or the labor authorities or other officials unless there is a labor union and/or collective bargaining agreements (with non-union employees), as explained below.

Upon termination at the employer's discretion, the employer must pay severance and pay or give notice, in addition to pending (unused) vacation days and proportional Christmas/13th month bonus. Severance is paid based on the employee's seniority and in accordance with the rules established by Article 29 of the Labor Code. The maximum amount of

years of service that can be recognized for an employee is eight unless the employer has an internal workplace policy that is more favorable to the employee. On the other hand, notice can be given or paid; the length will depend on the employee's time of service, in accordance with Article 28 of the code. The maximum amount of notice required under the law is one month unless the employer has a workplace policy that is more favorable to the employee. During the notice period, the employee is granted one paid day off each week to find new employment; this benefit is granted regardless of the cause of termination.

There are special cases where certain employees have additional rights in light of a specific condition they possess. For example, pregnant and nursing employees are protected by law from being terminated at the employer's discretion; that is, pregnant or nursing employees can only be terminated with cause (i.e., employee's gross misconduct), which must be duly approved by the Ministry of Labor.

Another example of protected employees are members of a labor union. In this case, in addition to paying all termination benefits required by law, the employer should also review any applicable collective bargaining agreement to determine whether additional benefits must be paid to the terminated employee.

Employees on sick leave, duly granted by the Costa Rican Social Security Administration or the National Insurance Institute, are also protected by law in that their employment contract cannot be terminated during the sick leave except in the event of the employee's gross misconduct. If the employer is initiating a workforce restructuring, it is advisable to contact the employee to negotiate a private settlement agreement, as described below, to protect the employer's interests while respecting the employee's rights.

In the event of a massive workforce restructuring where the company is shutting down its operations, the Ministry of Labor has limited their participation vis-à-vis the employees with special conditions, to simply verifying that the employer is respecting all termination rights. Given the special conditions of certain employees, it is advisable to pay them at least the minimum amount required by law and to execute a termination and release agreement with each employee before a private mediator, duly authorized by the Ministry of Justice. Such termination and release agreements shall be binding on the employee in the sense that it will have the same effects as a final judicial resolution, thus guaranteeing a dispute-free environment, post restructuring. Otherwise, the risk of litigation will persist during the statute of limitations period (i.e., one year from the termination date).

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## Czech Republic

### Flexible measures

When considering restructuring, a company has several available possibilities, such as:

- ▶ Part of the business could be sold or outsourced, which could trigger an automatic transfer of employees depending on the circumstances
- ▶ Using a more flexible form of employment (agreements outside employment relationships) or temporary agency workers
- ▶ Automation

Some of the steps taken during restructuring could result in a higher number of employees being dismissed.

### Collective dismissals

According to the applicable legal regulations, ( i.e. Act No. 262/2006 Coll., the Labor Code), the statutory prerequisites for a collective dismissal are:

- ▶ The termination of a certain number of employment relationships within a period of 30 calendar days
- ▶ Based on termination notices that are given by the employer for organizational reasons (which include cancellation and relocation of the employer or its part, or restructuring)
- ▶ Made in relation to at least 10 employees of an employer with 20 to 100 employees; 10% employees when

employing 101 to 300 employees; and 30 employees when employing more than 300 employees.

Prior to serving the individual employees with termination notices, the employer is obligated to notify the trade unions or works' councils in writing (or the employees in cases where employees' representatives are not active in the organization) in a timely manner of its intention, but at least 30 days in advance of:

- (i) The grounds for the collective dismissal
- (ii) The number and professional qualifications of the employees who are to be made redundant
- (iii) The number and professional qualifications of all employees who are employed by the employer
- (iv) When the collective dismissal is supposed to occur
- (v) The proposed criteria for selecting employees who are to be made redundant
- (vi) The severance payment, as well as any other rights of the employees who are to be made redundant

In addition, the issues related to the collective dismissal are to be discussed with the employees' representatives (or the employees) to mitigate the negative implications of the procedure as much as possible. Their consent to the procedure is not necessary.

Furthermore, the employer is obligated to provide the employees' representatives/ employees with both notifications, which are sent to the Labor Office, and to inform the employees who are being dismissed of the date when the final written report is delivered to the Labor Office.

At the consultation stage when the intention to proceed with the collective dismissal is conveyed to the employees, the employer is obligated to provide the respective Labor Authority with a written report containing the same information as mentioned above, as well as a notification indicating that the consultation process with the employees' representatives/ employees has been initiated.

Subsequently, the employer must provide the respective Labor Office with the final written report summarizing the outputs from the consultation process, which contains specific details about the number and professional qualifications of the employees who have been made redundant.

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## France



Roselyn Sands

### A new ball game for workforce restructuring in France

President Macron's presidential campaign focused on the transformation of France; his priority: to increase the attractiveness of France to foreign investment, and to encourage job creation through greater flexibility of French labor and employment laws. In record time, President Macron did just that: significant reform of labor and employment laws and continuity in easing the rules on workforce restructuring.

As a result, corporations doing business in France have much more flexibility, simplicity, and predictability in implementing reductions in force in France. This seems to have been perceived by foreign investors: the EY Barometer on France's attractiveness dated June 2018 mentions a spectacular progression of foreign projects in France (+31% in 2017 compared to 2016).

Specifically today, for the first time now, employers have the option of pursuing either 1) the traditional social plan approach, which is now less complex, or 2) the new collective mutual termination approach.

#### 1. Redundancies under the traditional social plan approach: now less complex and less risky

##### Predictable works council consultation process

Before 2013, the works council had the power of delay and obstruction, as the timeframe of the consultation process was not regulated by law. Since 2013 (thus prior to the Macron reform), the law restricted the time required for works council consultation for redundancies and thus rendered the timeline predictable. The duration of the consultation process in case of collective redundancies is now 2/3/4 months, based on the number of headcount reductions. So this timeline obstacle has been corrected.

##### Economic rationale limited to France and thus easier to demonstrate

The economic rationale for redundancies occurring in France was previously

assessed based on the situation of the French company and of the relevant sector of activity of the whole group to which it belongs, i.e., at the international level. This extraterritorial approach was justified by the necessity to prevent multinational companies from artificially creating economic difficulties in their French subsidiaries to justify headcount reductions. However, it was also considered an obstacle to doing business in France.

Under the Macron reform, the perimeter of the economic-rationale assessment test is now limited to France only. As a result, this assessment is easier.

##### Simplified redeployment obligation limited to France

Under prior French labor law, employers were required to help redundant employees find alternative employment solutions and conduct a full search for available positions not only in France, but also within the group worldwide, prior to termination. Thus, employers were burdened with the obligation to propose redeployment offers to the concerned employees wherever operations existed around the world with available job positions. These propositions had to be precise, written and customized to the employee's profile and thus created significant hardship for the group.

The Macron reform has ended the search for redeployment positions extraterritorially. This search is now limited to companies located in France. As a result, a redundancy can no longer be challenged because the employer did not search available position in foreign countries, closing the door to numerous claims in this regard.

##### Reduced litigation risks

In case of litigation, employees' potential damages for wrongful termination is now subject to a mandatory scale providing for minimum and maximum amounts depending on the employee's length of service (this excludes damage claims related to discrimination and harassment). Pursuant to the scale, damages for wrongful dismissal are now capped between one month and 20 months' salary (company

counting more than 11 employees), depending on the employee's years of service – whereas there was no cap before.

Moreover, the statute of limitations to challenge the grounds for dismissals has been reduced from 2 years to one year (except for discrimination and harassment).

Therefore, the risk of litigation is predictable and exposure significantly reduced.

#### 2. Collective Mutual Termination: a new alternative to collective dismissals

French law reform has established a Collective Mutual Termination option. This system allows companies to negotiate, through a collectively bargained agreement, the terms and conditions for employees, who agree by mutual agreement to exit the company, subject to the approval by the French administration.

The Collective Mutual Termination could be considered as an easier, less confrontational, and more secure mechanism for employers seeking a workforce reduction, under the condition that no forced redundancy occurs. Indeed:

- ▶ There is no need to justify an economic rationale
- ▶ The rules regarding redundancy do not apply (as there are technically no forced departures).

In conclusion, overall, workforce reductions are now easier in France. Employers presently have access to options in adjusting their headcounts. A social plan and collective redundancy is no longer the sole option, as collective mutual agreement is also possible. Careful consideration should be given before making a decision on the best course of action, including but not limited to timing, the strength of the economic difficulties, whether the required reductions are must-dos or nice-to-dos, and relationships with unions and works councils, among others, in order to find the best way forward.

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## Georgia

### Flexible measures

During the last two decades, the Labor Code of Georgia (LC) has experienced fundamental reforms concerning the suspension and termination of labor relations. In 2006, the new LC became effective with freedom of contract as the fundamental principle. According to the new LC, employers can dismiss their employees with the notice of a minimum 30 calendar days or a minimum 3 calendar days in advance, depending on the amount of the compensation paid due to the dismissal. If a labor agreement is terminated based on the initiative of an employee, an employer has to be notified in writing at least 30 days in advance.

In 2013, the Parliament of Georgia adopted the new LC. Regulations related to the dismissal of employees have been modified. Now an employer has to base the decision of an employee's dismissal on certain grounds that have to be justified. Article 37 of LC sets forth grounds for terminating labor agreements. However, the legislator points out another reason for dismissal in Article 37 of LC: *"Other objective circumstance justifying termination of a labor agreement."* Basically, this regulation allows an employer to dismiss an employee at any time, since it is not hard for an employer to find an objective reason justifying termination, (e.g., an employee not matching work standards).

An employer has flexibility not only in the reasons for terminating labor agreement but also in the notice period.

The International Labor Organization (ILO) stipulates that the notice period for dismissing an employee should be of reasonable duration. Compensation in lieu of notice may be paid to the employee whose employment is to be terminated.

The rationale of this rule is to allow time for an employee to seek alternative employment.

### Collective dismissals

An important innovation in the LC is the mechanism related to collective dismissals. The basis of collective dismissals is economic, technological or structural reason, which is defined as reorganization. LC defines collective dismissal in Article 38 as termination of labor agreements with at least 100 employees in 15 days' time. This may limit the rights of those who work in companies with less than 100 employees. If the number of dismissed employees is below 100, it will not be qualified as a collective dismissal.

The ILO requires states to enact laws to guarantee that employers consult with workers' representatives and notify the public authority.

Until 2013, it was a matter of discussion whether the LC of Georgia was meeting the standards of the ILO.

Now there is a norm concerning the legislative gap in Georgia: An employer has to send a written notice 45 days in advance to the Ministry of Labor Health and Social Affairs of Georgia and those employees who are being dismissed. Accordingly, the state authorities are informed in the case of collective dismissals. However, they do not have the regulative power to affect the process in any way. Therefore, the purpose of the provision obligating employers to inform state authorities about collective dismissals remains unclear, since the state cannot interfere in the process.

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## Germany



Dr. Karsten Umnuss

### Collective dismissals

In Germany, collective dismissal obligations are triggered if the employer decides to dismiss:

- ▶ More than 5 employees in an establishment with 21-59 employees
- ▶ More than 25 employees or 10% of all employees in an establishment with 60-499 employees
- ▶ More than 30 employees in an establishment with 500 or more employees.

In cases of collective dismissals, special rules have to be observed. The employer is obligated to inform the employment agency about the planned collective dismissals, including prior involvement of the works council, before the declaration of the dismissal. The requirements for such a mass dismissal notification are high. Mistakes in connection with the legally prescribed requirements can lead to the ineffectiveness of all dismissals.

Additionally, the employer has to inform and consult the works council prior to the implementation of the contemplated collective dismissal. The employer must provide the following information to the works council:

- ▶ Reasons for the dismissals
- ▶ Number of employees to be dismissed
- ▶ Selection criteria
- ▶ Period over which the dismissals are to take place

The works council must be informed in advance. Generally, the employer must provide the required information to the works council four to six months prior to the planned implementation of the collective dismissal. Although there is no legal requirement, written form is advised.

Subsequently, the employer must consult with the works council to mitigate the consequences of collective dismissal and to draw a reconciliation of interests, which describes the measure. Usually, such consultations will be done together with the social plan negotiations. A social plan provides compensation for those employees who might lose their jobs or be negatively affected by the measure.

While there is no obligation to conclude a reconciliation of interests, a social plan must be agreed on. If the parties fail to reach an agreement, they can declare the negotiations to have failed and an arbitration committee to be appointed. If the parties cannot agree on the appointment of the arbitration committee, a decision on this will be taken by labor court.

If the parties also fail to reach an agreement in front of the arbitration committee, a decision about the social plan is made by the arbitration committee.

Furthermore, as collective dismissals are individual dismissals as well, the works council must be heard before every dismissal.

### Flexible measures

In order to prevent the strict standards of collective dismissals, flexible measures could be considered when hiring employees.

Fixed-term employment contracts, "work on call" and the use of a contingent workforce are factors.

"Work on call" exists if the parties agree that the employee has to perform his work according to the need of work. The employment contract must specify a duration of the weekly and daily working hours. This does not lead to a daily/weekly work obligation. It guarantees the employee the remuneration if the employer does not exhaust the specified hours. However, a deviation of 25% up and 20% down is allowed.

Companies can also make use of contingent workforce. Generally speaking, a contingent worker is any worker who is not an employee of the employer entity and who provides services to that entity for a limited period of time to satisfy temporary employment or service needs. This includes but is not limited to:

- ▶ Agency workers
- ▶ Self-employed workers/ freelancers/ consultants/ contractors.

As the German Special Protection against Unfair Dismissals Act is not applicable in relation to contingent workers, companies using a contingent workforce enjoy flexibility.

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## Greece

### **Flexible measures and collective redundancies**

Salaries are one of the largest costs for companies and are often the most challenging item to control. Amending employees' compensation, however, is touchy for those who are affected, so it is important to handle the changes in alignment with applicable provisions.

Currently, the Greek legal environment has the following alternative options for flexible working arrangements:

#### **Part-time work and work on rotation**

Part-time work is defined as employment in which the employer and the employee agree that the latter will provide daily/ weekly/monthly services for a definite or indefinite period of time, for less than normal working hours.

In addition, work on rotation is defined as employment in which the employee provides services full time, but for less working days per week/month/year.

Both types of employment should be reported to the Labor Office within eight days from the day that the contracting parties reached the agreement, or there is legal presumption that the employee provides full-time employment.

While both types of employment may be implemented following an agreement of the parties, work on rotation may also be implemented following a unilateral decision

of the employer in the event the employer's financial activity is seriously restricted and only after the conclusion of a consultation procedure between the employer and the employees' representatives.

During the implementation of said measure (i.e., unilateral implementation of work on rotation) which may not supersede nine months per year, the employer's flexibility to terminate employees is suspended.

#### **Temporary suspension of employment**

The employer is entitled to temporarily suspend employees' provision of duties for a maximum period of three months per year.

The measure may be imposed only under the following conditions: a) there is a severe restriction of the employer's financial activity, b) the employer addresses a respective written statement to the employees, c) a consultation procedure between the employer and the employees' representatives is concluded d) the employer does not implement said measure in an abusive manner.

During the suspension period, the employer is obligated to pay a half-salary to the employees.

During the implementation of said measure, the employer's flexibility is seriously restricted.

#### **Working hours arrangement**

The law also provides for collective working hours arrangement following an agreement between the employer and the employees' representatives; however, said measures due to complexities set by law have not been extensively implemented.

#### **Collective redundancies**

Under the term "collective redundancies," the law identifies redundancies that exceed specific thresholds per calendar month (six per month for entities employing 20 to 150 employees and a percentage of 5% and up to the amount of 30 employees per calendar month for entities employing more than 150 employees) and are imposed due to reasons related to the financial activity of the employer and not due to the employees' performance.

The collective redundancies process entails information and consultation obligations toward the employees' representatives. The procedure stated by law should last at least 60 days and Greek Labor Authority should be notified. Unlike in the past, the Greek Authority has no "veto" competence (i.e., Greek Authority has no competence to forbid the redundancies). If the employer does not apply the steps provided by law, then the respective redundancies are considered null and void and the employees have the right to claim their re-employment and default payments.

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India



Anirudh Mukherjee

## Global workforce restructuring: dismissal mechanisms

Indian labor laws are stringent about dismissal of employees, and the emphasis is on protection from unfair dismissal. Employers must, therefore, conform to the procedure prescribed under law and be able to validate the reason for dismissing an employee. The concept of “at-will” employment is not recognized in India, thereby saddling the employer with the burden of validating the cause for dismissal. An employer may dismiss an employee for reasons such as misconduct, continued ill health, unauthorized absence from work or business-related factors (like reorganization, closing of business, transfer of undertaking or elimination of job role on business transfer). The primary focus of labor laws is to safeguard the interest of employees, and if a dismissal is challenged, the employer is exposed to high risk. To mitigate the risk, the employer must comply with the termination provisions contained in the employment contract of the employees as well as the procedure prescribed in law.

### Legislative framework

The law on dismissal of employees is largely covered under the Industrial Disputes Act, 1947 (ID Act) and state-specific shops and establishment act. The ID Act is applicable to industrial establishments and to an employee who qualifies as a “workman.” The definition of “workman” covers any person employed to do any skilled or unskilled work, but specifically excludes any person employed mainly in a managerial or administrative capacity, or who is in a supervisory capacity drawing wages exceeding INR10,000 per month. The rules for retrenchment under the ID Act differ depending on the number of workmen employed in the industrial establishment. The ID Act provides that a

workman who has completed one year of continuous service cannot be retrenched by an employer without the employer meeting certain pre-conditions – e.g., a written notice period of 30-60 days indicating the reasons for retrenchment (or wages in lieu of such notice), payment of severance compensation and notification of appropriate government authorities. For an establishment employing more than 100 workmen, prior permission of the appropriate government authority is mandatory for retrenchment. The ID Act further provides for the “last in, first out” process to be followed, unless there is an agreement to the contrary between workmen and employer or reasons are recorded by the employer for retrenching any other workman. Further, if the employer proposes to hire anyone in the future, the retrenched employee is to be given an opportunity to be rehired and given preference over others.

For employees in the non-workman category, the dismissal has to be in accordance with the employment contract and the provisions of the applicable shops and establishment act, which normally provides for a notice period of 30 days or salary in lieu thereof. No notice period or salary in lieu of such notice is required to be given if an employee is dismissed on the grounds of misconduct and such employee has been afforded the opportunity to explain the charges levied against him.

The dismissal of an employee not falling under the ID Act or shops and establishment act must comply with the terms of the employment contract.

### Collective dismissal

There are no additional obligations prescribed if the employer wants to terminate a number of employees at the same time. However, for retrenchment of workmen due to transfer of undertaking

or closure of undertaking, the procedure is prescribed under the ID Act. For closing an undertaking, the employer must either give prior notice to, or get the approval of, the appropriate authority (depending on the number of workmen employed). For retrenchment pursuant to a business transfer, the workman becomes entitled to such notice and compensation as if he/she has been retrenched. No compensation becomes payable in case of business transfer if (a) the services of the workman are not interrupted due to such transfer, (b) terms of new employment are not less favorable than applicable prior to the transfer, and (c) the new employer is legally liable to pay retrenchment compensation to the workman (in case of retrenchment) on the basis that the service has been continuous and not interrupted by transfer.

### Mitigating unfair dismissal

Dismissals may be challenged on grounds of violating procedural aspects, or over the reasons given for dismissal. Even if the employer complies with procedural requirements, the dismissal can be found in violation of the law if the employer fails to establish the alleged grounds of dismissal. Therefore, in all circumstances, it is imperative for the employer to have sufficient documentary proof. Employees must also be given a fair opportunity to explain their case. The remedies available to an employee for unfair dismissal are reinstatement with back wages or damages for illegal/wrongful termination.

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Italy

## General overview of workforce restructuring

In the current economic climate, many national and multinational companies are seeking to optimize the productivity or the structure of their workforce nationally and internationally. The options for achieving this might include the reorganization of a workplace or group of companies; the downsizing or closure of a business; or the restructuring due to relocation or outsourcing.

### Collective dismissals

Redundancy results in a reduction of workforce and may be the consequence of a new organization of the business, or a part of it, due to a financial crisis, a reorganization or a restructuring. When employees are terminated or encouraged to resign at the same time, a dismissal is "collective."

In Italy, Law No. 223/1991 outlines the collective dismissal procedure. Companies with more than 15 employees which – due to financial crisis, reorganization or restructuring – intend to dismiss at least 5 employees (executives included) within a 120-day period are required to follow the collective dismissal procedure. The process requires consultation with the union's representative. The company must send prior written notice to its internal works councils and to the relevant unions (also to the Ministry of Labor in certain cases) with detailed information about the reasons for the redundancies and the timing of the dismissals; the number; the position and professional profiles of the redundant employees; and alternative measures to

be adopted to reduce the adverse effects of the dismissals in order to start a joint consultation with unions.

After the consultation phase, the employer is required to notify the local labor authorities of the outcome of the consultation; another conciliation procedure may take place before the competent labor authority, upon its request.

After the collective dismissal negotiation process, the employer must communicate individually to the affected employees the outcome of the process through a dismissal letter within the terms agreed with unions.

The selection criteria of the employees to be dismissed is usually agreed upon with unions. If no agreement is reached, those ones provided by law must be applied.

Each dismissed employee is entitled to receive the salary accrued during the procedure and the notice period (or the possible indemnity in lieu thereof), the severance payments and other severance indemnities provided by individual contract and the applicable collective bargaining agreements.

### Flexible measures

Among the flexible measures that might be considered by the employer – not only in the context of a collective dismissal procedure – are:

- ▶ Transfer of some employees to other production units and/or to other companies (to lower-level positions)
- ▶ Signature of agreements for the reduction of the working hours and/or compensation to preserve job positions and require, if possible, an integration of

the salary to a public fund

- ▶ Replacement of some redundant employees to lower-profile activities within the company, as an exception to the general rule against demotion (Sect. 2103 of the Italian Civil Code)
- ▶ Provision of an economic incentive to voluntarily leave the company within a certain period of time
- ▶ Reduction of the number, positions and/or different criteria to be used in selecting the redundant employees
- ▶ Granting the employees the right to be hired again by the company if new positions open within a limited period of time (usually one or two years)

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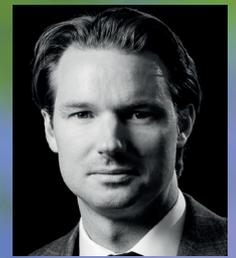
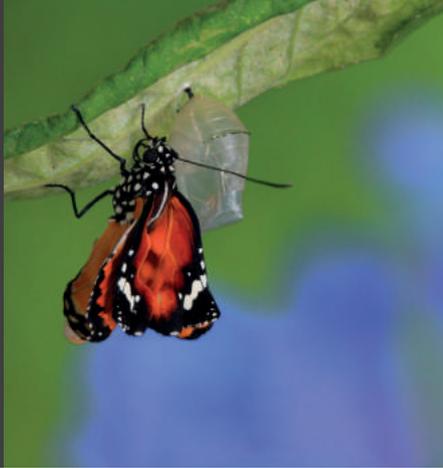
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## Netherlands



Joost van Ladesteijn

### Collective dismissals

#### Legal context

In the Netherlands, a collective redundancy situation generates an obligation to notify the competent authority and to inform and consult interested parties, as required by the Dutch Collective Redundancy (Notification) Act (WMCO) and the Dutch Works Councils Act (WOR). The WMCO applies in the event of:

- (i) A contemplated dismissal of a group of at least 20 employees
- (ii) At one or more locations of the same company
- (iii) Within the same geographical work area
- (iv) During a period of three consecutive months

In addition, the collective redundancy must be based on economic grounds, such as economic difficulties, work reduction, organizational or technological changes, partial or full closure of the business or a relocation of the company.

#### Notification and consultation requirements

If the employer plans to dismiss a group of at least 20 employees at one or more locations, the WMCO, if applicable, triggers a duty to notify the Public Employment Service (PES) and to notify and consult the trade unions involved. In accordance with the WOR, the employer is also required to inform the works council and submit a request for advice. Failure to comply with the applicable requirements can revoke any dismissals, as discussed in more detail below under item 3.

#### Obligation to notify the PES

The employer is required to notify the PES of the contemplated collective dismissals. The notification should include:

- (i) The reasons for the proposed termination decision
- (ii) The information on the impacted

employees

- (iii) Whether the works council and the trade unions have been consulted
- (iv) The criteria used to determine which employees will be made redundant
- (v) The calculation method for severance pay
- (vi) The intended date for implementation

#### Obligation to consult with trade unions

The employer must also notify the trade unions of the contemplated collective dismissal. A copy of the notification must be sent to the PES. The employer is also required to consult with the trade unions concerned. After notification, the employer is obliged to comply with a one-month waiting period. Only after the one-month wait is the employer authorized to terminate the contemplated employment contracts. Failure to do so could result in annulment of the terminations.

#### Obligation to consult with the works council

Whether the employees must be consulted under the WOR depends on if a works council or an employee representative committee has been set up. In principle, a works council or employee representative committee should be installed if a company has 50 or more employees.

In the event of a collective dismissal, the employer is obligated to inform and consult the works council prior to the proposed termination decision. The employer is required to inform the works council in a timely manner. The request for advice submitted by the employer must cover:

- (i) The reasons for the proposed termination decision
- (ii) The consequences the decision is likely to have for the employees involved
- (iii) The proposed measures to be taken in response

### Sanction for breaching the applicable requirements

In the event of violating any of the notification or consultation obligations under the WMCO – i.e., when the notification is incomplete, or the trade unions or works council have not (yet) been informed or consulted – the PES will not consider the applications for dismissal until the employer has met its obligations. Under the WMCO, the employee will be able to nullify the termination of the employment agreement if the employer has breached its obligation to inform or to consult. If successfully nullified, the employee will remain employed with retroactive effect, and may take legal action for back wages plus statutory interest and an increase.

#### Conclusion: practical tips for employers

To recognize what triggers these collective consultation obligations can be a complicated task and is largely based on the circumstances of the case. Companies bear the risk of multiple cases of litigation, as parties such as the impacted employees may claim reinstatement and the works council can commence a legal procedure based on the consultation process. It is therefore key to spot the events that trigger collective consultation obligations and to be knowledgeable about the information that needs to be provided. For the latter, it might be useful to impose a confidentiality agreement with the trade unions and the works council during the consultation phase.

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## New Zealand

### Global workforce restructuring and flexible working

As the pace of technological change increases, pressures increase on traditional employment structures. Two issues making an impact are the replacement of permanent employees with other workers (be they machines, contractors or flexible workers) and workers seeking greater flexibility to balance their work and personal lives.

#### Redundancy in New Zealand

Often, a change in working arrangements will result in permanent employment roles being disestablished, and those holding those roles being made redundant. In New Zealand, there is no distinction between collective and individual redundancies. When any employment is terminated on grounds of redundancy, the decision must be both substantively and procedurally justified. There must be a “genuine business case” for a redundancy. The New Zealand Court of Appeal has confirmed that, in redundancy situations, the test for whether a dismissal is justified should include an assessment of whether the employer’s commercial rationale for the proposed redundancy is one that a fair and reasonable employer would reach. In addition, employers must provide potentially affected employees with the information they will rely on to make a decision, and provide them with a genuine opportunity to comment on that information and provide alternatives, before a final decision is made.

#### Flexible working arrangements in New Zealand

The use of flexible working arrangements has increased exponentially in recent years, to the benefit of both employers and employees. New Zealand legislation seeks to balance an employee’s desire for work-life balance and job security with an employer’s requirements to meet changing resource needs and use labor resources as efficiently as possible.

#### Protecting employee flexibility

The ability to request flexible working arrangements is protected under New Zealand law. Employees can ask to change their work arrangements by making a flexible working request. Employers must consider these requests and respond within one month. Requests can only be refused on particular grounds, including an inability to reorganize work among existing staff, detrimental impact on quality or performance, and insufficiency of work during the periods the employee proposes to work.

If an employer refuses a request and the employee is dissatisfied, the parties can seek assistance from a Labor Inspector or seek to mediate the issue using state-provided mediation services.

#### Moderating employer flexibility

Employers are seeking to reduce fixed labor costs by introducing flexible working arrangements. These include maintaining on-call and standby rosters, using contractors or providing work only when it is available.

The Government has sought to balance this against employee job security and protection of vulnerable workers. In April 2016, legislation was passed prohibiting the use of “zero-hour” employment agreements (under which employees must remain available but only work and get paid when the employer decides there is work to do). When employees are required to be available beyond their usual hours of work, they must be reasonably compensated for this additional availability.

Further change is in the pipeline. Legislation is currently before Parliament that would allow employees providing services to another company to benefit from collective employment terms in place at the client company; would reinstate set meal and rest breaks; and would abolish 90-day trial periods. The Government has indicated that it will also introduce changes intended to protect dependent contractors (minimum wages and the right to bargain collectively), and it is looking at whether the current employer/contractor structure gets the balance right between flexibility and protection.

This is an area in which we can expect ongoing legislative evolution in New Zealand.

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## Norway



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### Legislation

The Norwegian Working Environment Act (WEA) applies to undertakings that engage employees. Shipping, hunting, fishing and military aviation are exempted.

The Norwegian regulations on collective redundancies are based on Council Directive 98/59/EC of 20 July 1998.

### Restructuring

The employer has the prerogative to manage an enterprise within the framework of laws, regulations and agreements. Consequently, the employer can make unilateral decisions that directly or indirectly affect the company and the employees. Examples include reorganizing work tasks, changing compensation, relocating personnel to different workplaces, and changing the work hours when necessary.

Managerial prerogative is a flexible tool that allows the employer to organize the business such that it can avoid issues such as redundancies. This right is a general non-statutory right, which originates from both customary law and practice.

The main principle to bear in mind is that the essential character of an employee's position should not change significantly, and the change has to be within the framework of the original employment relationship. However, whether a situation falls within managerial prerogative will depend on an overall assessment that will be decided by applicable legislation, customary practice and current agreements.

### Constructive dismissal

If the employer imposes significant changes in the employment relationship and these changes fall outside the limits of managerial prerogative, it may call for a constructive dismissal. In such cases, there are two alternatives: the parties can agree on a new employment agreement or the employer will conduct a formal termination of the employment relationship.

For any dismissal, the cause for termination must be justified as a fair dismissal.

When an employee is given a constructive dismissal, there are two alternatives. First, the employee could accept the changes and step into the new position, immediately or after finishing the notice period. Second, the employee could choose not to accept the changes and resign from the current position after finishing the notice period and possibly take legal proceedings against the employer for unfair dismissal.

### Collective redundancies

When reorganization of the company is not sufficient, the management may have to resort to collective dismissal as a last option.

Unlike for managerial prerogative constructive dismissal, the rules for collective dismissal are carefully regulated in the WEA. Collective redundancies are defined as situations in which at least 10 employees are given notice of dismissal within a period of 30 days without being warranted by reasons related to the individual employee.

### Requirements

When contemplating collective redundancies, the employer shall, as early as possible, consult with the employees' elected representatives. The consultations aim to start a dialogue and give the employees the best possible information on relevant questions. At best, such a dialogue may lead to avoiding redundancies or reduce the number of persons made redundant.

The employees' representatives have the right to receive expert assistance in the consultations.

If it becomes clear that it is not possible to avoid the redundancies, the employer shall make efforts to mitigate the adverse effects.

### The employer's duty to provide information

The employer is obliged to give the employees' elected representatives

all relevant information. This includes written notification on the reasons for any redundancies, the number of employees who may be made redundant, the categories of workers involved, the number and groups of employees normally employed, the period during which such redundancies may take place, and proposed criteria for selection of those who may be made redundant.

Such notification shall be given at the earliest opportunity and no later than the time the employer calls the consultation meeting. The Labour and Welfare Service shall also be given the same notification.

If the employer is planning to terminate more than 30 employees or 90% of the staffing, the employer must notify the county municipality.

### Consequences for the employees

The termination periods are based on the individual employment contracts. But projected collective redundancies will not come into effect earlier than 30 days after the Labour and Welfare Service has been notified.

The employees are, in any case, protected against unfair dismissal.

### Preferential right to a new appointment

Norwegian law gives redundant employees priority to be re-employed in the company. The prerequisite is that the company is going to recruit new employees in the first 12 months after the end of the notice period.

However, if the former employees are going to claim priority, they have to have the right qualifications for the new position.

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**Konstanty Dobiejewski**



## Poland

### Flexible measures

In the era of conducting business activity in a cross-border manner, in a dynamic economic situation and with the need to reduce costs, business strategies of international companies undergo continuous changes, including restructuring of the workforce.

Reshaping a workforce structure may be achieved in many ways (e.g., assignment of employees to the company's subsidiaries abroad, transfer of work establishment, outsourcing of certain departments or a reduction of workforce using the collective dismissal procedure).

### Collective dismissals

Global restructuring of multinational companies often leads to the reduction of the workforce.

Even though Polish labor law aims to protect the employment relationship, the employer should terminate contracts with its employees mainly due to justified reasons related to employees. In certain cases when reduction of the workforce is due to reasons not attributable to employees, the collective dismissal procedure may be conducted.

However, it should be noted that for termination of employment contracts due to reasons not attributable to employees, the employer is obligated to pay dismissed employees additional compensation in the form of a statutory severance payment calculated on the basis of length of employment with the particular employer. The amount of the severance payment is

as follows:

- ▶ If the employee is employed for no more than 2 years, 1 month's remuneration
- ▶ If the employee is employed for a period of 2 years to 8 years, 2 months' remuneration
- ▶ If the employee is employed for at least 8 years, 3 months' remuneration

The collective dismissal procedure should be conducted before implementing steps aiming at reduction of the workforce. It applies to employers that hire more than 20 employees and want to terminate a certain number of employment contracts within a 30-day period.

The number of employees to be dismissed depends on the total number in the workforce:

- ▶ Ten employees if the employer hires less than 100 employees
- ▶ Ten percentage of the total workforce if the employer hires 100 to 300 employees
- ▶ Thirty employees if the employer hires more than 300 employees

Before terminating the employment contracts, the employer is obligated to notify the trade unions operating in the workplace or, in case of absence of trade unions in the workplace, to consult with employees' representatives about the intent to conduct a collective redundancies procedure. The employer should give details of the plan as well as consult about matters related to the termination of certain employees.

Within 20 days from the notification of the intent to conduct a collective redundancies procedure, the employer should either conclude the agreement regarding collective redundancies with the trade unions operating in the workplace or introduce regulations on collective redundancies after consultation with the employees' representatives.

The employer is also obligated to twice notify the District Labour Office on steps related to the collective redundancies procedure.

Only after conducting the collective dismissal procedure can the employer terminate the employment contract with its employees, either by way of a mutual agreement or by termination notice.

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## Romania



Nicoleta Gheorghe

### Dealing with business difficulties from a workforce perspective

Workforce restructuring in the form of collective redundancy is governed by the Romanian Labor Code.

Collective bargaining agreements (CBAs) can modify the rules governing collective redundancies and grant more favorable rights to the employees.

Rules regarding collective redundancy are triggered when an employer proposes to dismiss the following number of employees within 30 calendar days in the specified threshold:

- ▶ At least 10 employees in a company with 21-99 employees
- ▶ At least 10% of the total number of employees in a company with 100-299 employees
- ▶ At least 30 employees in a company with 300 or more employees

As an alternative to the collective redundancy, the Romanian Labor Code regulates the technical unemployment.

Specifically, the employer may suspend the individual labor agreements of its employees (not terminate them) if the activity is temporarily suspended or reduced due to economic, technological, structural or similar reasons.

### Collective redundancy

The collective dismissal triggers a complex process that has the following features:

1. Legal justification

Collective redundancy may occur for one or several reasons not related to the employee. The restructuring must be effective and have a real and serious cause.

2. Employee representatives' consultation  
Union and/or employees' representatives must be informed and consulted on matters such as number and categories of employees impacted by the collective redundancy; reasons for the contemplated restructuring; envisaged measures to limit the number of dismissed employees; and contemplated timing.

3. Information requirements to the territorial labor inspectorate and unemployment agencies

The employer has the obligation to notify the territorial labor inspectorate and the unemployment agency of the collective redundancy and the measures envisaged to limit the negative consequences.

If, after the consultation with the union or the employees' representatives, the employer decides to continue the redundancy process, it must inform the territorial labor inspectorate at least 30 days before issuing the dismissal decisions to the employees.

4. Selection criteria process and dismissal documentation requirement

The employees made redundant must be selected based on certain criteria established by law and/or by the provisions of the applicable CBA and in a transparent manner based on criteria pertaining to the employee, such as: specific professional

skills, family situation, number of years of service with the company, and issues that increase the difficulty of finding a new job (e.g., disability, age).

5. Human resources (HR) legal costs

The key components of mandatory HR legal costs are as follows: (a) notice or an indemnity in lieu of notice if the employee is released from working during the notice period, or (b) termination indemnity, if such an indemnity is established in the individual employment contract or applicable CBA.

### Technical unemployment

When the employer applies for the temporary suspension and/or reduction of its activity, the employees involved in the reduced or suspended activity who no longer perform their activity benefit from an indemnity of no less than 75% of their base salary.

During the temporary suspension and/or reduction of activity, the employees are at their employer's disposal. The employer at any time can restart the activity.

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## Russia

### Collective dismissals

Workforce restructuring is referred to as redundancy under the Russian Labor Code. The law differentiates between “redundancy” and “collective redundancy” (also referred to as mass redundancy).

A redundancy qualifies as a collective redundancy if it meets one of the following criteria:

- ▶ Liquidation of an enterprise having 15 or more employees
- ▶ Staff redundancy of 50 or more employees within 30 calendar days; 200 or more employees within 60 calendar days; or 500 or more employees within 90 calendar days
- ▶ Termination of 1% of employees due to liquidation or redundancy within 30 calendar days in regions with the total number of employed less than 5,000

Legal justification for redundancy is not required. However, the employer must indicate the reason for redundancy (e.g., economic difficulties, technological changes) in the notice to a work council/ union and the State Unemployment Service.

The employer cannot choose the employees to be redundant. Employees with a higher productivity and skill have a preferential right to remain employed. In the case of equal productivity and skill, preference is given to employees:

- ▶ Who have two or more dependents
- ▶ Whose family has no other workers with independent earnings

- ▶ Who sustained a labor injury or occupational illness while working for this employer
- ▶ Who are invalids of the Great Patriotic War or certain other combat operations
- ▶ Who are raising their skill without ceasing work

Certain employees receive special protection during the process, particularly pregnant women or women with young children, single parents, trade union members, or members and former members of a union’s collegial bodies.

The employer shall notify the work council/ union at least three months prior to employees’ termination date.

The labor authorities’ approval is not required to implement a collective redundancy. However, the employer is required to file two notices with the State Unemployment Service (the first notice must be filed at least three months prior to the planned termination date of the employees, the second notice at least two months prior).

The employer must notify each impacted employee at least two months prior to the redundancy and obtain signed acknowledgement.

### Measures aimed to limit negative impact

The employer is required to offer impacted employees any vacant positions in the region that correspond to the employee’s qualification or require a lower qualification.

The applicable collective bargaining agreement may stipulate additional conditions such as an employer’s undertaking to offer vacancies in other regions.

The impacted employees are entitled to the following payments:

- ▶ Salary during the two months’ notice period or payment in lieu of notice
- ▶ Severance payment of salary for up to three months (this amount is up to six months in regions of Far North and similar regions)
- ▶ Payment of accrued vacation

Further, a collective bargaining agreement may provide for a list of actions for the prevention of a collective redundancy or for mitigating consequences on the impacted employees (e.g., reduction of working time without decrease of headcount, granting of unpaid leave, assistance to certain categories of impacted employees with new employment, professional training and education of released employees prior to termination).

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## Serbia



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### Collective dismissals and flexible measures

The Serbian Labor Law (the Law) considers redundancy one of the legal grounds for termination of employment. Employment can be terminated due to redundancy provided that the need for work of a certain employee or group of employees ceases or is diminished due to economic, organizational and/or technical changes for the employer.

Modeled on the EU Directive on Collective Redundancies (98/59/EC), the Law stipulates that a special procedure for collective redundancy is to be followed if a large number of employees is made redundant. This procedure is to be followed when the employer decides to, within a period of 30 days, terminate the employment contracts of at least: (i) 10 employees, if the employer has more than 20 and less than 100 employees, (ii) 10% of employees, if the employer has between 100 and 300 employees, (iii) 30 employees, if the employer has more than 300 employees.

Furthermore, the prescribed collective redundancy procedure is to be followed if the employer terminates at least 20 employees, over a period of 90 days, regardless of the total number of employees the employer has.

A simplified redundancy procedure would apply in cases that fall below the thresholds detailed above.

To provide an appropriate level of employee protection in case of collective redundancies, the Law imposes several duties on employers. The first is the employer's obligation to adopt and implement a "Redundancy Program." The Law prescribes the mandatory content of this program (including the criteria for determining which employees would be made redundant, the measures for solving the social and economic position of redundant employees, the amount of severance payments, transfer of redundant employees to another position and notice period).

Before implementing the program, an employer must, in cooperation with the representative trade union at the employer or other elected representative of employees and the Serbian National Employment Agency, take appropriate measures to provide new employment for redundant employees. These include transfer to other work assignments, employment with another employer, retraining or additional training, part-time work (but not less than half of the full-time work), or assistance in self-employment.

The National Employment Agency must provide the employer with a proposal of measures aimed at mitigating negative consequences of collective dismissals; however, the employer is free to decide whether to adopt any of the proposed measures.

Prior to the termination of any employment contract due to redundancy (either collective or individual), a severance payment to the employee is mandatory. The Law prescribes a minimum (non-taxable) amount of severance pay. A higher amount may be determined under internal general bylaws of the employer or an individual employment contract.

Furthermore, an employee terminated as part of collective dismissals is entitled to compensation, pension and disability insurance, as well as health protection, in accordance with the relevant social insurance regulations.

Finally, the employer is not allowed to hire new employees at the same work positions as those of redundant employees within three months of the terminations. If such need arises during this three-month period, the redundant employees have priority over other candidates for employment.

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## Slovakia

### Flexible measures and collective dismissals

Despite the lowest unemployment rates in recent history and increased competitiveness in the Slovak labor market, employers still vividly recall the impact of the 2008 economic recession. During the crisis, entrepreneurs took advantage of various strategies, including measures increasing workforce flexibility. Such adaptable workers continue to be in high demand among employers, mitigating the negative impact on businesses of decreased demand for local production.

### Flexible measures

Slovak labor law can be characterized by its bipolar division of dependent labor and independent contracting and the limited number of contractual arrangements available for both employees and employers. Besides a standard employment contract, an employer may decide to employ: a) temporary workers assigned from another employer (limited to a maximum period of 24 months) or an agency, b) part-time workers, or c) workers based on specific agreements outside the regular employment relationship and recognized by the Labor Code. Slovak law, in principle, prefers a standard full-time employment relationship. Attempts to rebrand employment relationships as more flexible and less-costly commercial contracts with freelancers have attracted

the attention of competent labor authorities and resulted in penalties.

Despite the lack of alternative schemes, there are measures available to employers to react to the rapidly changing business environment.

The Labor Code provides various legal instruments, which, to a certain extent, allow flexibility for employers to react to work demands such as job-sharing, home work, telework and the use of a working time account.

A working time account is a scheme under which employees' working time is adapted to the employer's immediate capacity, while the employee receives the basic salary. The employee's working time may not exceed, on average, 48 hours a week within a 12-month reference period. However, introduction of such schemes may require the consent of employee representatives – bodies that may otherwise not be required to operate within the corporate structure.

### Collective dismissal

Should multiple redundancies, despite available flexible solutions, still be necessary, the Slovak labor law recognizes the use of collective dismissal, specifying conditions that must be fulfilled prior to termination of an employment relationship. A formula included in the applicable provisions stipulates whether a multiple redundancy qualifies as

collective dismissal, based on the size of the employer and number of employees dismissed.

Obligations stemming from collective dismissal status are predominantly administrative and include notifying the competent employment authority, negotiating with employee representatives in an effort to minimize adverse effects on the employees, and disclosing relevant information to employees. Despite the relative formality of the collective dismissal process, collective dismissals can have grave reputational impact on the employer, as they generally attract substantial media coverage. Therefore, there have been attempts to circumvent collective dismissal rules by implementing multiple redundancies over a longer period.

### Conclusion

Flexible measures available under Slovak labor law provide mechanisms to react to the current market situation. Improper selection or implementation of such schemes may result in unfavorable requalification of such arrangements and the unwanted attention of the labor authorities.

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## Spain



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### Flexible measures and collective dismissals

Measures have been taken in Spain to strengthen internal flexibility in the development of employment relationships and, in particular, to foster the use of temporal employment adjustment in order to avoid more dramatic measures, (i.e. individual or collective dismissals).

#### Collective dismissal

Spanish labor law defines “collective dismissal” as the termination of labor contracts based on economic, technological, organizational or productive grounds when, during a period of 90 days, the termination affects no less than:

- a) 10 employees in companies that employ less than 100 employees
- b) 10% of the employees in companies that employ 100 to 300 employees
- c) 30 employees in companies that employ 300 or more employees

The Worker’s Statute details a procedure for collective dismissal, which includes a communication to the labor authorities, a consultation period with the workers’ representatives, and specific documentation requirements.

#### Internal flexible measures

There are alternatives to the termination of employees that an employer can consider during situations of economic crisis, including the use of collective negotiation.

Please note that the flexible measures that will be addressed below have a collective nature when the thresholds established for collective dismissal are exceeded, and to use them, a specific procedure must be followed.

##### a. Functional mobility

This measure shall be based on technical or organizational grounds and for the period required, according to the academic or professional qualification of the employee

and taking into account the employee’s dignity. In case of a category upgrade, the time will be limited to a period not exceeding six months during one year or eight months during two years (if this limit is exceeded, a substantial modification shall be carried out). The employer shall communicate its decision and the reasons to the workers’ representatives, and a worker’s salary shall be adjusted to the functions that the employee is really performing (unless the employee is given inferior functions, in which case, the employee’s current salary will be respected).

##### b. Geographical mobility

This measure may be carried out as a transfer or as an assignment, depending on whether the change of work setting is done for more or less than 12 months in a period of 3 years. To use this measure, a justified economic, technical, organizational or production ground is required.

The worker can choose to: (i) transfer and receive the compensation for expenses (ii) terminate the contract with a compensation of 20 days per year, with a maximum of 12 installments, or (iii) challenge the measure. The transfer must be communicated by the employer to the worker and the worker’s legal representatives, before the effective date (individual measure) or a consultation period with the employee’s representatives shall take place (collective measure).

##### c. Substantial modification of working conditions

The company may carry out substantial changes in working conditions based on economic, technical, organizational or productive grounds. These reasons will be related to the competitiveness, productivity or technical or work organization in the company.

The modifications may affect the working hours, schedule, shifts and the remuneration system or salary amount, functions exceeding the limits established

for functional mobility, etc. As described for geographical mobility, if this measure has a collective nature, a consultation period with employees’ representatives will be required.

##### d. Temporary non-implementation of the conditions foreseen in the collective bargaining agreement (CBA)

By agreement between the company and employees’ representatives, when economic, technical, organizational or production reasons exist, a company may refrain from applying the working conditions established in the applicable CBA when it affects, among other things, matters related to working hours, shifts, functions that exceed the time limits, remuneration system or salary amount. In recent years, this measure has been commonly applied by companies in order to avoid the payments of salaries foreseen in the CBA.

##### e. Temporary layoffs

The employer has two options in this regard: (i) temporary suspension of contracts, and (ii) reduction of working hours (a reduction of between 10% and 70% of the working day). In times of crisis, this measure is significant, since these temporary layoffs can help a company overcome difficult times without resorting to the ultimate termination of contracts. The labor authorities’ authorization will not be required.

#### Conclusion

All in all, the objective of the Spanish law aims to increase internal flexibility in employment relationships. The collective bargaining between the parties is a key element.

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## Sweden

### Global workforce restructuring

Key practical issues in workforce restructuring include legal justification, trade union consultation process and timing considerations.

The redundancy process in Sweden is governed by the Employment Protection Act (1982:80) as well as supporting regulations in the Employment (Co-Determination in the Workplace) Act (1976:580). However, the term “collective redundancy” is not legally defined. The legal process will remain the same for terminating either one employee or the entire workforce.

Prior to deciding upon a redundancy, and regardless of the size of it, if the employer is bound by a collective bargaining agreement (CBA), it must consult with the impacted trade unions. If the employer is not bound by a CBA, consultation needs to take place nonetheless if any of the affected employees are unionized.

Different from an individual dismissal, a collective dismissal requires an employer to notify the Swedish Public Employment Service (*Sw. Arbetsförmedlingen*) when the redundancy comprises five or more employees.

The redundancy may be due to any economical or organizational reason, as long as it is not discriminatory and contradictive to “good practice” on the labor market. Accordingly, a profitable company may still contemplate a restructuring or reorganization, triggering a redundancy situation.

### Collective dismissals

An employer is not free to choose which employees will be made redundant. When dismissing an employee due to redundancy reasons (i.e., the employee’s position is made redundant), the employer needs to comply with the following rules. First, the employer must search for any vacant position (within the same legal entity) to offer the affected employees, subject to an employee having “sufficient qualifications.” An employee having “sufficient qualifications” for a vacancy does not necessarily mean that the employee is the best suited for the position (compared with other candidates). Basic skills are sufficient, and the employer must tolerate a training period up to six months.

If there is no vacancy to offer, or the employee lacks “sufficient qualifications” for an identified vacancy, the employer must follow the dismissal order based on the “seniority principle.”

This principle, basically “last in, first out,” means that the employer shall offer to transfer the redundant employee to another position, if that position is held by someone with a shorter length of service.

The application of the seniority principle is limited to the operational unit (normally geographically delimited to a certain office) where the employee carried out work duties.

An employee dismissed due to redundancy has a priority right for re-employment if he/she has been employed by the employer for at least 12 months prior to receiving notice of dismissal. This right applies during the notice period and nine months after the last date of employment.

### Flexible measures

The availability of flexible measures is limited, if not nonexistent. For example, an employer is not allowed to partly cease its production or services and enforce temporary leaves without pay for the employees.

The employer may, however, collectively change the activity level of the employments by, for example, amending the terms and conditions of prior full-time employments to part-time employments. To qualify as a redundancy situation from a legal point of view, such amendments must follow the redundancy process, including trade union consultations prior to any changes being imposed on the employees.

To conclude, there are limited flexible measures available to prevent a redundancy process and related dismissals in case of a planned workforce restructuring. Redundant employees are, however, considered protected through their priority right to re-employment outlined in the previous section of this article.

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## Switzerland



Marc Philipp Gugger

### Global workforce restructuring

#### General flexibility

Switzerland is viewed as having less severe labor and employment law conditions compared with other nations. Terminations are in principle possible and valid even without reason and therefore business restructuring reasons are also permissible. There are no statutory obligations for general severance payments, even in the case of a mass dismissal process. Nevertheless, exceptions derived from various case law as well as contractual, legal and regulatory limitations have to be considered.

#### Contractual obligations

Employers have to comply with contractual obligations derived from individual and collective bargaining agreements applicable (e.g., change-of-control clauses, severance payments, longer notice periods, garden leave, consulting rights or hardship clauses). Employees cannot resign from any existing legal and/or contractual claims, subject to any (fair and well-balanced) mutual agreement. Regardless of any contractual choice of law and forum provisions in the case of international circumstances, mandatory statutory Swiss labor and employment law conditions remain applicable in Switzerland. This is of particular importance in case it is intended to amend and/or harmonize employment conditions prior to or after a restructuring. If an employee is not willing to accept the new employment conditions, a dismissal with the option of altered conditions of employment might be required.

#### Mass dismissal

A collective redundancy is implemented by notice of termination (also with the

option of altered conditions) given by the employer for reasons not pertaining personally to the employees. Collective redundancy is defined as terminations of:

- ▶ At least 10 employees in a business normally employing more than 20 and less than 100 employees
- ▶ At least 10% of the employees of a business normally employing at least 100 and less than 300 employees
- ▶ At least 30 employees in a business normally employing at least 300 employees

All redundancies within a business during a period of 30 consecutive calendar days are decisive.

An employer intending to perform a collective redundancy must inform (in writing) and consult with the organization that represents the employees or, where there is none, the employees. Further, the employer has to adhere to the statutory information duties toward the labor authorities.

The employer must share all relevant information and give the employees an appropriate amount of time (between two and four weeks) to formulate recommendations on how to avoid or reduce such redundancies and how to mitigate their consequences.

After the consultation process, the employees must be provided with a second written notification about the outcome of the consultation process (which has to be shared with the labor authorities).

#### Social plan

If at least 30 employees are affected by the collective redundancy in companies that employ regularly more than 250 employees, the employer has the obligation

to negotiate a social plan with the work union, the employee's representative body or the employees. The social plan process may last several months and is independent of the collective redundancy process.

The measures of a social plan may vary depending of the size of the company and the employer's potential to provide a large range of measures to minimize the negative impact of the redundancies, including outplacement or severance payments.

#### Compliance risks

The breach of the duty to inform and/or consult the employees may lead to severance payments (up to two months' salary in case of a mass dismissal) or to a denial of the commercial registry registration of the planned restructuring, which might cause delays to the transaction (e.g., merger, spin-off, asset deal, transfer of business).

Noncompliance with mandatory statutory law may further lead to severance payments of up to six monthly salary payments and claims for further damages caused to the employees (e.g., in case of abusive wrongful terminations). Respective litigation cases cannot stop or slow down the restructuring process.

Contractual clauses might trigger additional side effects.

The most important value to be protected in all workforce restructurings in most cases is the employer's brand and reputation. Thus, besides assuring compliance with contractual and statutory laws, it often is crucial to avoid having to inform cantonal authorities and receiving negative publicity.

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**Halyna Khomenko**



# Ukraine

The Ukrainian labor law is currently being shaped so that it conforms with the European legislation.

In 2013, certain aspects of collective dismissals were formalized by the new wording of the Ukrainian law "On Employment of the Population."

The Ukraine-European Union Association Agreement prescribes an obligation for Ukraine to implement EU Directive 98/59/EC on collective redundancies; however, even the current Ukrainian labor law largely complies with the EU requirements on collective dismissals.

### Legal criteria for a collective dismissal

The Ukrainian labor law qualifies dismissal as a collective one if it meets one of the following criteria:

One-time staff dismissal or staff dismissal within:

- ▶ One month
  - ▶ of 10 or more employees at a legal entity with a headcount of 20-100 employees
  - ▶ of 10% or more of employees at a legal entity with a headcount of 101-300 employees
- ▶ Three months
  - ▶ of 20% or more of employees at a legal entity regardless of the headcount

### Notification procedure

Collective dismissal requires an employer to follow a specific procedure.

Despite the fact that there is no requirement to provide legal justification for collective dismissal, an employer should notify a trade union on the reasons for collective dismissal, categories and the

number of impacted employees, and the terms of dismissals at least three months prior to the planned date of dismissals. The employer must consult with trade unions on measures aimed at preventing or reducing the number of dismissals and at mitigating unfavorable consequences of any dismissal.

In addition, an employer is required to notify the State Employment Service of Ukraine on the collective dismissal two months prior to the scheduled date of dismissals via a specific report.

An employer should also notify each impacted employee at least two months prior to the scheduled dismissal. Together with the notice of dismissal, an employer should offer an employee another job at the given legal entity if any positions are vacant.

### Preferential right to remain employed

An employer is not entirely free to choose which employees would fall under a collective dismissal. The Ukrainian labor law establishes a preferential right to remain employed in case of collective dismissal and/or a special protection during the redundancy process to certain categories of employees (e.g., pregnant women, women with young children, young professionals).

### Termination procedure

Generally, termination of employment on the ground of collective redundancy may be done only with the prior consent of a trade union of which the concerned employee is a member. An employer may terminate employment relations with an employee within a month after the receipt of a trade union consent.

An impacted employee is entitled to a severance payment of not less than one employee's average monthly salary. Additionally, if employees have not used their annual vacation by the date of dismissal, an employer should compensate the unused vacation to them.

### Disputes

Compliance with the statutory established requirements and procedure for a collective dismissal can be challenged by the impacted employees in court within one month after the receipt of the order on dismissal or the employment record book (e.g., if the employee believes that preferential right to continue employment has not been taken into consideration during the redundancy process).

If the court decides in favor of an employee, the employee may be reinstated at work and awarded compensation for the period of absence at work based on the previous average monthly salary.

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# EY labor & employment lawyers in the news

## International Events

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- ▶ Webcast – February 2018  
**“The EU Posted Worker Directives and Mobility”** presented by James Egan, Emilie Boot, Ivan Saez Fuertes, Roselyn Sands and Barbara Verduyn
- ▶ Il Sole 24 Ore – “Tuttolavoro” ninth edition – February 2018, Milano
  - Stefania Radoccia spoke on a workshop on labor and employment law themes, such as increased protections and the expiration of incentives in the labor market; flexibility for the pensions; the effects of the reform on dismissals; whistleblowing between the regulatory framework and practical application; flexibility in work organizations: flexibility and productivity; the unexpressed possibilities of second-level bargaining
  - Stefania Radoccia spoke on **“Infosfera, ICT and future of labor”**
- ▶ XBHR Conference – March 2018, Prague  
Roselyn Sands spoke on **“Role of Human Resource in the future”**
- ▶ American Bar Association Conference – May 2018, Milano  
Roselyn Sands spoke on **“Global Developments in LEL in 2017 and What’s on Horizon”**
- ▶ Webcast – May 2018  
**“How In-House Counsel Can Prepare in Advance for Tax Planning?”** presented by Achim Grothaus, Karen Holden, Seth McNary, Roselyn Sands, Jean-Baptiste Barberot and Richard Norbruis
- ▶ IBA Annual Employment and Discrimination Conference – May 2018, Montreal  
Paula Hogéus spoke on Ethical Issues in Employment Law
- ▶ May 2018, Sweden  
Paula Hogéus spoke on global citizenship for multinational companies.
- ▶ Practising Law Institute Conference – June 2018, New York  
Roselyn Sands spoke on **“Employee termination across borders”**
- ▶ International Employment Law Forum – June 2018, Cascais  
Roselyn Sands spoke on **“Artificial Intelligence: The future of the Workplace and the Practice of Labor & Employment Law”**
- ▶ George Svanadze was a co-organizer, moderator and speaker on an International Labor Law Conference organized in cooperation with ILO and Tbilisi State University Faculty of Law
- ▶ George Svanadze spoke at the Georgian Law Firms Association, he presented a workshop on **“Choice of Law and Choice of Jurisdiction in International Labor Agreements”** from the conflict of laws and private international law perspective
- ▶ George Svanadze spoke on a certified trainings in employment and labor law organized by EY and the National Center for Commercial Law at Tbilisi Free University

# EY labor & employment lawyers in the news

## Czech Republic

### Client Conference and Alerts

- ▶ EY PAS Conference – April 2018: **“Can you keep your employees?”** Barbora Kudrhalt Suchá was a speaker at this conference.
- ▶ EY “Audit” Conference – April 2018: **“News in 2018”** contribution devoted to employment law news was presented by Ondřej Havránek.
- ▶ Client’s session – March 2018: **“GDPR for HR”** was presented by Karolína Šindelářová.
- ▶ EY PAS Conference – December 2017: **“Employees in 2018”** contribution was presented by Ondřej Havránek.
- ▶ EY PAS Conference – June 2017: **“Labor law prior to and after the amendment to the Labor Code,”** joint presentation made with Ondřej Havránek, Anna Bartůňková, Eva Procházková and Barbora Kudrhalt Suchá.
- ▶ HR Legal Alert – November 2017
- ▶ HR Legal Alert – September 2017

### Press & Media Exposure

- ▶ Barbora Kudrhalt Suchá and Tomáš Čermák are co-authors of the book *Comparison of the Czech and Slovak Labor Code*, to be published by ANAG in the second quarter of 2018.
- ▶ The article, **“Přechod práv a povinností z pracovněprávních vztahů – činnost spočívající v podstatné míře na pracovní síle”** (Transfer of rights and obligations from labor relations – an activity based essentially on the labor force), by Barbora Kudrhalt Suchá, was published on [www.epravo.cz](http://www.epravo.cz) on 7 March 2018.
- ▶ The article **“Několik rad k zaměstnaneckým kartám občanů třetích zemí vykonávajících práci v České republice”** (Several pieces of advice on employees card of third countries’ citizens working in the Czech Republic), by Karolína Šindelářová, was published on [www.epravo.cz](http://www.epravo.cz) on 8 November 2017.
- ▶ The article, **“Několik poznámek k monitoringu zaměstnanců”** (Several notes on employees’ monitoring), by Eva

Procházková, was published on [www.epravo.cz](http://www.epravo.cz) on 10 October 2017.

### Peer Recognition and Positions

- ▶ Weinhold Legal belongs again to the Ranked Firms in the area of Employment Law for 2018, and Eva Procházková is ranked as a notable practitioner by Chambers Europe 2018, as in previous years.
- ▶ In 2018, Legal 500 also recommended the Weinhold Legal Employment Law team and stated: **“Weinhold Legal provides an excellent level of service and covers all areas of employment law for its multinational client base. Eva Procházková and Anna Bartůňková are singled out for their innovative and professional approach.”** Eva is also recommended by Legal 500 as the Next Generation Lawyer in the area of Employment.
- ▶ In a ranking by the publisher [epravo.cz](http://www.epravo.cz) under the auspices of the Czech Bar Association, Weinhold Legal was again selected as **“Recommended law firm”** in the category of Employment Law for 2017.

## France

### EY France Conference and Webcasts

- ▶ January 2018: **“La réforme du droit du travail en marche”** presented by Caroline Dirat, Marie-Pascale Piot & Laurent-Paul Tour
- ▶ February 2018: Webcast on **“Les nouvelles flexibilités apportées à l’entreprise (ruptures individuelles et collectives, modes de travail, contrats ...”** presented by Anne-Elisabeth Combes, Marie-Pascale Piot and Yannick Bodin
- ▶ February 2018: Webcast on **“Everything you wanted to know about the French Labor and Employment**

### Law Reform but were afraid to ask!”

presented by Roselyn Sands and Laurent-Paul Tour

- ▶ June 2018: **“Selection d’actualité en Droit social”** presented by Anne-Elisabeth Combes, Sophie Muyard, Marie-Pascale Piot
- ▶ January 2018: Anne-Elisabeth Combes spoke at the MEDEF at the french employer organisation on French anti-corruption laws.

### Publications

- ▶ Bloomberg BNA’s Fifth Edition of its **“International Labor and Employment Laws – “Chapter on “Employment and**

### Corporate Law issues Applicable in Restructuring of Companies in the EU”

### Teaching

- ▶ Laurent Tour continues teaching at the ESSEC School of business administration.
- ▶ Roselyn Sands teaches at the University of Paris Law School, in both its Human Rights Master of Laws program and its International Human Resources Program; Magellan Institute and the INSEEC Business School of Paris.

# EY labor & employment lawyers in the news

## France (cont'd)

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### Peer recognition and Positions

- ▶ Marie-Pascale Piot is elected member of the Conseil de l'Ordre of the Nanterre Bar Association.
- ▶ Roselyn Sands is listed in the Who's Who Legal 2018 for France as a **"Leader in the field with vast experience advising foreign clients operating in French market Peers speak highly of her work with the US clients and expert handling of global restructuring matters."**
- ▶ AmCham France – Roselyn Sands, Co-chair of the HR legal committee and frequent speaker
- ▶ American Bar Association – Roselyn Sands, Vice-chair International Labor & Employment law committee
- ▶ XBHR, Global Forum for Cross-Border Human Resources Experts – Roselyn Sands is Founding Member & Executive board member
- ▶ International Forum on Employment Law – Roselyn Sands is Steering committee member & recurrent Speaker

## Georgia

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### Client Conference and Alerts

- ▶ George Svanadze organizer and speaker on the certified trainings in employment and labor law organized by EY and the National Center for Commercial Law at Tbilisi Free University
- ▶ Alerts: Amendments to the Law of Georgia on Workplace Safety; Amendments to the Law of Georgia on Entrepreneurs
- ▶ George is an active participant in the American Chamber of Commerce Georgia commercial law committee's and International Chamber of Commerce legal committee's works on a new draft of the Labor Code of Georgia.

### Webcasts

- ▶ **Pace Law School**, Certificate Program on International Commercial Law & International Alternative Dispute Resolution

### Teaching

- ▶ George Svanadze is an Associate Professor at Tbilisi Free University and Assistant Professor at Tbilisi State University. At both law schools, he is teaching in bachelor's and master's degree programs.
- ▶ He also is an invited Lecturer at East European University and New Vision.
- ▶ He delivers lectures in the Georgian, English and German languages.
- ▶ He regularly conducts seminars and public lectures for Georgian attorneys, judges and notaries within the framework of continued legal education.

### Press & Media exposure

- ▶ George Svanadze is an author of multiple publications in Georgia and Germany on topics including employment and labor law.

### Peer recognition and Positions

- ▶ George Svanadze is an invited professional in various institutions such as the National Center for Commercial Law, Georgian Bar Association, Training Center of Justice (Ministry of Justice of Georgia), Chamber of Georgian Notary, High School of Justice and the Georgian National Communications Commission.

# EY labor & employment lawyers in the news

## Italy

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### Client Conference and Alerts

- ▶ **Confimprese's Conference on Franchising (October 2017):** Speech related to risk management in franchising networks: contract instruments and successful business models
- ▶ **Capri Digital Summit, EY – Capri, October 2017:** Effects of the digital transformation on employment relationships
- ▶ **Il Sole 24 Ore – “Tuttolavoro” eighth edition – Milan, February 2017**
- ▶ **National conference of the accountant Association – Rome, April 2016**
- ▶ **EY Hr Forum – Milan, 2017-2015**

### Webcasts

- ▶ **Sole 24 Ore – “Tuttolavoro” ninth edition – Milan, 26 February 2018:** Speech on **“Infosfera, ICT and future of labor”**

### Press & Media exposure

- ▶ Article on Quotidiano del Lavoro, 14 March 2018: **“Training is the Cornerstone for Smart Working”**
- ▶ Article on Quotidiano del Lavoro, 19 May 2017: **“In the work of the future, collaborations and on-call contracts”**
- ▶ Article on Il Sole 24 Ore on the assisted negotiation, 14 April 2014
- ▶ Article on Il Sole 24 Ore on the contractual qualification as executive in the judicial cases, 10 October 2014

- ▶ Weekly section on Il Sole 24 Ore called **“the expert's answers”** on labor and employment law themes
- ▶ Articles on Guida al Lavoro (weekly periodical) on labor topics

### Peer recognition and Positions

- ▶ Stefania Radoccia received in 2016 the Legal Community Award as **“Leading Partner of the Year”**

## Greece

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### Peer recognition and Positions

- ▶ Maria Rigaki is again listed for 2018 in LEGAL 500 as a recommended labor and employment lawyer in Greece.

## Slovakia

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### Client Conference and Alerts

- ▶ EY Law & PAS seminar on 8 February 2018: **“Personal data and privacy protection of employees”** focused on the actual employment-related issues of data protection and the new GDPR. The event was organized in cooperation with the local Data Protection Authority.
- ▶ EY Law & PAS seminar on 7 June 2018: **“Employees' Benefits”** focused on the tax-efficient remuneration of employees, tax equalization, share plans and related legal aspects of employees' benefits

# EY labor & employment lawyers in the news

## Spain

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### Client Conference and Alerts

- ▶ Conference on the most significant case law of labor matters concerning top executives (Instituto de Consejeros y Administradores)
- ▶ Manuel Fernández-Fontecha: Workshop on immigration and Social Security issues – in particular, expatriation to Brazil (RED-Expat)
- ▶ Clients alert: The team has recently prepared a recurring news feed for its clients on:
  - ▶ The registration of the working time
  - ▶ Supreme Court ruling dated January 2017 on discrimination in an incentive system based on gender grounds
  - ▶ Revaluation of retirement pensions, minimum interprofessional salary and special Social Security scheme for the self-employed
  - ▶ Social Security bilateral covenant between Spain and China, which was released on 20 March 2018.
  - ▶ Supreme Court ruling dated 26 February 2018 containing significant labor considerations: (i) that all directors are presumed to have executive functions;

and (ii) all the remuneration received by the directors shall be reflected in the company's statutes

- ▶ Top executives – in particular, the so-called **"Teoría del Vínculo"**

### Press & Media exposure

- ▶ Raúl García participated in a debate about pensions in Spain in prime time on Televisión Española.
- ▶ [www.rtve.es](http://www.rtve.es)
- ▶ Press: Raúl García. Opinion Tribune published in EXPANSION. Topic: **"Pensions: the return of the debate"**
- ▶ Raúl García and Manuel Fernández-Fontecha. Opinion Tribune published in EXPANSION. Topic: **"Surveillance of workers through video cameras"**
- ▶ Raúl García. Opinion Tribune published in EXPANSION. Topic: **"Regulation of the services rendered in the collaborative economy"**

### Teaching

- ▶ Raúl García is an Associate Professor of Labor Law at IE (Instituto de Empresa).

Three months at the Legal Business master's program.

- ▶ Manuel Fernández-Fontecha is an Associate Professor at IE (Instituto de Empresa) and ICADE (Universidad Pontificia Comillas) in the Accounts Audit and Superior Accounting master's program.

### Peer recognition

- ▶ Raúl García was highlighted as a Labor Law leader in Spain by Chambers and Partners and among Best Lawyers by Legal 500.
- ▶ EY has been recognized by RED-Expat as the best advisor on migratory matters and international mobility. This is one of the most important awards in the sector.
- ▶ Eva Sainz (LEL Department Senior Manager) has been recognized as Best Labor Advisor on Mobility Issues for 2017 in Spain (labor and social security).

## Sweden

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### Client Conference and Alerts

- ▶ Paula Hogéus will speak on five occasions at locations in Sweden during the fall of 2018 for the Swedish HR association on the subject of **"Social Media in the Workplace."**

### Press & Media exposure

- ▶ Paula Hogéus is co-author of the ABA Section of Labor and Employment Law publication International Labor and Employment Laws as well as the publication Restrictive Covenants and Trade Secrets in Employment Law.
- ▶ Paula Hogéus and Hanna Julin participated in the ABA publication Social Media and Employment Law.

### Peer recognition and Positions

- ▶ EY Law Sweden is listed in Legal 500.
- ▶ Paula is listed in Who's Who



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# Our digital guide on labor and employment law challenges in business transformations

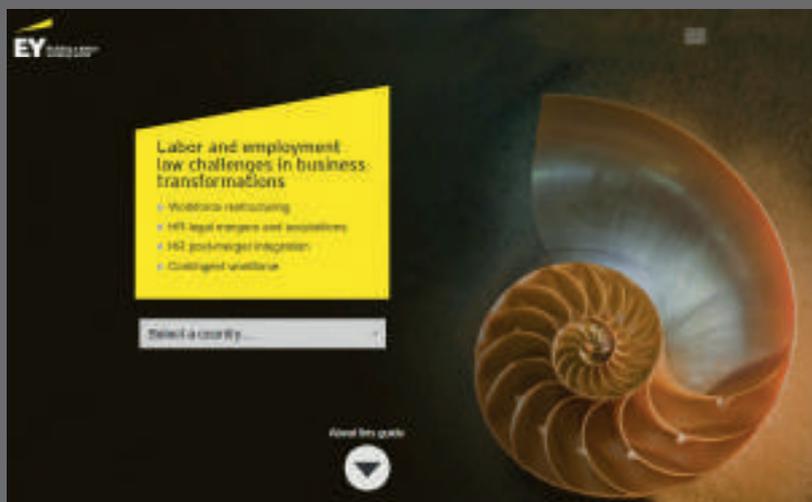
Available in a digital format, the guide focuses on matters of key strategic importance for multinational companies on a country-by-country basis.

As all multinational corporations know, workforce issues in transformational projects are a significant challenge. Each country has different labor and employment laws, and more than ever, companies now need to understand these laws to manage cost and risk, proactively identify possible hurdles, and facilitate efficient, timely and agile implementation of global or regional projects.

The guide covers **35 jurisdictions** and offers **multinationals corporation pragmatic insights** into the issues they will face around the world in transforming their business, and helps them navigate through the process and mitigate potential risks.

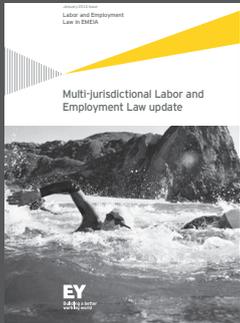
Laws relating to issues such as **workforce restructuring, HR legal mergers and acquisitions, HR post-merger integration and contingent workforce** can be compared side-by-side thanks to the enhanced functional feature of the guide's digital platform.

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## EY Law Guide on labor and employment law challenges in business transformations

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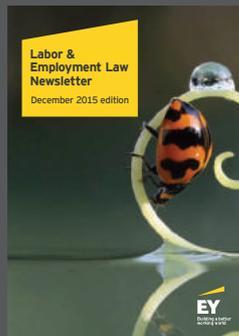
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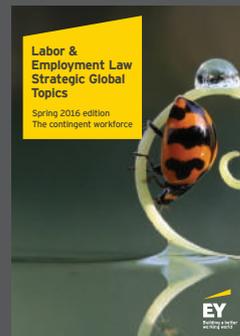
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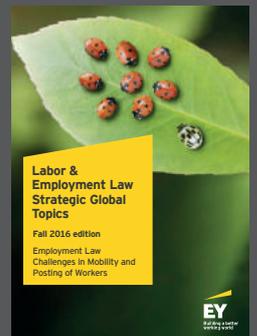
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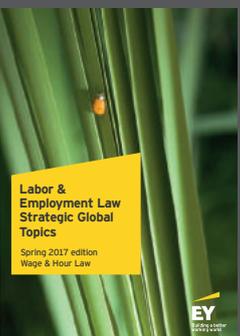
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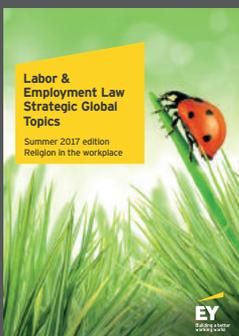
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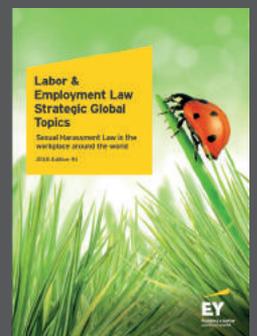
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EYG no. 04103-182Gbl

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