

## HUNGARY

Prepared by Hédi Bozsonyik, Adrienn Tar and László Pók  
Szecskay Attorneys at Law

### 1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

Act XXII of 1992 on the Labor Code (hereinafter: the “Labor Code”) governs employment relationships, including the termination of the employment in Hungary.

**Employment relationships established for an indefinite period** may terminate in the following ways:

- a) by the death of the employee or the cessation of the employer without a legal successor;
- b) by mutual agreement between the employer and the employee;
- c) termination by the employer or the employee by an ordinary notice;
- d) termination by the employer or the employee by an extraordinary notice with immediate effect;
- e) during the probation period in case of termination by the employee or the employer with immediate effect.

**Employment relationships established for a definite period** may terminate in the following ways:

- a) by the death of the employee or the cessation of the employer without a legal successor;
- b) by mutual agreement between the employer and the employee;
- c) termination by the employer or the employee by an extraordinary notice with immediate effect;
- d) during the probation period in case of termination by the employee or the employer with immediate effect;
- e) by expiration of the definite period,
- f) the employer may terminate the employment relationship under conditions other than those stipulated above, in which case the employee shall be paid one year's average salary, or his average salary for the remaining period if it is less than one year.

The Labor Code includes special provisions on **mass lay-offs**.

The following situations qualify as mass redundancy or mass lay-off: the termination of the employment of:

- i. at least 10 employees by an employer that employs more than 20 but less than 100 employees;
- ii. 10 per cent of the employees by an employer that employs at least 100 but less than 300 employees;
- iii. at least 30 employees by an employer that employs at least 300 employees;

within a period of thirty days, for reasons in connection with its operations.

In order to calculate the employees, the average statistical workforce for the preceding six-month period before the redundancy shall be taken into account. If the employer has more than one business premise, the numbers indicated above must be taken into account with respect to all such business premises individually. However, if these business premises are located in the same county or in Budapest, the number of the employees shall be aggregated.

## **2. Are there any formal requirements for terminating an employee or groups of employees?**

### **Termination by ordinary notice**

Both the employee and the employer may terminate the employment relationship for an indefinite period by ordinary notice. The employer shall justify the reason for termination by notice, unless the employee is a pensioner or an executive as defined by law. (The justification shall clearly indicate the cause. In the event of a dispute, the employer must prove the authenticity and substantiality of the reason for termination.)

The reason for termination must be exclusively in connection with

- (i) the employee's ability,
- (ii) the employee's behavior in relation to the employment relationship, or
- (iii) the employer's operations.

Before the termination of the employment on the basis of the employee's work performance or conduct, the employee shall be given the opportunity to defend himself against the complaints raised, unless it cannot be expected of the employer in view of all the applicable circumstances.

The Labor Code sets forth situations when an employer shall not terminate an employment relationship by ordinary notice, i.e. with those unable to work due to illness; during sick leave for the purpose of caring for a sick child etc. The notice period shall be minimum thirty days and maximum one year depending on the period spent by

the employee in the employment relationship. In the event the employer terminates the employment, the employee must be exempted from performing work for at least half of the notice period.

With termination by ordinary notice by the employer and the cessation of the employer without a legal successor, the employee shall be entitled to a severance payment if the employment relationship has been in existence for at least 3 years. The severance shall be amount to between 1 and 6 months' average salary depending on the duration of employment relationship with the employer.

### **Termination by an extraordinary notice**

The employer or the employee may terminate an employment relationship by extraordinary dismissal in the event that the other party

- a) is in breach of its/his/her substantial obligations arising out of the employment relationship, whether willfully or by gross negligence, or
- b) otherwise behaves in such a manner that would make the continuance of the employment relationship impossible.

Both the employer and the employee shall justify the reason for termination by extraordinary notice. The justification shall clearly indicate the cause. In the event of a dispute, the party which terminated the employment must prove the authenticity and substantiality of the reason for termination.)

Prior to the employer's announcement of termination by extraordinary notice, the employee shall be given the opportunity to acknowledge the reasons for the planned termination and to defend himself against the complaints raised, unless it may not be expected of the employer as a result of all the applicable circumstances.

The right to provide extraordinary notice may be exercised within 15 calendar days of learning of the reason that serves as the basis for such termination, but the latest within one year from the occurrence of the cause, or in the event of a criminal offence up to the statute of limitation period (three years in case of an executive employee).

If an employment relationship is terminated by the employee by extraordinary notice, the employer shall pay the employee his/her average remuneration for a period the same as in the event of termination by ordinary notice by the employer. The provisions pertaining to severance payment shall also be duly applied. The employee may also claim compensation for any damages incurred.

### **Mass lay-off**

When an employer is planning to implement collective redundancies, it shall begin to consult with the workers' council or, if no such council exists, with the committee set up by the local trade union branch and by the workers' representatives (hereinafter referred to as "workers' representatives") within fifteen days prior to the decision, and shall continue such negotiations until the decision is adopted or until an agreement is reached.

At least 7 days before the discussions, the employer shall inform the workers' representatives in writing regarding the reasons for the projected redundancies, the number of workers to be made redundant, and the number of workers employed in the 6 months preceding the decision.

During the consultations the employer shall inform the workers' representatives in good time in writing of the period of the proposed redundancy, the criteria for selection and the conditions for redundancy payments.

In order to reach an agreement, the consultations shall, at least, cover the possible ways to avoid collective redundancies, the principles of redundancies, the means of mitigating the consequences, and reducing the number of employees affected.

The employer shall notify the government employment agency about its intention to make a collective redundancy, and all the relevant details. This notification shall be conveyed simultaneously with the provision of information to the workers' representatives.

If an agreement is reached between the employer and the workers' representatives during the consultations, it shall be documented in writing. A copy of this agreement shall be sent to the government employment agency.

Following the consultations with the workers' representatives, the employer will be entitled to make the necessary decisions relating to the redundancy which will have to address issues such as (a) the number of the employees affected and (b) the first and last day of the execution of the redundancy and the detailed timing of the individual measures.

The employer shall notify the government employment agency in writing at least thirty days prior to implementing the termination by ordinary notice or delivering the necessary statement in case of an employment for a definite period.

The employer shall also notify the employees affected of its intention to make a collective redundancy at least thirty days prior to delivery of the ordinary dismissal or the necessary statement in case of an employment for a definite period. A copy of this notification shall be delivered to the workers' representatives and to the competent employment center.

**3. Are there special legal requirements for a layoff caused by redundancy in the workforce?**

If the reason for termination is in connection with the employer's operations, the employment can be terminated by ordinary notice. If the conditions of mass lay-off are met, both the requirements of termination by ordinary notice and the special requirements for mass lay-off shall be fulfilled (please see Section 2 above).

**4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?**

Termination may be challenged for non-compliance with formal requirements and for reasons pertaining to the merits, i.e. employees may challenge the reasons of the termination. The most typical formal mistakes are the following:

- the notice was not provided in writing,
- the notice was not signed or delivered by the person entitled to exercise employer's rights,
- the notice was delivered during a so-called "protection period" (e.g. the employee is on sick leave/maternity leave/is pregnant, etc.),
- the notice was delivered after the statutory deadline in case of termination by extraordinary notice had elapsed.

**5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?**

In the event of unlawful termination, the following sanctions can be imposed against the employer:

- (i) the employee shall, upon request, continue to be employed in his/her original position;
- (ii) if the employee does not so request or if upon the employer's request the court does not order the reinstatement of the employee in his/her original position, the court shall order, with respect to all applicable circumstances (in particular the unlawful action and its consequences), the employer to pay no less than two and no more than twelve months' average salary to the employee;
- (iii) if the employee does not so request or if upon the employer's request the court does not order the reinstatement of the employee in his/her original position, the employment relationship shall be terminated on the day on which the order determining the unlawfulness of the termination becomes final, therefore the remuneration of the employee shall be paid to him/her until this day;
- (iv) the employee shall be reimbursed for lost wages (and other emoluments) and compensated for any damages arising from such loss. The portion of wages (other emoluments) or damages recovered elsewhere shall neither be reimbursed nor compensated.

In the event of an unlawful termination of the employment by immediate notice, the employee shall be also entitled to the remuneration due in case of an ordinary termination, thus, to the average salary due for the notice period and to severance.

**6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?**

As concerns termination by ordinary notice, the most common mistakes arise from insufficient reasoning and formalities.

Furthermore, the person entitled to exercise the employers' rights shall exclusively make the decision on termination by ordinary notice or agree with the employee mutually on terminating the employment. Such person may authorize another person to sign any of the mentioned documents; however, the decision shall be made by the person entitled to exercise the employer's rights.

**7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?**

Special rules shall be applied to executive officers. The Labor Code sets forth that executive employees are the executive officers of a company (i.e. CEOs, or Managing Directors in case of a limited liability company or members of the board of directors in case of a PLC), and their deputies. The shareholders' or quotaholders' meeting shall be entitled to exercise employer's rights with respect to Managing Directors or members of the Board of Directors. Therefore, in order to terminate the employment of a Managing Director or a board member, the shareholders' or quotaholders' meeting shall pass a resolution on the termination of the employment, and shall appoint a proxy to sign and deliver the termination documents. If ordinary notice is to be given to the executive employee, the employer shall not provide reasoning to the ordinary termination. In addition, some other limitations concerning the ordinary notice (e.g. prohibition of termination with regard to those who unable to work due to illness/during sick leave for the purpose of caring for a sick child etc) shall not apply to executive employees.