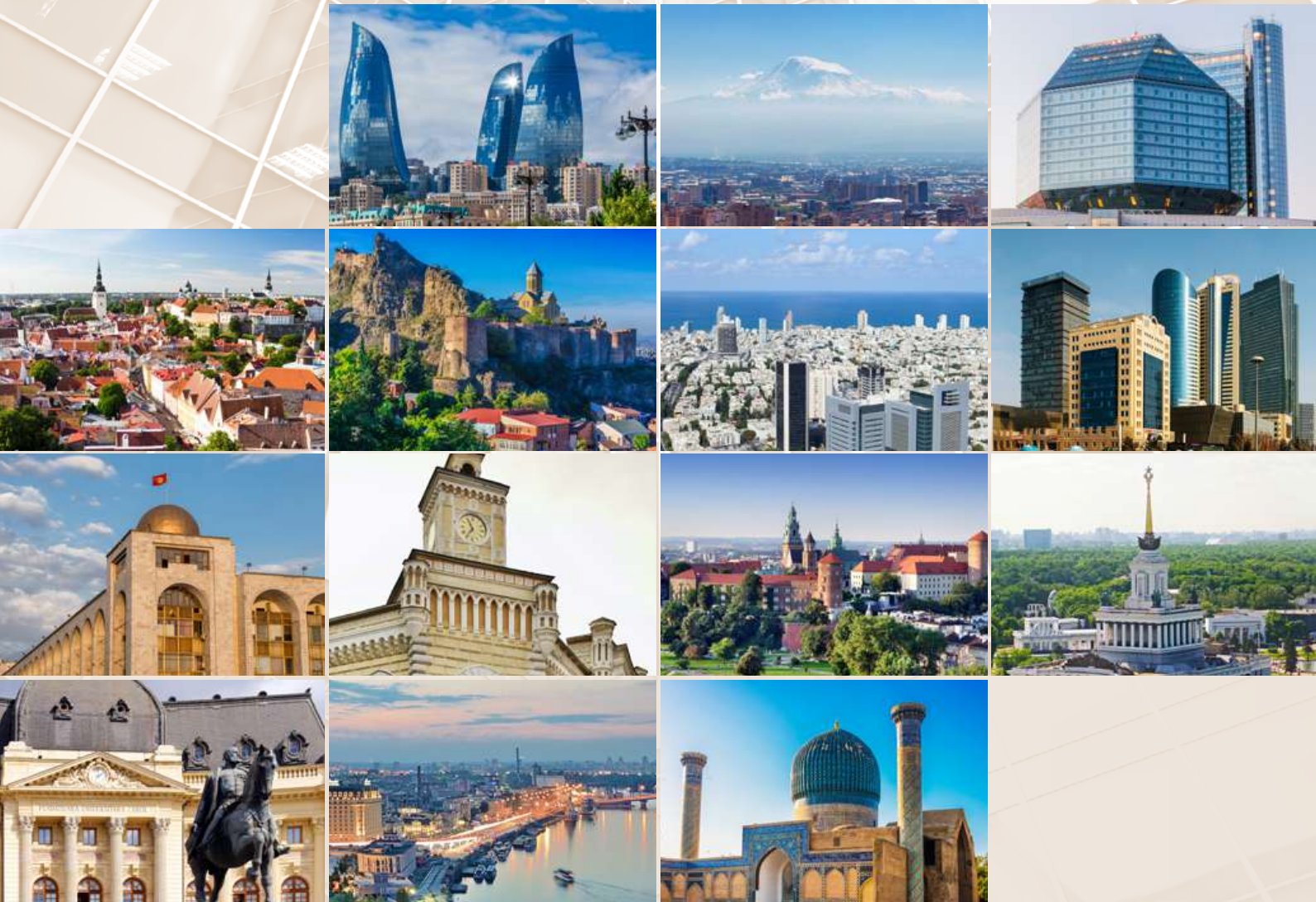


REDUNDANCY OF PERSONNEL:

Local and Global



Dear Readers!

We would like to introduce you to our new brochure “Redundancy of Personnel: Local and Global”.

ALRUD has acquired a strong reputation, as a point of contact for international law firms and clients with interests in Russia, the CIS (Commonwealth of Independent States), and neighbouring countries. We have established solid business relationships with the leading domestic law firms and high-profile experts worldwide. Together, we offer an unparalleled range of cross-border advice and options, for all industries and practical insights into international governing legislation.

The abnormal economy situation experience has shown that it is essential to have a rapid opportunity to structure your company’s operations more effectively and efficiently. Over the decades, we have found that there are still many concerns about the redundancy of personnel, especially across borders. For this reason, it is crucial to have a trusted advisor anywhere in the world. With this understanding, we have collaborated with leading law firms in the region to make this complex process easier for you:

ALRUD (**Russia**)
Ameria Legal (**Armenia**),
FINA (**Azerbaijan**),
COBALT (**Belarus and Estonia**),
Gvinadze & Partners (**Georgia**),
Herzog Fox & Neeman (**Israel**),
AEQUITAS (**Kazakhstan**),
Kalikova & Associates (**Kyrgyzstan**),
Gladei & Partners (**Moldova**),
Raczkowski (**Poland**),
Nestor Nestor Diculescu Kingston Petersen (**Romania**),
Vasil Kisil & Partners (**Ukraine**), and
Azizov & Partners (**Uzbekistan**)

Led by ALRUD, we have prepared easy-to-read outlines of the main steps necessary to carry out the procedure of dismissal of staff.

We hope you will find this brochure useful in your daily needs if a lay off arises. Please feel free to contact us with any comments, or questions, you may have as a result of this material.

The following companies are gratefully acknowledged for their cooperation with ALRUD:



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Armenia



Staff redundancy: when to use?

Staff redundancy primarily implies the elimination of a certain job position and its removal from the staff structure of the company. As a consequence, the employment relationship with the employee is terminated.

Generally, staff redundancy may be carried out in the following cases:

- the company needs to cutback the number of its employees or to eliminate several positions out of the staff list due to any of the following circumstances:
 - a. reduction of production volume; and (or)
 - b. changes in the terms of economic and (or) technological and (or) work organization conditions; and (or)
 - c. production necessity; or
- the company is being liquidated.

Types and options

Staff redundancy, by its extent, can be **ordinary** or **collective**. Under Armenian law, staff redundancy is considered as collective, if the company plans to lay off more than ten percent of the total number of employees within two months, but not less than 10 employees.

Specific criteria, procedures and social guarantees may be established by collective or individual agreements. Differing terms may also be prescribed under laws regulating specific fields of activities, such civil or military (governmental) services.

Staff redundancy can take form of **staff reduction** and **downsizing**. When the staff is reduced, one or more job positions are completely removed. When the staff is downsized, the number of employees, holding the same position, is reduced (for example, two out of four accountants are left). Staff reduction and downsizing can be carried out both independently and simultaneously. In both cases the company, within the limits of its possibilities, has to offer each employee another job in accordance with their professional training, qualification, health condition. In the absence of appropriate opportunities for the employee or if he/she has refused the offered job, the agreement is terminated.

Procedures

The procedure for staff redundancy is multi-stage, formalistic and consists of the following main stages:

- To start, the company needs to make a formal decision (generally formal decision of the relevant corporate body (having such authority under the law or the charter of the company) on approval of the amendments to the staff list and the reinstated staff list of the company) and then decide on who, among the employees, has/have a preemptive right to keep their job(s) (cannot be made redundant etc.).
- Employees-to-be-redundant are eligible for job vacancies, available in the company's structure.
- The general notice period is 2 (two) months, prior to dismissal of employees. A longer notice period may be defined under collective or individual employment agreements.

- The company must notify in writing:
 - a. The employee(s) to be made redundant;
 - b. The State Body authorized by the Government of Armenia in the field of employment, by submitting the data on the number of dismissed employees (by professions, gender, age) no later than two months before the termination of the employment contracts (in case of collective redundancy);
 - c. The employee representative (if any (in case of collective redundancy)).
- For the employee to find a new job, the employer must give free time, according to the schedule offered by the employee. The time allotted may not be less than ten percent of the working time included in the notice period. During this period, the average salary of the employee is maintained and is calculated based on the average hourly salary of the employee.
- The law provides for that the employee, subject to redundancy, is entitled to full salary, during the notice period (2 months), and a severance payment of 1 monthly-average salary. This severance payment, as well as other due payments (salary, cumulated and unused vacation payments) shall be paid on the date of employment termination, unless longer period or other terms are agreed between the employer and the employee.
- The employee shall be provided with relevant internal legal act (in general, in the form of Order of the director of the company) on termination of his/her employment agreement.

Exceptions

There are special categories of employees that cannot be made redundant (pregnant women, women having children under 3 years old, actual caregivers of a child under one year of age). Staff redundancy is also not allowed during temporary disability or vacation of the employee, when participating in a lawful strike or fulfilling responsibilities imposed on the employee by state or local self-government bodies. These exceptions do not apply if the redundancy is carried in course of the company's liquidation process.



**Lilit
Aleksanyan**
Senior Legal Adviser

If an employee, elected to employee representative bodies, is dismissed, the consent of the representative body must be provided. The refusal to dismiss the employee can be appealed in court by the company.

Protection of other categories of employees may be given by collective or individual agreements, company's policies, etc.

Risks and implications

- Follow pedantically the procedure specified by law (e.g., if one of the staff redundancy stages is not fulfilled, the dismissal can be challenged);
- Offer all vacant positions, including new job positions, part-time positions, positions at all branches and separate divisions;
- Do not introduce new job positions with the same, or similar, job duties, at least for a certain period;
- Avoid discrimination.

What implications of unlawful dismissal?

- Reinstatement of the employee;
- Compensation for non reinstatement of the employee (not less than the average salary and not more than twelve times the average salary) in case the reinstatement is not possible due to economic, technological, organizational reasons or due to impossibility to restore the employment relationship between the employee and the employer;
- Payment to an employee of the average wages, for the entire period between dismissal and reinstatement/ the date of a court ruling or the difference in wages for the period during which the employee performed less paid work;
- Payment to an employee penalty for each overdue notice day in case of non-compliance with the dismissal notice period;
- The company can be liable for an administrative fine up to 50,000 AMD (approx. 80 EUR).

Azerbaijan



Staff redundancy: when to use?

The term “staff redundancy” should be understood to encompass an abolition of certain job position(s) at the company, which is usually carried out in order to improve management in the company, prevent excessive costs due to reduced workload, optimize performance and provide other necessary reforms. The definition of “staff redundancy” is not duly specified by the Azerbaijani law.

Types and options

Staff redundancy can be carried out in two forms - in a form of reducing the number of employees (in Azerbaijani: “işçilərin sayının ixtisarı”) and in a form of staff reduction (“şatların ixtisarı”), where:

- Reduction in the number of employees, at a company, means a reduction in the number of staff for a particular position (reduction of several employees performing the same functions);
- Staff reduction means removal of a specific position from the staff structure of the company as a whole (reduction of all employees performing the same, or similar, functions).

Procedures

In the case of staff redundancy, the employer must duly notify the employee to be dismissed. Depending on the employee’s length of service, time of notification varies from 2 to 9 weeks and the amount of compensation, in lieu of notice period, varies from 0.5 to 2 times’ average monthly salary. During the notice period, the employee shall be given, at least one paid day off a week to enable him/her to find a job.

There are certain mandatory requirements to be followed, when carrying out a staff redundancy. Therefore, realization of the staff redundancy is to be confirmed by the following set of documents:

- An order approving the new staffing of the company, with removal of the reduced staff, or making appropriate changes to the old staffing;
- Document on the results of the comparative analysis of preferential employment rights;
- Substantiated written decision of the trade union of the company in a case of redundancy of employees who are members of the trade union;
- Document confirming that the State Employment Service, under the Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan, was duly informed about the staff reduction within prescribed period of time (2 to 9 weeks) in advance;
- A document, signed by the employee, confirming that the employee has been duly notified of the redundancy within prescribed period of time (2 to 9 weeks) in advance accordingly, or a written consent of the employee to receive a severance pay, instead of the notice period, and a document confirming that such payment has been made;
- An order (or other official document) to dismiss an employee for, at least, one working day in each working week in order to enable him/her to seek a job while maintaining his/her salary during the notice period;
- An order terminating the employment contract of each redundant employee.

In addition to the aforementioned requirements, the employer, as per provisions of the Law on Employment, before carrying out the staff redundancy, at the company, must submit a three months' prior written notice to the trade union organization, which is holding negotiations with the employees on protection of their rights.

Upon termination of the employment contract, employees must be paid severance pay and other payments due as provided by law.

Exceptions

There are special categories of employees provided by the Labour Code of Azerbaijan that cannot be made redundant, such as:

- pregnant women, as well as women with children under the age of three, men raising a child under the age of three alone;
- employees whose sole source of income is the enterprise where they work and who raise their children on their own, before school age;
- employees who have temporarily lost their ability to work;
- due to the fact that the employee has diabetes, or multiple sclerosis;
- for the motive of being a member of a trade union organization, or any political party;
- employees under 18 years of age, with limited health capabilities, or family members with group I disabilities.



**Kamala
Khalilova**

Lawyer

In case of reduction in the number of employees, employees with the highest skill ratings (professional qualifications) shall be retained. The employer shall determine a given employee's professional qualifications. Should skill ratings be identical, the employer shall retain the following individuals:

- members of families of shekhids (martyrs);
- war participants;
- spouses of soldiers and officers;
- individuals supporting two, or more, children under the age of 16;
- persons with disabilities as a result of an industrial accident, or occupational disease, at the same enterprise;
- persons with refugee, displaced status, and persons with like status;
- other employees as stipulated in collective agreements and employment contracts.

Risks and implications

As a rule, if the company does not observe the procedures specified by law, then dismissal of employees under the staff redundancy may be considered as being unlawful and the dismissed employees may be reinstated at work, by court decision.

How to reduce the risks of challenges to the redundancy?

In order to reduce the risks of challenges to the redundancy, we would recommend to strictly comply with the legal requirements, specified by law regarding dismissal of employees under the staff redundancy, and avoid announcing, or introducing otherwise, new job positions with the same, or similar, job functions and duties, at least for a certain period.

What implications of unlawful dismissal?

Here are the major possible implications of unlawful dismissal:

- Reinstatement of the employee;
- Payment to an employee of the average wages, for the entire period between dismissal and reinstatement/ the date of a court ruling;
- Payment to employee a compensation for "moral damage", as a result of unlawful dismissal;
- The company can be liable for an administrative fine from 500 up to 1,000 manats for not submitting a prior notice to a trade union organization, before carrying out the staff redundancy, and also for an administrative fine from 1,500 up to 2,000 manats for termination of an employment contract, by violation of the requirements of labour law.

Belarus





Staff redundancy: when to use?

Staff redundancy implies elimination of a certain job position and its removal from the staff structure of the company. As a consequence, any employment relationship with the employee is thereby terminated. Therefore, staff redundancy is accompanied by a decrease in the number of employees in the company.

The grounds for staff redundancy are not defined by law. Generally, staff redundancy is carried out when the company reduces its activities, or shifts to a different type of activity, and there is no longer any necessity for certain positions (functionality). However, such a decision must be valid and justified.

Types and options

Staff redundancy, by its extent, can be **ordinary**, or **collective**. Belarusian law provides for the following general criteria of collective redundancy:

- Liquidation of a company with 25, or more, employees;
- Redundancy of a particular number of employees, during a certain period, depending on the company's overall number of employees (e.g. dismissal of 20% of employees (but not less than 25 employees) within 1 month in a company with up to 1 000 employees; dismissal of 5% of employees within 2 months in a company with over 10 000 employees, etc.);
- Redundancy in different territorial units (e.g. dismissal of 1% of the total amount of employees within 2 months in Minsk city; dismissal of 2% of the total amount of employees within 2 months in district cities and urban settlements);

Staff redundancy can take form of **staff reduction** and **downsizing**. The Belarusian legislation does not define what exactly is meant by each term. According to judicial practice and the Ministry of Labour and Social Protection approach, when the staff is reduced, one or more job positions are completely removed (in this case, the selection procedure is not needed). When the staff is downsized, the number of employees, holding the same position, is reduced (the selection procedure is required, in such a case). Staff reduction and downsizing can be carried out both independently and simultaneously.

Procedures

The procedure for staff redundancy is multi-stage, formalistic and consists of the following steps:

- The first step is to make a decision on staff redundancy, determine the measures for its implementation and formalize it in the form of the director's order. The order should also specify positions, number of staff units to be reduced and terms of these measures' introduction.
- Employees-to-be-redundant must be notified by the employer in writing, generally no later than 2 months before the dismissal. During the notification period, the employee performs its work duties and is subject to full salary. In addition, such employee is given one free day per week, with or without pay, (by agreement with the employer) to look for employment with other employers.
- The employer is obliged to offer the employees-to-be-redundant, during the entire notification period, other job vacancies available in the company, considering their qualifications, or send such employees, with their consent, for retraining.

- The employer has the right, with the consent of the employee, to replace the notification on upcoming dismissal, with a compensation, in the amount of two months' average salary.
- The employer must also notify, in writing, labour and social protection authorities no later than 2 months and a trade union (if an employee is a member of a trade union) no later than 2 weeks before redundancy.
- Upon expiration of a two-month notification period (or payment of a relevant compensation to the employee), the employer has the right to issue an order for the employees' dismissal. No later than the day of dismissal, the employer makes all payments due to the employee(s) (salary, compensation for unused labour leave) including a severance payment in the amount of at least 3 average-monthly salaries, for dismissal due to staff redundancy.

Exceptions

There are special categories of employees that cannot be made redundant (pregnant women, women with children under 3 years old, individuals bringing up children under 14 years old (disabled children under 18 years old) without a mother/father).

The pre-emptive right to remain at work, upon staff redundancy, is held by employees with higher qualifications and labour productivity. If the specified conditions are equal, the pre-emptive right to remain at work is given to disabled people, participants of the liquidation of consequences of the Chernobyl disaster; those fallen ill and suffered radiation sickness caused by consequences of the Chernobyl disaster, other radiation accidents; other categories of employees provided for by the legislation, internal company's policies, employment contracts, etc.



Darya Zhuk
Managing Partner



Anna Gritskevich
Associate

Staff redundancy is also not allowed while the employee is on a sick leave, nor on vacation. To terminate an employment contract with an employee under 18, the employer must additionally obtain a consent of the Commission on Minors' Affairs. Collective staff redundancy may be carried out only upon at least 3-month prior written notification of the relevant trade unions, and negotiations with them on observance of the employees' rights.

Risks and implications

If the company does not observe the procedures specified by law, a dismissal may be considered as being unlawful and an employee may be reinstated at work, by court decision.

How to reduce the risks of challenges to the redundancy?

- Follow the procedure specified by law (e.g. if one of the staff redundancy stages is not fulfilled, the dismissal can be challenged);
- Meet the notification terms and formalities (the employer's official can be held administratively liable for failure to notify/untimely, or incomplete notification of labour and social protection authorities on upcoming staff redundancy, in the form of a fine from 145 to 435 BYN (approx. 50-150 EUR);
- Offer all vacant positions, including new job positions and part-time positions in the company, during the entire notification period and retraining;
- Avoid discrimination;
- Pay the severance pay to the redundant employees upon dismissal;
- Adopt a new staffing schedule to confirm the change in staff structure;
- Do not introduce new job positions with the same or similar job duties, at least for a certain period.

What implications of unlawful dismissal?

- Reinstatement of the employee;
- Payment to an employee of the average salary for the entire period between dismissal and reinstatement/ date of a court ruling;
- Payment to an employee of compensation for "moral damage" because of unlawful dismissal;
- The employer's official can be held administratively liable for violations of labour law that caused harm to an employee, with a fine from 58 to 580 BYN (approx. 20-200 EUR). The company's director can also be subject to criminal liability for knowingly allowing the unlawful dismissal of an employee, in the form of deprivation of the right to hold certain positions, or engage in certain activities, or correctional labor for up to 2 years, or imprisonment for up to 3 years.

An aerial photograph of a city in Estonia, likely Tallinn, showing a dense urban landscape with numerous buildings featuring red-tiled roofs. A prominent church spire is visible in the mid-ground, and the city extends to the horizon under a clear blue sky. A thin orange vertical line is present in the top left corner.

Estonia



Staff redundancy: when to use?

An employer may terminate the employment contract due to redundancy, if the continuance of the employment relationship, on the agreed conditions, becomes impossible, due to a decrease in the work volume, reorganization of work, or other cessation of work (lay-off).

Types and options

Estonian law distinguishes between individual and collective redundancy.

Individual redundancy is a simple and straight-forward procedure, whereas collective redundancy triggers certain information and consultation obligations. A redundancy is deemed collective, if it involves termination due to lay-off, within 30 calendar days, of the employment contract of no less than:

- 5 employees in an enterprise, where the average number of employees is up to 19;
- 10 employees in an enterprise, where the average number of employees is 20–99;
- 10 per cent of the employees in an enterprise, where the average number of employees is 100 to 299;
- 30 employees in an enterprise, where the average number of employees is at least 300.

Before the employer decides on the collective termination (i.e. before individual termination notices are submitted to the employees), the employer must consult, in good time, the trustee or, in his/her absence, the employees, with the goal of reaching an agreement on prevention of the planned terminations, or reduction of the number thereof, and mitigation of the consequences of the terminations, including contribution(s) to the seeking of employment by, or re-training of, the employees to be laid off. The employer is also required to inform the Estonian Unemployment Insurance Fund of the planned redundancy.

Procedures

Before termination of an employment contract, due to a lay-off, an employer must, if possible, offer another job to the employee. The obligation to offer another job involves also organizing in-service training for the employee and changing of working conditions, if taking such measures would enable the employer to offer another position to the employee (a position that would otherwise not be currently suitable for the employee). Such in-service training and changing of working conditions is not required, if it would cause disproportionately high costs for the employer.

If there are no suitable positions available, the employer may proceed with the redundancy.

An employer must notify the employee of the termination of employment contract, in advance, as follows:

Duration of employment	Advance notice
Less than 1 year	Not less than 15 days
1-5 years	Not less than 30 days
5-10 years	Not less than 60 days
10 years of more	Not less than 90 days

In case the advance notice period remains shorter than that required by law, compensation needs to be paid in the amount of salary the employees would have been entitled to, if they had been given the possibility to work, until the end of the statutory advance notice period.

In addition to providing prior notice, an employer is required to pay compensation to the employee, in the amount of 1 month's average salary of the employee, upon termination of employment contract due to lay-off.

Although the law accepts delivery of the termination notice, in any format that can be reproduced in writing, it is advisable to deliver it by hand (in writing) and have the employees sign a copy for the employer, confirming receipt of the notice on the respective date. The employment contract terminates automatically upon arrival of the termination date and no additional documentation needs to be formalized. The termination notice needs to include the legal basis for the termination, as well as the reason for the termination.

Exceptions

Certain categories of employees are protected under law against lay-off and termination of their employment contracts due to lay-off is, as a rule, prohibited:

- pregnant women;
- women who have the right to pregnancy, or maternity, leave (regardless of whether they are using this right at the moment, or not);
- employees on parental leave, or adoptive parent, leave.

Employees belonging to the above categories may be laid off only in case of liquidation, or bankruptcy of the employer.

None of the other categories of employees receive total protection against lay-off. However, upon selecting the employees for lay-off, the following persons have preferential right to keep their jobs:

- employees' representatives (i.e. employee trustee, working environment representative, members of working environment council, trade union representatives, members of European Works Council);
- employees raising children under 3 years of age.

Therefore, if there are several employees doing the same work and the employer decides to reduce the number of positions, employees' representatives and employees raising children under 3 years of age cannot be selected among the ones to be laid off. In the case when the respective type of work ceases completely and all the respective positions are eliminated, the employees' representatives and employees raising children under 3 years of age can be laid off (as well as others).

The law does not regulate the selection criteria that the employer must apply upon choosing the employees to be laid off from among the rest of the employees. However, the law states that the employer must abide by the regulation of equal treatment of employees and the selection may not be discriminative.

Risks and implications

Termination of an employment contract, without a legal basis, or otherwise in conflict with the law, is void. An action with the court, or an application with a labour dispute committee, for establishment of voidness of termination, may be filed within 30 calendar days, as of the receipt of the termination notice.

Implications of unlawful dismissal:

- Compensation payment for unlawful termination (usually in the amount of the employee's 3 months' average salary);
- Reinstatement available, only if requested by the pregnant employee, an employee who has the right to pregnancy, or maternity, leave, or has been elected as the employees' representative.



Heili Haabu

Attorney-at-law

Georgia



Staff redundancy: when to use?

The Labour Code of Georgia differentiates between individual and collective dismissals and provides an exhaustive list of grounds for termination. In case of individual termination, staff redundancy can be made based on economic circumstances, and/or technological or organizational changes requiring downsizing (Article 47.1(a) of the Labour Code), or commencement of liquidation of the employer as a legal entity (Article 47.1(m) of the Labour Code). The Labour Code further provides specific regulation of collective redundancy, as discussed below.

Types and options

A collective redundancy is defined as the termination of employment agreements, by an employer, for 30 calendar days, on a basis that is not conditioned by an employee's person, nor behaviour, nor by the expiry of the employment agreement:

- a. with at least 10 employees – in an organization in which the number of employees is more than 20, but less than 100;
- b. with at least 10% of employees – in an organization in which the number of employees is more than 100.

Procedures

The procedure for collective redundancies is strictly straightforward and involves provision of information and consultation. In particular, where an employer is contemplating collective redundancies, the employer shall begin consultations with the employees' association (or if there is no employees' association, with the employees' representatives) within a reasonable time, with a view to reaching a possible agreement. Consultations shall, at least, include the ways and means of preventing collective redundancies, or reducing the number of employees to be laid off, and the possibility of re-employment in respect of laid-off employees, and support for their retraining. The employer shall send a written notification to the the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia ('the Minister'), and to the employees whose employment agreements are being terminated, at least 45 calendar days before the collective redundancy. The employer shall communicate to the employees' association (or if there is no employees' association, to the employees' representatives) a copy of the notification sent to the Minister. The employees shall be granted an opportunity to submit constructive proposals. The employer shall provide the following information to the employees' association (or if there is no employees' association, to the employees' representatives) in writing: the reasons for the planned collective redundancy, the number and category of employees to be laid off, the total number and categories of employees in the organization, the period of time during which the collective redundancy will take place, and the criteria according to which the employees to be laid off are selected and paid compensation. The employer shall send to the Minister a copy

of the written notification on the information referred above sent to the employees' association (or if there is no employees' association, to the employees' representatives).

A collective redundancy shall take effect 45 calendar days after the notification has been sent to the Minister.

Exceptions

The Labour Code of Georgia does not provide specific exceptions related to collective redundancies. However, the list of invalid grounds of termination should be taken into consideration. Namely, the employer shall not terminate the employment agreement:

- On the grounds of discrimination;
- During the period of maternity leave, parental leave, newborn adoption leave, or additional parental leave, following the notification to the employer from a female employee about her pregnancy; due to an employee being conscripted into compulsory military service, or military reserve service; or during the period of being a member

of a jury in court (except for situation of expiry of an employment agreement; the completion of the work under an employment agreement; violation of labour duties; the entry into force of a court judgment or other decision precluding the possibility of performing the work).

Risks and implications

If the court considers that dismissal (whether individual, or collective) is illegal, the employer's decision on terminating the employment agreement will be declared void and the court will order reinstatement (on the same or equal position), or impose on the employer payment of compensation, instead of reinstatement. The amount of compensation is determined by the court. Moreover, an employee may, in addition to being reinstated, or receiving compensation in exchange thereof, request compensation for lost earnings from the date when the employment agreement was terminated, up to the date when the final court decision, declaring void the employer's decision on terminating the employment agreement, was enforced.



Zakaria
Shvelidze

Partner



Israel

Staff redundancy: when to use?

Staff redundancy refers to a situation where termination is being considered due to business reasons, such as a reduction in force or organizational changes, rather than issues concerning an employees' performance, or conduct.

There are no specific mandatory selection criteria for redundancies. As a general rule, employers are entitled to terminate their employees' employment at any time, subject to exercising this right, within the context of the relevant considerations, in compliance with any applicable laws (including anti-discrimination laws), and any other binding legal sources, whether written or oral, such as employment agreements, customs in the workplace and any collective bargaining agreements/settlements, or extension orders, if applicable.

Types and options

Any staff redundancy cases, even when only one employee is being eliminated, would be regarded as a redundancy. There is no threshold.

Procedures

According to court decisions, in all termination processes (including for redundancy), employers are required to hold a personal hearing with employees, whose employment they wish to terminate, prior to making any final decision regarding such termination.

The purpose of the hearing procedure is to inform the employees as to the employer's intention to terminate their employment, specify the reasons for such and give the employees the opportunity to respond to the employer's intent.

The obligation to conduct a hearing must be carried out in good faith and with a sincere and fair willingness to listen and to consider the employee's views.

The hearing process is divided into three steps:

1. Invitation – The invitation should specify the reasons for which the employer is considering the employee's termination. Such reasons should be relevant, reasonable and non-discriminatory.
2. Hearing meeting – The employees should be given the opportunity to present their arguments and any relevant information which may affect the employer's decision.
3. Decision – If the employer decides to proceed with termination, it should issue a written termination letter (from which time, the prior notice shall begin).

In addition, as a general rule, case law requires employers to inform and consult with the employees with respect to redundancies. In practice, the employer will only be able to comply with this duty where there is an employee representative body with which to consult.

Exceptions

Israeli labor law prohibits the termination of an employee's employment in certain circumstances, including terminating the employment of:

a) a pregnant employee; b) an employee undergoing fertility treatments; c) an employee during statutory maternity, or paternity, leave, or statutory unpaid leave, following such parental leave and 60 days thereafter; d) an employee on army reserve duty and 30 days thereafter (provided the service is for more than two consecutive days); or e) an employee on sick leave, who must be enabled to utilize his accumulated sick days (up to the maximum statutory cap of 90 days and, in certain cases, even a more beneficial contractual cap); all subject to the conditions and circumstances set out in the relevant legislations / judgments.

We note that specific ministerial approvals for the termination of some of the above groups of employees may be obtained in certain circumstances, if the employer demonstrates that the termination is not due to the special circumstances of the employee (for example, the employee being pregnant).

Furthermore, according to a new and developing trend in recent labor court rulings, employers have a general duty to make an effort to locate an alternative position for employees, whose employment is being terminated for redundancy / due to organizational change. This duty is especially

applicable in the case of certain group of employees (such as disabled employees and employees who are close to retirement age), before proceeding to termination.

The court does not view this requirement by virtue of the result (i.e. whether the employee was indeed transferred to an alternative suitable position or terminated due to the lack thereof), but rather, whether the employer carried out a real and honest process to examine whether there is an alternative position.

Risks and implications

In general, if termination of employment is not made in good faith and for valid reasons, or if the employer does not follow the required process, the labor courts may, if approached, rule that the termination is unlawful.

Wrongful termination may result in financial compensation. In principle, damages for wrongful termination are uncapped. However, the courts rarely award more than twelve months' salary for successful wrongful termination claims. Theoretically, reinstatement of the employee is also an option, although this is rarely the primary remedy. The labour courts also have the authority to issue injunctive relief.



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Kazakhstan





Staff redundancy: when to use?

According to the Labour Code, an employer must not substantiate its decision on staff redundancy, as being an act that can be made by the employer in the framework of freedom of business activities. Nevertheless, in practice staff redundancy and job displacement are referred to as being a statutorily allowed reorganization of an employer, which is intended, as a rule, to improve the work of organization. Staff redundancy (job displacement) is allowed both in case of actual reduction of the scope of work, and in the event of various technical and organizational measures allowing a company to reduce the number of employees, although the scope of work may remain the same, or even become greater.

Types and options

The Kazakhstan legislation does not provide for any types of redundancy and their qualification features. However, in practice, a situation may involve reduction of specific positions (staff redundancy), or reduction of the number of employees holding similar positions (job displacement). Depending on the number of reduced employees, it is theoretically possible to distinguish redundancy of single and global nature. According to the relevant ministry, concurrent loss of jobs in connection with staff redundancy, or job displacement by more than 3 employees, will be global.

Procedures

In case of termination of labour relations with employees, on the employer's initiative, in connection with staff redundancy, it will be necessary to do as follows:

- notify the employees of staff redundancy and termination of labour relations with them for this reason at least 1 month prior (unless a longer period is stipulated by an employment contract and/or collective agreement, if any) to the contemplated date of termination of labour relations; in case the employees agree in writing, the employment contracts may be cancelled before expiration of the said notice period;
- submit information to the population employment center, at the place of location of an employer (in writing, or by way of the state Internet resource "Labour exchange") concerning the upcoming release of employees, in connection with staff redundancy (number, categories, positions, professions, specialties), qualifications and amounts of salaries of employees, as well as the terms, during which labour relations with employees will be terminated) at least 1 month prior to the contemplated date of termination of labour relations with employees;
- perform full settlements with employees not later than 3 business days from the moment of termination of labour relations (specifically, to pay salary to employees for the actually worked time; compensation in connection with loss of job in the amount of an average monthly salary; compensation for the unused days of the annual paid labour leave; other payments, if stipulated by the employer's internal regulations and/or employment contracts with employees);
- in case of presence of material claims, it is necessary to enter into negotiations with employees concerning voluntary repayment of the existing debts and compensation of the caused damages; to organize the transfer (return) of the property belonging to the employer and held by the employees;

- revoke the powers of attorney, issued to employees for the representation of the employer's interests before the state organizations and institutions, and any other legal entities and individuals (because such powers of attorney do not become automatically void in case of termination of labour relations with employees);
- organize the transfer and acceptance of documents, special seals of the employer, if any, electronic keys, etc.;
- issue an employer's act (order), which must specify the ground for the employment contract termination according to the Labour Code (staff redundancy and/or job displacement – Article 52.1.2 of the Labour Code); copy of the order is served, or sent to an employee (by registered mail with a description of the contents and mail notification of delivery) within 3 business days of the date of issue; and
- on the day of termination of an employment contract, to issue a document to an employee confirming his/her labour activities.

From the moment of cancellation of employment contracts with employees, it is necessary to immediately introduce changes into the employer's staff schedule in order to record the fact of excluding the positions of such employees from the organization's staff.

Exceptions

An employer has no right to dismiss employees in cases, as follows:

- if an employee submitted to an employer a certificate of pregnancy, or has children under the age of 3 years, or an employee is a single mother raising a child under the age of 14 years, or a disabled child under the age of 18 years – in these cases, it is necessary to select another ground for the termination of Labour relations, for example, agreement of parties;
- without a positive resolution of a commission, formed from the equal number of representatives of management and employees of the employer, if employees have less than 2 years until reaching the retirement age, established by the Kazakhstan legislation, i.e. this ground for termination of labour

relations may be applied only after formation of the said commission and adoption of a resolution approving displacement of the position of a respective employee;

- without a motivated opinion of the trade union body, if employees hold positions in elective trade union bodies, without the release from the principal job;
- during the period of temporary incapacity for work and/or employee's leave – in this case, an employee who is on leave, or on "sick leave", must be notified of upcoming cancellation of the employment contract only after his/her return to work, and the employment contract cancellation will only become possible upon expiration of the established notice period.

Risks and implications

The risk that the employees will subsequently challenge, in court, their "redundancy" is high. In case of a dispute with reduced employees, the court checks:

- compliance with the redundancy procedure;
- actual nature of redundancy (including whether any new persons have been hired, instead of dismissed employees, or not).

An employer should not hire new persons instead of reduced employees within at least the limitation period for appealing against the redundancy. This means that it is necessary not to create new similar positions in the employer's organization (in any subdivisions) after redundancy, until expiration of the limitation period for disputes concerning reinstatement at work. Later, if the need to create similar positions arises, such creation of positions must be thoroughly substantiated by the objective reasons, in order to avoid accusations of an employer of fake redundancy.

In case the reduced employees, or other individuals, are engaged after dismissal under individual civil contracts for the performance of the same functions, the risk, that such redundancy may be recognized as fake redundancy, is high. The court may recognize that, in fact, there was no staff redundancy, and the employer's actions were aimed at avoidance of the performance of labour obligations and impairment of labour rights of employees.

Despite the absence of an expressed legal obligation to substantiate the decision on redundancy, in practice, it is recommended to include such substantiation in the documents on redundancy (first of all, from the viewpoint of economic and production needs). In case of a dispute, this will serve as an additional argument to support the valid, but not fake or discriminatory nature of redundancy.

AQUITAS
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Kyrgyzstan

Staff redundancy: when to use?

Staff redundancy is used in cases of the liquidation of a company, elimination of a certain position (i.e., removal of a job title position from the staff schedule of the company) or reduction of the number of employees.

The reasons for such measures may vary, including terminating, or reducing, some or all activities of the company, shifting to different activities, and reorganization of the company in a form of a merger, accession, division or transformation, from one type of organization to another. Generally, staff redundancy occurs when certain position(s), or a certain number of employees, are no longer necessary for the company.

As a result of the above, the employment relationship with the employee is terminated.

Types and options

Kyrgyz laws do not define any specific types, or options, for termination of employment due staff redundancy. However, the law provides certain specific procedures for terminating employment relationships due to liquidation of the company (termination of employer's activities).

Procedures

The procedure for staff redundancy is the following:

1. The company evidences a decision on staff redundancy in a form of an order, which shall indicate employees-to-be-redundant and reasons for removing certain positions, or reducing the number of employees (it is recommended to adopt a new staff schedule, which would indicate respective changes in the company structure).

In case of elimination of the position, or reduction of the number of employees, the employee may be offered another position, if he/she is qualified to perform its respective functions.

In case of reducing the number of employees, priority should be given to keeping employees with higher productivity and qualifications, as well as to those who meet certain criteria established in the collective agreement, or employment contract.

2. The staff-to-be-redundant must be notified personally, in writing, at least 1 month before the dismissal. Such notification may be documented by the employee signing the order on staff redundancy, acknowledging the fact that he/she has been personally informed about the upcoming dismissal.

During this one month-period, the employee shall be provided 1 day-off per week, to search for a job, with the preservation of he/she average salary. By agreement of the parties, the employment contract may be terminated earlier, with payment of compensation of not less than the average wage for each day remaining, until the expiration of the one-month period.

3. Upon termination of an employment contract, severance payment, of not less than 2 average monthly salaries, shall be paid to the employee.
4. The employee dismissed due to staff redundancy shall be paid the average monthly wage (including the severance pay) during the period of job search, but not more than 3 months, provided that he/she, within 10 working days after dismissal, registers with the State Employment Service as a job seeker. For the first month from the date of dismissal, the employee is paid a severance pay, for the second and third months of job search, the employee retains he/she average monthly salary.

Exceptions

An employee cannot be dismissed during a period of temporary incapacity for work (i.e., when an employee is on sick, or on maternity leave) and during an employee's vacation leave, except in cases of company's liquidation.

In some cases, dismissal of employees shall be carried out only with the prior written consent of the relevant trade union organization, or other representative body of the employees of the company.

Risks and implications

If the company does not observe the procedures specified by law, an employee may apply to the court, with the request to be reinstated at work and receive compensation. If it is not possible to reinstate the employee in his/her previous position (e.g., if the position has been removed from the staff schedule, or the company has been liquidated), the court imposes, on the employer or his/her legal successor, the obligation to provide the employee with a monetary compensation of at least 12 average monthly salaries.

The employee may also resort to the commission on labour disputes (if such exists in the company) with the request for compensation.

The employee may be entitled to receive compensation of his/her average income for the entire period of forced absence, or the difference in income for the entire period, when he/she had to work in a lower-paid position.

Also, at the request of the employee, the court may decide to provide the employee with monetary compensation for moral harm, caused to him/her by violation of the established procedure for dismissal. The amount of such compensation is determined by the court.

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**Magomed
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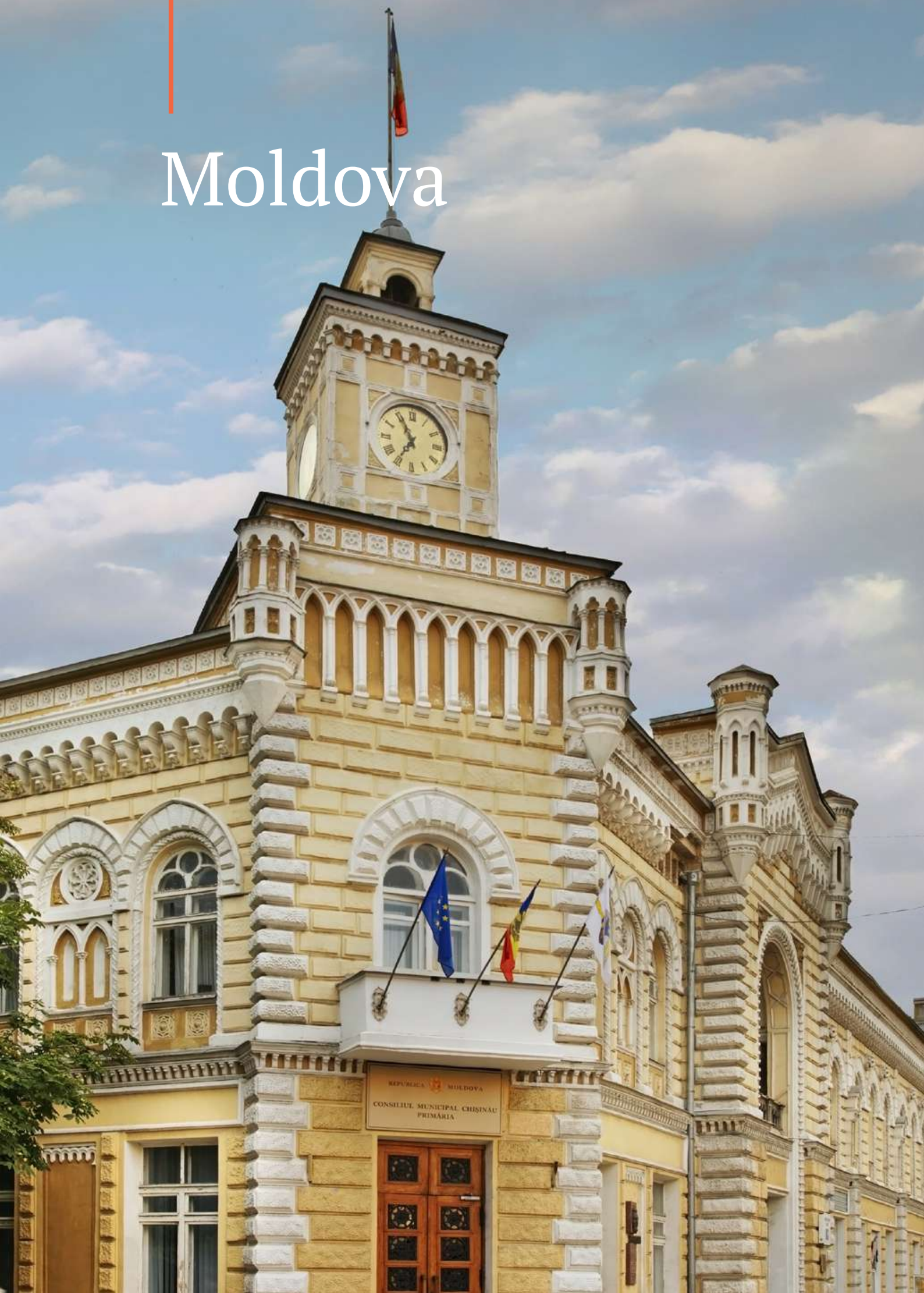
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Staff redundancy: when to use?

Staff redundancy is one of the legal grounds which allows the employer to terminate the employment agreement, primarily, due to the elimination of a certain job position and its removal from the staff structure of the company, or reduction of the number of employees.

There are several situations where staff redundancy may be applied:

- elimination of a job position within a company;
- reduction of the overall number of employees; or
- liquidation of a company.

Types and options

Staff redundancy, by its extent, can be **ordinary** or **collective**. The law provides for the following general criteria of collective redundancy:

- a. redundancy of 10 employees, in companies having 20-99 employees;
- b. redundancy of at least 10% of employees, in companies having 100-299 employees;
- c. redundancy of at least 30 employees, in companies having 300 or more employees.

Staff redundancy can take form of **staff reduction** and **downsizing**. Staff reduction implies the complete elimination of a position within a company, when, for example, the duties of one position are assigned to another existing position and, the former is removed entirely. Downsizing entails the reduction of employees that hold the same position within the company. Both forms of staff redundancy must be carried out according to strict procedures.

Procedures

Redundancy is consisting, usually, of the following stages:

- **Prior information:** if the staff redundancy process will affect several employees, the company shall publish a formal notice, addressed to the representatives of the employees (or trade unions, if they exist at the company level) at least 30 days before starting the redundancy process.
- **Initiation of the staff redundancy process:** the company shall issue a formal decision (HR order), which shall be legally, or economically, reasoned and shall elaborate the procedure which will be applied by the company: staff reduction or downsizing.
- **Notification about the staff redundancy process:** the company shall issue a formal decision (HR order), which shall provide the obligation to notify the employees affected by the redundancy process. The order shall be notified to the affected employees, **2 months** prior to the dismissal.

At this stage, the company shall take into account the following mandatory rules:

1. the company shall reduce, first of all, the vacancies and shall terminate the labour agreements, first of all, with employees employed by cumulation (i.e. having 2, or more, jobs concomitantly);
2. at the time of notification, the company shall propose to the affected employees, in writing, another job (position) within the company, provided

that such job (positions) exists, and the notified employee meets the necessary requirements;

3. the law provides a preferential right of work for certain categories of employees, which shall be taken into account by the company: first of all, the employees having higher qualifications and labour productivity benefit of the preferential right for work. In cases where qualifications and productivity are equal among employees, the law provides certain favored categories of employees (e.g. employees that provide for 2, or more, family members and/or a person with special needs, etc.).

At the same time, 2 months prior to the dismissal, the company shall notify in writing:

1. the National Agency on Employment, and
 2. the trade unions, to ask their consultative opinion on the dismissal, if the affected employee is part of any trade union.
- **Dismissal of the employees:** the company shall issue a formal decision (HR order), for each employee on the dismissal due to staff redundancy, at the expiry of the 2 months' notice period.
 - a. The law provides for that the employee, subject to redundancy, is entitled to the average monthly salary, during the notice period (2 months), and a severance payment of up to 3 monthly-average salaries, for the period of unemployment: in the first month following the dismissal, the employee is entitled to a severance payment equal to an average weekly salary for every year worked at the company, which will not be less than an average monthly salary, but not more than 6 average monthly salaries;
 - b. for the following 2 months, the severance payment is equal to an average monthly salary. severance payment shall be paid in instalments, and



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is subject to confirmation of pending unemployment, throughout the 3 months following dismissal.

Exceptions

Certain categories of employees cannot be subject to dismissal for redundancy reasons, which include employees that are pregnant, or have children under 4 years old, are on medical, holiday, study or maternity leave. Employees elected as members of trade unions are also safeguarded from losing their jobs and must be offered the same, or an equivalent, position after the expiry of their trade union term. Also:

- companies cannot dismiss employees that are fulfilling state, nor public, duties, nor during their secondment, and
- the employees up to 18 years of age cannot be dismissed without the written consent of the territorial Agency of Employment.

Risks and implications

If the company does not observe the procedures specified by law, a dismissal may be considered as being unlawful and an employee may be reinstated at work, by court decision. Also, the company will be required to repair the damages caused by such a dismissal, which include: **a)** severance payments for the period of involuntary absence from the workplace, **b)** legal and non-legal fees incurred within the reinstatement process (court fees, experts' remunerations), and **c)** moral damages.

Keep in mind that...

- the eliminated position, subject of a redundancy procedure, cannot be reinstated within a year after the dismissal the employee that held that position; and
- if the 2-month notification period has expired without a dismissal order being issued, the procedure cannot be repeated for one subsequent year.

How to mitigate legal risk in the context of staff redundancy?

- make sure to accurately follow legal procedures when dismissing employees;
- consult up-to-date legislation in relation to employment;
- avoid hiring members of staff with similar duties and responsibilities;
- negotiate with employees, in order to avoid potential litigation;
- ensure a fair and non-discriminatory dismissal procedure upon downsizing or staff reduction.

Poland



Staff redundancy: when to use?

Staff redundancy is applicable to employers terminating employment, for reasons not attributable to employees. It implies the elimination of a certain job position, or reduction in number of certain and/or similar positions and its/their removal from the staff structure of the company.

The grounds for staff redundancy are not legally defined. Therefore, usually these are business reasons (for example resignation from certain activities, restructuring or reorganizing a company's structure, or a structure of a specific sector, or team).

Redundancies are mainly governed by the Act of 13th March 2003 on Special Rules on Terminating Employment Relationships of Employees for Reasons not Attributable to Employees ("the Act"). It is applicable to employers employing at least 20 employees.

Types and options

Staff redundancy, by its extent, can be **collective** or **individual**.

1. The redundancy is collective, if within 30 consecutive days, the following number of employees is made redundant:
 - a. 10 or more, if the employer employs up to 99 employees,
 - b. 10%, if the employer employs between 100 and 299 employees, and
 - c. 30 or more, if the employer employs 300 employees or more.

The above limits include employees whose employment contracts are terminated with notice, or by agreement, if at least 5 agreements are executed in this 30-day period.

2. The redundancy is individual, if there is one dismissal, or several dismissals below the threshold of collective dismissals.

Staff redundancy can take form of **liquidation** or **reduction of position(s)**.

- a. Liquidation is removing one, or more, positions completely (in this case, the selection procedure is not needed).
- b. Reduction is downsizing the number of employees, holding the same, or similar, positions (in such a case, the selection procedure is required).

Procedures

In summary, the procedure involves:

- a. information/consultation with a works council (if it exists at the company);
- b. notification to unions, or to employees' representatives, if there is no union at the company;
- c. first notification to Regional Labor Office ("RLO");
- d. when 50 or more employees are to be dismissed within 3 months – conclusion of the agreement with RLO as to the assistance that will be provided to the dismissed employees;

- e. consultation with unions, or employee's representatives;
- f. after max. 20 days following the consultation with unions, conclusion of the agreement with unions, or when it cannot be reached, or if there are no unions at the employer's - issuing a collective redundancy regulation by the employer and announcing it to all its employees;
- g. second notification to RLO;
- h. after the second notification to RLO dismissals can start – the Company can proceed to terminate employment, of the affected employees, by serving termination notices, or entering into mutual agreements. Employment can terminate no sooner than 30 days after the second notification that can be of importance only in case of the shortest notice periods.

Exceptions

There are special categories of employees that cannot be made redundant. The most important "protected" categories of employees are as follows:

- pregnant employees;
- employees on maternity and similar leave;
- employees in the pre-retirement period (4 years before the retirement age);
- employees during justified absence from work;
- members of works councils;
- trade union activists;
- social labor inspectors.



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**Natalia
Basista**

Advocate / Lawyer

If the affected employee belongs to the particular "protected" category, the employer, as a rule, cannot terminate employment with such employee, during collective procedure. They can only be served with notices of alternative of terms of employment. However, if as a consequence of this change, such employee's remuneration is decreased, he/she will be entitled to a special allowance for the period, equal to the period of protection (in practice it is usually impossible to decrease their remuneration).

The above protection only does not apply in case of employer's liquidation, or bankruptcy.

Risks and implications

If the employer does not observe the procedures specified by law, a dismissal may be considered as being unlawful. In such a case an employee may be reinstated, or adjudged compensation by court.

What are the implications of unlawful dismissal?

- a. reinstatement and remuneration (capped at 2 months' remuneration); only a protected employee can claim reinstatement and remuneration for the entire period of remaining without work; or:
- b. compensation in the amount of the remuneration for 2 weeks to 3 months, though not less than the remuneration for the notice period.

How to reduce the risks of challenges to the redundancy?

- Follow the procedure specified by law (e.g. if one of the staff redundancy stages is omitted, the dismissal can be challenged);
- Do not introduce new job positions with the same, or similar, scope of duties, at least for a certain period;
- Avoid discrimination;
- Adopt the resolution, or introduce the new organizational structure, to confirm the change in employer's, or team's, structure;
- Apply fair and objective criteria while selecting employees for dismissal, in case of reduction in the number of positions (not elimination of a unique position, nor all the same and/or similar positions when criteria are not needed); criteria must be specified in notice document;
- Try to conclude a termination agreement instead of notice.

Russia



Staff redundancy: when to use?

Staff redundancy primarily implies the elimination of a certain job position and its removal from the staff structure of the company. As a consequence, the employment relationship with the employee is terminated.

The grounds for staff redundancy are not defined by law. Generally, staff redundancy is carried out when the company reduces its activities, or shifts to the different type of activity, and there is no longer any necessity for certain positions (functionality).

Types and options

Staff redundancy by its coverage can be divided into **ordinary** and **collective**. Russian law provides for the following general criteria of collective redundancy:

- Liquidation of a company with 15 or more employees;
- Redundancy of particular number of employees during a certain period, as prescribed by regional rules (e.g. 50 or more employees during 30 calendar days);
- Special criteria for regions, with a total number of employed of less than 5,000 people (e.g. the dismissal of 1% of the total number of employees due to the liquidation of the company).

Specific criteria may be established by regional, or industrial, agreements.

Staff redundancy can be also in form of **staff reduction** and **downsizing**. When the staff is reduced, one or more job positions are completely removed (in this case, the selection procedure is not needed). When the staff is downsized, the number of employees, holding the same position, is reduced (for example, two out of four accountants are left; the selection procedure is required, in such a case). Staff reduction and downsizing can be carried out both independently and simultaneously.

Procedures

The procedure for staff redundancy is multi-stage, formalistic and consists of the following stages:

- To start, the company needs to make a formal decision (in form of an HR order) and then decide on who, among the employees, has/have a preemptive right to keep their job(s).
- Employees-to-be-redundant are eligible for job vacancies, available in the company's structure (within a particular region).
- The general notice period is 2 (two) months, prior to dismissal of employees and, in some cases, 3 (three) months
- The company must notify in writing:
 - a. The employees to be made redundant;
 - b. The State Employment Centre;
 - c. The trade union(s) (if any).

- The law provides for that the employee, subject to redundancy, is entitled to full salary, during the notice period (2 months), and a severance payment of up to 3 monthly-average salaries, for the period of unemployment. This severance payment is being paid in instalments, upon request from the employee, and is subject to confirmation of pending unemployment, throughout the 3 months following dismissal.

Exceptions

There are special categories of employees that cannot be made redundant (pregnant women, women having children under 3 years old, individuals bringing up children under 14 years old (disabled children under 18 years old) without a mother/father). Staff redundancy is also not allowed while the employee is on sick leave, nor on vacation.

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Employees working in the Far North regions, and similar regions, equated by the government, are entitled to higher severance: in case of staff redundancy (average salary payments up to 6 months, in total).

If an employee, who is a member of the trade union, is dismissed, the reasoned opinion of the trade union must be taken into account.

Protection of other categories of employees may be given by regional and/or industrial agreements, company's policies, employment contracts, etc.

Risks and implications

If the company does not observe the procedures specified by law, a dismissal may be considered as being unlawful and an employee may be reinstated at work, by court decision.

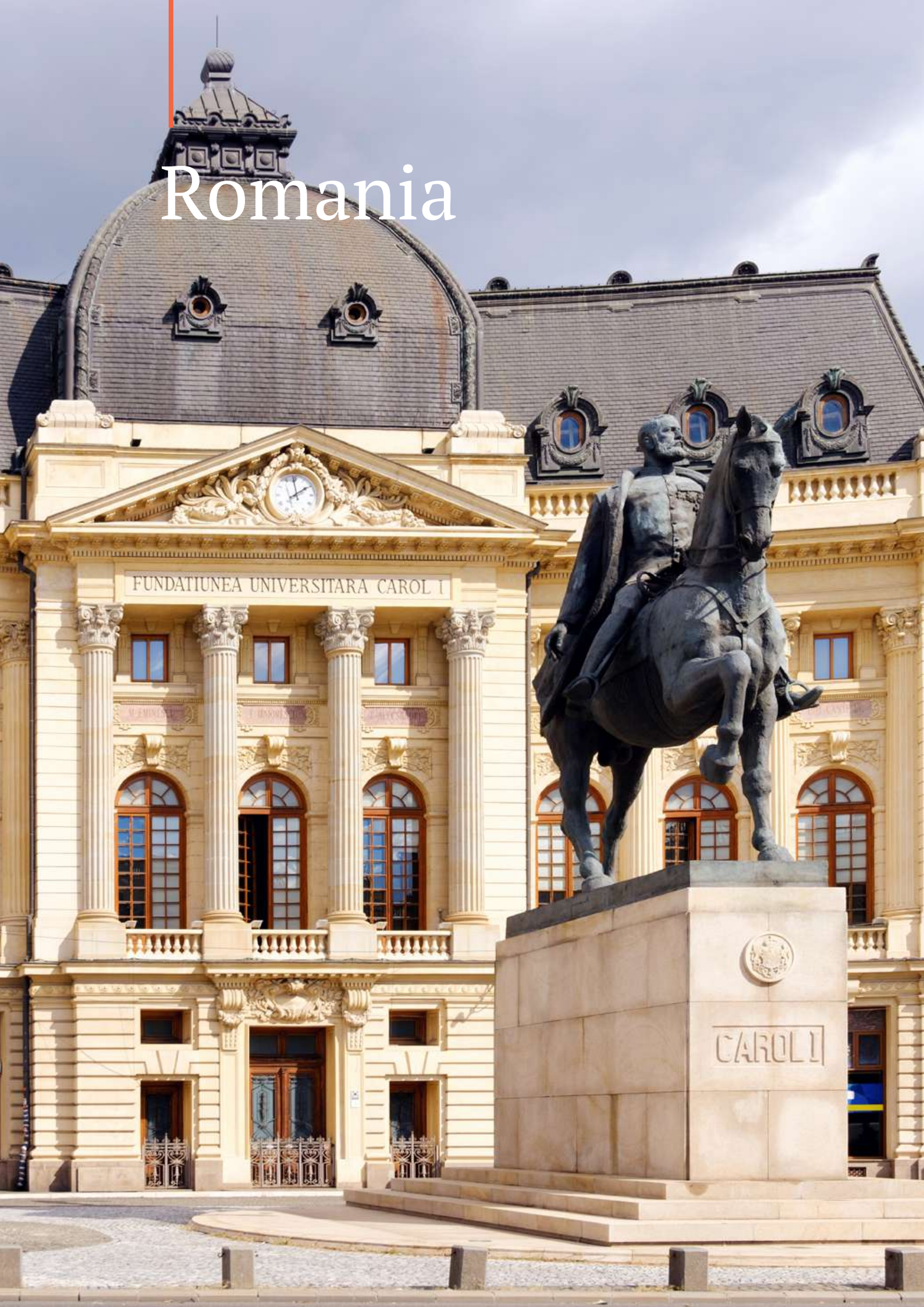
How to reduce the risks of challenges the redundancy?

- Follow pedantically the procedure specified by law (e.g. if one of the staff redundancy stages is not fulfilled, the dismissal can be challenged);
- Learn and comply with regional particularities;
- Offer all vacant positions, including new job positions, part-time positions, positions at all branches and separate divisions, in the company region;
- Do not introduce new job positions with the same, or similar, job duties, at least for a certain period;
- Avoid discrimination;
- Adopt the new staff schedule to confirm the change in HR structure.

What implications of unlawful dismissal?

- Reinstatement of the employee;
- Payment to an employee of the average wages, for the entire period between dismissal and reinstatement/the date of a court ruling;
- Payment to an employee of compensation for "moral damage", as a result of unlawful dismissal;
- The company can be liable for an administrative fine up to 50,000 Rubles (approx. 550 EUR).

Romania



Staff redundancy: when to use?

Redundancy occurs, in practice, when the employer changes its organizational structure for economic, financial or technical reasons. In order to be valid, the termination of an employment contract must be determined by the suppression of the position, occupied by the respective employee/s, from the organizational chart. The suppression has to be effective (i.e., the position is eliminated and cannot be renamed, nor recreated under a different denomination) and to be grounded on a real and serious cause (i.e., the purpose of this reorganization should not appear to be solely aimed at removing a certain employee, but must be grounded by objective reasons).

Types and options

The dismissal due to redundancy can be either **individual** or **collective**. Each type of redundancy process involves the effective suppression of positions. If only a part of a set of identical, or similar, positions are suppressed, a selection procedure must be performed, based on objective criteria (primarily performance-related). No mandatory amount of compensations for dismissal, nor obligation to provide vacant positions to the employees, affected by redundancy, are regulated by law (if regulated through internal rules, or applicable collective labor contract, they must be observed).

As a general rule, a redundancy process is collective when the redundancy affects the following thresholds of employees, within a 30-calendar day period: **a)** at least 10 employees, if the employer has more than 20, but fewer than 100 employees; **b)** at least 10% of the workforce, if the employer has at least 100, but fewer than 300 employees; **c)** at least 30 employees, if the employer has 300 or more employees.

Procedures

Main steps to be observed in the case of an **individual** process are the following:

- drafting an analysis justifying the necessity of the reorganization and proposal to reorganize employer's activity, by suppressing the respective position/s, with the reasoning behind it and goals to be achieved;
- adopting a corporate decision by the employer's competent body on the reorganization;
- issuing prior notice notification/s - minimum 20 working days (more favorable durations in internal rules/collective labor contracts/employment contract to be observed);
- issuing the individual dismissal decision/s – issued in writing and communicated to the employee/s; must include the minimum requirements provided by law.

The entire **collective** dismissal procedure may last over 2 months and consists of the following main steps:

- drafting an analysis justifying the necessity to reorganize the company's activity;
- adopting a corporate decision, approving the intention of reorganization;
- notifying the intention to implement the collective dismissal (Notification I) to the employee representation bodies (i.e., employees' representatives/trade unions) - mandatory content as per the law; a copy thereof must also

be forwarded to both the territorial labour inspectorate and territorial employment agency on the same date;

- performing information and consultation procedures, as per the law;
- adopting a corporate decision on the reorganization and collective dismissal;
- notifying the decision to implement the collective dismissal (Notification II) – minimum content as per the law; the employer must inform (at least 30 calendar days prior to the issuance of the individual dismissal decisions), at the same date, both the territorial labour inspectorate and the territorial employment agency, as well as the employee representation bodies of the results of the consultations;
- issuing prior notice notification/s – minimum 20 working days (more favorable durations in internal rules/collective labour contracts/employment contract to be observed);
- issuing the individual dismissal decision/s - in addition to the aspects mentioned for the individual procedure, these decisions should also comprise the criteria for establishing the priority order applied when implementing the collective dismissal.

Termination of employment must be registered within the REVISAL app (labour authority platform).

Within 45 calendar days from the date of dismissal, the employees dismissed (through collective procedure) have the right to be re-employed, with priority, in the position re-established in the same activity, without examination, competition or probationary period.



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**Gabriela
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Exceptions

Dismissal is prohibited based on discriminatory grounds provided by the law, such as: sex (including pregnancy, childbirth, breastfeeding status), sexual orientation, age, nationality, race, color, ethnic origin, religion, political beliefs, social origin, disability, family status or responsibilities, participating in strikes or exercising any trade union related rights.

Dismissal is also, in principle, prohibited (except where the employer undergoes bankruptcy, judicial reorganization or dissolution) while the employee is in one of the following cases: sick leave, quarantine leave, pregnancy, maternity and maternity risk leave, parental leave, paternal leave, while on reinsertion incentive, childcare leave, annual leave etc.

Risks and implications

Failure to inform and/or consult employee representation bodies, in case of collective dismissals, or providing incorrect, or incomplete, information in bad faith, is sanctioned with fines of up to RON 50,000 (approx. EUR 10,200).

As a rule, any dismissal decision can be challenged within a maximum of 45 calendar days, as of the date it was communicated to the employee. If the court rules in favor of the employee, it will ascertain the nullity of the dismissal and order the employer to:

- pay the employee compensation, equal to the wages and other entitlements (index-linked and taking into account any increases that may have occurred in the meantime) from the date of dismissal, up to the date of the court ruling/effective reinstatement;
- reinstate the employee (upon express request);
- pay moral damages (upon express request), depending on the circumstances of the case.

In an attempt to mitigate potential risks, employers must:

- follow pedantically the procedure provided by law and perform objective selection procedures (where needed);
- conclude (if possible) mutual termination agreements with the employees (after positions are suppressed through company documents);
- not recreate the suppressed positions, at least for a certain period.

Ukraine



Staff redundancy: when to use?

Staff redundancy is one of the grounds for the termination of an employment agreement.

Redundancy takes place in the course of reorganization, liquidation, bankruptcy or change of business of the employing company.

Types and options

There are two types of redundancy: individual and collective.

Collective redundancy is defined as a one-off redundancy (other than in the case of full liquidation of the company) or:

- a total reduction of ten or more employees, within a one-month period where the company employs between 20 and 100 employees; or
- a total reduction of 10% or more of the workforce, within a one-month period, where the company employs between 101 and 300 employees;
- a total reduction of 20% or more of the workforce, within a three-month period, regardless of the size of the company.

Staff redundancy can take the form of staff reduction and downsizing. Staff reduction implies removing one or more job positions. In the case of downsizing, there are no changes in job positions, however, the number of employees, holding the same position, is reduced (for example, two out of four accountants are left).

Both individual and collective redundancy are subject to the procedures on proper notification of the employee and negotiation with the trade union, specified below.

Procedures

The procedure for staff redundancy consists of the following steps:

1. Consultations with a trade union.

An employer must provide information to a trade union, in advance, and no later than three months before the date of the dismissals. An employer must hold consultations with a trade union no later than three months after the decision on redundancy is made, by the employer. The consultations must cover issues of job-loss prevention and ways of minimizing the staff reduction, or mitigating the negative consequences of the redundancy. If an employee is a member of a trade union, it is necessary.

The aim of consultation with a trade union is to minimize unemployment. There is no statutory requirement as to the duration of consultations. In practice, consultations take place within one month of the call for consultations and notification of the employees of the dismissals.

There is no statutory requirement to reach an agreement, nor is there a requirement to achieve a specific result, during the consultations.

2. Notification of State Employment Service.

Collective redundancy also triggers a mandatory notification obligation to the State Employment Service at least two months before the actual date of dismissal. The notification must be in the form of a written report on an official form.

3. Notification of employees.

An employer must notify employees individually, two months prior to the date of the dismissals. In addition, all vacancies of the same qualification level and specialization should be offered to the redundant employee. The dismissal, due to redundancy, is only possible when there is no vacant positions of the same qualification level and specialization, or the employee refused to be transferred.

4. Consideration of the pre-emptive right to retain the job.

The employer must consider any pre-emptive rights that the employees may have to retain their jobs. The preemptive right to retain the job is granted to employees with higher qualifications and productivity. In case of equal productivity and qualifications, certain categories of employees are granted the pre-emptive right.

5. Securing the trade union's consent under specific circumstances.

If an employee is a member of a trade union, it is necessary to obtain the trade union's consent to dismiss him/her, except in the liquidation of the company.

Exceptions

There are specific categories of employees that cannot be made redundant, or require a special redundancy procedure.

Employees under 18 years old can be made redundant only in exceptional cases, under the consent of the service for children and when another employment is provided to them.

Pregnant women, women with a child under 3 years old, women with a disabled child under 14 years old, or single mothers with a child under 14 years old can be made redundant only in case of a full liquidation of the company and when another employment is provided to them.

Risks and implications

Unlawful dismissal may lead to reinstatement of the affected employee, payment of his/her average salary during the whole time of unemployment and compensation for moral damage.

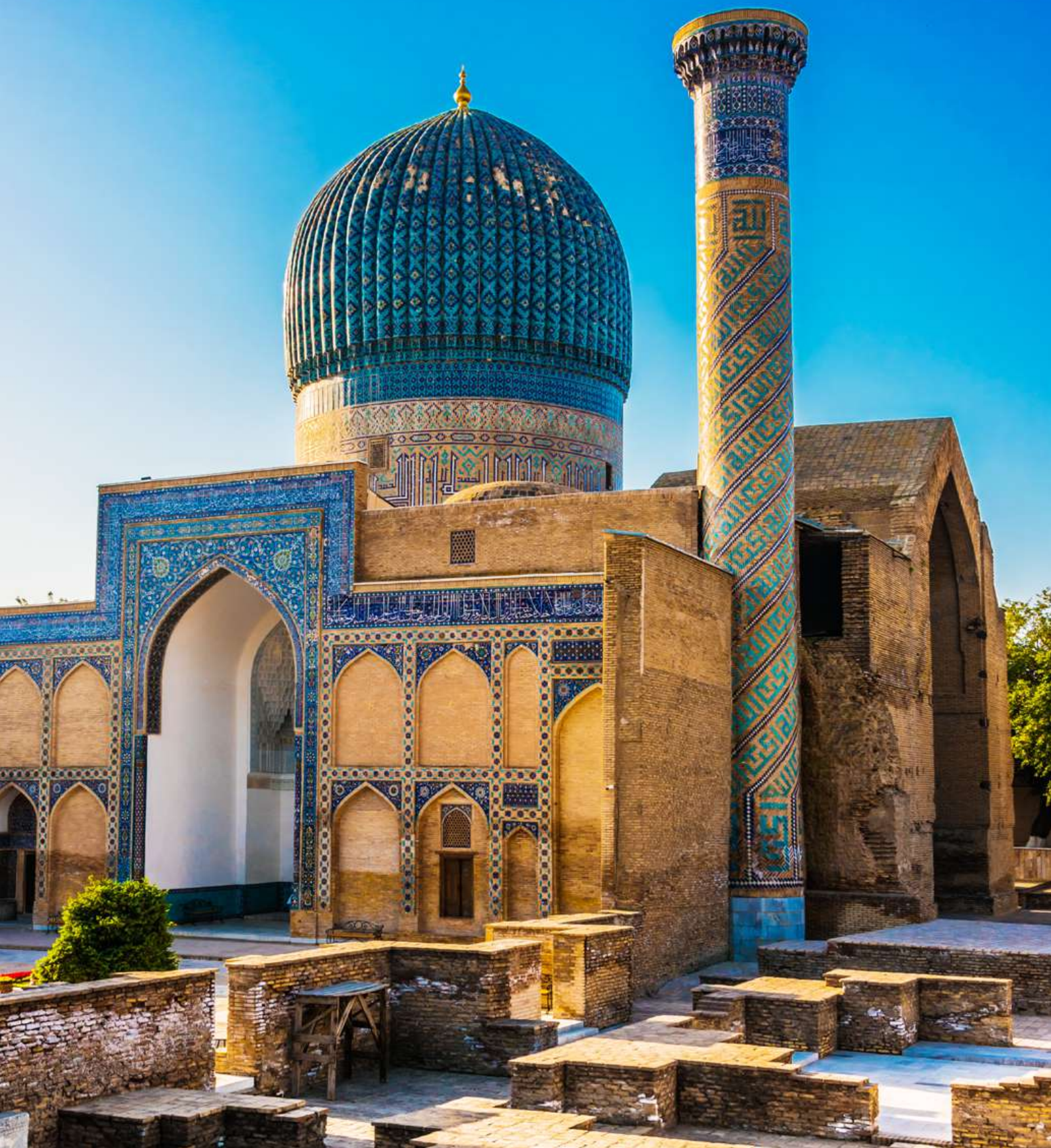
Additional administrative actions may be brought against the employer, in case of failure to notify the State Employment Service about contemplated collective dismissals. A fine of approximately EUR 700 must be paid.



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Staff redundancy: when to use?

Staff redundancy under Uzbek labour legislation is considered as employment contract termination on the initiative of employer, which is reasoned by

1. the changes in technologies,
2. production and labour organization,
3. reduction of the volume of work,

And causing changes in the number of employees, changes of the character of work, or liquidation of enterprise.

Types and options

Uzbek labour legislation does not specify on types of staff redundancy.

Procedures

Under the Uzbek labour legislation during staff redundancy an employer must follow steps listed below:

1. Coordination of the termination of a employment contract on the initiative of the employer with the trade union committee or other representative body of workers;
2. Notification an employee within a timeframe;
The employer is obliged to notify the employee in writing (against signature) of his intention to terminate a fixed-term employment contract at least two months;
3. Granting pre-emptive right to save a job. In such a situation, the right to save a job is granted to employees with higher qualifications and productivity;
4. Termination of employment contract. Termination is made by persons who have the right to hire, and is formalized by order;
5. On the day of termination of the employment contract, the employer is obliged to return the employee his employment record book and a copy of the order on termination the employment contract;
6. Making a payment upon termination of employment contract.

Exceptions

Termination of an employment contract on the initiative of the employer with pregnant women and women with children under the age of three is not allowed, except in cases of complete liquidation of the enterprise, when termination of the employment contract is allowed with compulsory employment.

Risks and implications

If employer does not follow the rules prescribed in labour legislation concerning the procedure on termination of employment contract, there is a risk that such a dismissal may be found by court unlawful and employee may be reinstated at work.

Factors to reduce the risks of unlawful dismissal

- Follow the procedure of employment contract termination prescribed by the legislation;
- Follow the rules established in collective agreements and local acts;
- Pay attention to benefits given to certain groups of employees;
- Offer all vacant positions in the structure of the company;
- Avoid creation of new job positions with the same, or similar, job duties;
- Adopt the new staff schedule in local acts.

Consequences of unlawful dismissal

- Reinstatement of the employee in previous job;
- Compulsory payment for the time of forced absenteeism;
- Compensation for additional costs associated with appealing the termination of an employment contract;
- Compensation for moral damage. The amount of compensation for moral damage is determined by the court, taking into account the assessment of the employer's actions, but it cannot be less than the employee's monthly salary.



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