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

The Portuguese Labour Code (in the version applicable since the 17 February 2009) lays out two forms of layoffs: collective dismissal (articles 359.º to 366.º) and individual redundancy (articles 367.º to 372.º). A dismissal is considered to be collective whenever there is (i) a closure of one or more departments or (ii) the need to reduce the workforce due to structural, technological or economic reasons, and the employer terminates, either simultaneously or within a period of three months, the employment contracts with at least 2 employees for companies with up to 49 employees or 5 employees for companies with 50 or more employees. In cases where dismissals do not meet the requirements to be considered collective dismissals, the rules regulating individual redundancy shall apply. These two types of layoffs apply to all employers, regardless the size of the work force or the nature of the employment, and all types of employees including white and blue collar workers, managerial staff, and employees occupying positions of trust within the organization.

The dismissal (for whatever reason) is only allowed when there is just cause and must be made as a part of a procedure organized by the employer. The grounds or "just cause" for layoffs the legislation refers to the following types of reasons: closure of one or more departments of the company; economic or market forces such as the reduction in the company's activity due to lower demand for goods and services or when it is impossible for practical or legal reasons to supply these goods and services; technological changes in the techniques or manufacturing processes or automation of production, equipment to control the movement of goods, as well as automation of communications or services; or structural changes such as changes in the main product line or restructuring of part or all of the company.

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

Collective Dismissals: A complex procedure applies to employers in terminating employees. For, a collective dismissal, the employer shall notify the workers' commission (or if one does not exist, the workplace multi-union committee or the trade union representatives) and the Ministry of Employment and Social Security as to the impending dismissals through an initial communication. In cases where there are no representative structures for the employees, all employees potentially affected must be notified and may elect, from among themselves within the period of 5 working days after which they have received the initial notification, a committee to act on their behalf. This initial communication from the employer must include a set of documents comprising of a description of the dismissal's grounds, a list of the entire workforce organized in accordance with the company's departments; and the identification of the criteria used to select which employees are to be dismissed.

Within the period of 5 days after the initial communication to employees' representatives or after the period of 5 working days for the election of a committee by the

employees potentially affected by the dismissal, a process of negotiations and consultation begins between the employer and the employees. These negotiations are focused on reaching an agreement regarding the method of carrying out the dismissals and the adoption of other measures aimed at reducing the number of employees affected such as changing to part-time, conducting more training or allowing early retirement. The Ministry provides services by as a participant in the negotiation process to support the parties, to help them reconcile their respective interests, and to assure compliance with legal requirements. In most cases, the negotiations happen just for the purpose of establishing what compensation is to be paid to the employees. The adoption of alternative measures to the dismissal is uncommon. In fact, the negotiations usually end after one or two meetings through which the impossibility of reaching an agreement with the employees is verified. The negotiations' conclusion is ensured by a deadline at the end of which the employer is automatically allowed to decide whether it will carry out the dismissals.

If an agreement is reached or it has been 15 days since the initial communication was made, the employer may issue a final decision by giving written notice to each employee to be dismissed. This notice must state the specific grounds for the employer's decision and the date on which the contract will be terminated. The communication must also refer the amount of the compensation due as well as the form of this compensation's payment. If the employees are entitled to other labor credits (arising from the performance or the termination of the employment), such communication must also include a reference to the amount of such credits, and the place, date and form of their payment. On the same date in which the dismissal decision is sent to the employees, the employer shall provide the Ministry of Employment and Social Security with a report outlining who is being dismissed along with other information. It is worth highlighting that the 15 day limit functions to limit the duration of the negotiations. Therefore, in order to decide on the dismissal without the agreement of the employees, the employer just has to wait until the end of that period and prove that at least one meeting with the employees took place.

Individual redundancy: A different, but complex procedure applies to individual redundancy. The employer must make an initial communication to the workers' commission or, if the relevant company does not have one, to the work-place multi-union committee or, should the latter not exist, to the trade union representatives. The employer must also notify the employee concerned. This notification should address the need to eliminate the post and terminate the employment contract, the reasons behind this decision, and a list the employees affected along with their respective occupational categories.

If the employee's representative structure is not in agreement with the proposed dismissal, it has a period of 10 days to object. The employee affected may make an identical objection. After the initial communication, the employees affected or their representative structure can, within 3 working days, request the intervention of the Portuguese Labour Inspection. This entity will function to assure the fulfillment of applicable legal requirements. The Inspection will have to present a written report within 7 days.

Five days after the window for employees' opportunity to object has closed, the employer may issue his decision. This decision shall be in writing and include a statement on the individual redundancy. This statement will outline the reasons of the dismissal and include the facts that justify the impossibility of taking alternative measures, proof that the selection criteria has been duly observed if objections have been lodged, the amount of

compensation and other labour credits to be awarded to the employee as well as the place and the form of its payment, and the date on which the contract will terminate.

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

For both collective dismissal and individual redundancy, the following requirements apply. An employer is required to give prior notice to employees of their termination. The period in between this notice and the date of termination is known as the prior notice period. The amount of prior notice varies with respect to the duration employment relationship. For employees who have been employed for less than one year, the prior notice period is 15 days. For employees with seniority equal to or greater than one year, but less than five years, the prior notice period must be 30 days. For employees with a seniority equal to or greater than five years, but less than 10 years, the prior notice period must be at least 60 days. Finally, for employees with a tenure equal to or greater than 10 years, the prior notice period due is at least 75 days. If the employer does not comply, wholly or partially, with the prior notice requirement, the employer will have to pay compensation equal to the remuneration of the absent period of notice. In this instance, the employment contract will terminate as if the employer has complied with the prior notice requirements, not at an earlier date.

After termination, the employee will receive financial compensation of one month's basic pay per each year of service. This rate of pay will be calculated "pro rate temporis" and is subject to a minimum of three months' pay. Portuguese law presumes that the employee accepts the dismissal when she receives the compensation. An employee can not appeal his dismissal to the courts, unless he is able to prove that he did not accept the dismissal and returns or makes available to the employer the total amount of financial compensation paid.

Employees affected by a collective dismissal shall be entitled, during the prior notice period, to time off to find employment. This time off to secure other employment is two working days per week and is taken without loss of pay. During the period of notice the employee has a special right to resign by giving notice of three working days. The employee's resignation does not affect his entitlement to the compensation above referred.

Another type of legal requirements regards the criteria for selection given the reorganization of the workforce. When several posts with identical job responsibilities exist and the employer wishes to eliminate some of the jobs, it becomes necessary to terminate employees selectively. If this scenario occurs within the context of a collective dismissal, the law does not impose any criteria. The employer can choose the criteria, provided that they are not discriminatory and that there is a relevant connection between the grounds invoked for the layoff and the criteria used to select the employees to dismiss.

For individual redundancy, the criteria for terminating employees are proscribed by the law. Employees must be terminated in the following order: employees with the shortest length of service in the particular employment post; employees with the shortest length of service in the occupational category; employees in a lower category in the hierarchy; and employees with the shortest length of service in the relevant company. Employees who, in the 3 months prior to the redundancy procedure, were transferred to their present job, are

entitled to return to their original work post should that post exist and continue to receive the same basic pay.

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

The failure to comply with the above requirements and procedures gives the employee the right to challenge the dismissal, appealing to the labour courts. Within a period of 60 days (or six months in the case of a collective dismissal), the employee can contest the decision of dismissal on the following grounds: lack of or insufficient motives of the employer supporting for the dismissal; non-compliance with the applicable legal requirements to the dismissal procedure; or failure to pay due compensation to the employee.

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

The consequences of an unfair dismissal vary depending on the employers' fault. If the termination is invalid, the contract remains in force and the employment relationship is not severed. The employee can be entitled to damages arising from the termination of the employment contract. This compensation will be, at least, equal to the amounts of the retribution that the employee would have received since the date of the dismissal until the date of the final ruling. Further, the employee is entitled, with respect to the period subsequent to the ruling, to be reinstated with all rights and guarantees unaffected. If the employee prefers not to return to the enterprise, he may opt, instead, to be paid some compensation. This compensation will be established by the court somewhere between 15 and 45 days of basic retribution for each year of service, calculated on a pro rata basis, and be equal to a minimum of three month's pay. The court will also consider the time the law suit is pending in making its determination of the appropriate amount of compensation. If the employer has up to 10 employees at its service or if the employee in question occupies a management position, the employer may present an opposition to the reinstatement request in which it must prove that the employee's return would be harmful to its commercial activity. If the court rules in favor of the employer, the employer not have to reinstate the employee, but will have to pay the compensation established by the court for somewhere between 30 and 60 days of basic retribution for each year of service calculated on a pro rata basis.

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

Since the procedure is very complex, sometimes employers fail to comply with some of the deadlines or communication restrictions. There are also some cases in which the employer fails to pay the correct amount of compensation and/or other labour credits or does not pay these amounts in due time. Another frequent problem is the lack of coherence between the grounds invoked in the dismissal and the criteria used to choose the employees affected.

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?

In practice, the vast majority of proposed cases of collective dismissals and individual redundancies are settled through "agreed resignation" or "agreed redundancy." These

expressions designate situations where, by an agreement with the employer, the employee consents to terminate the contract of employment in return for compensation as an alternative to a collective dismissal or a redundancy procedure. The legal form of termination is then not dismissal but termination by agreement. However, the law recognises that in reality the initiative to terminate the contract is on the employer's side, and therefore classifies this situation as involuntary unemployment for unemployment benefit purposes.

Portuguese legislation does not establish any limitation regarding the possibility of signing termination agreements whether the employer is conducting a collective dismissal or an individual redundancy. In fact, it is frequent to initiate this kind of process just as a way of pressuring employees to sign individual termination agreements. Such an agreement may be concluded at any time and is wholly discretionary, which means that it is not necessary for any justification of the termination. It is only necessary for purposes related with employment benefits such as before the Social Security administration, to state the reasons for the agreement).

It is worth noting that any agreement must be in writing and signed by both parties. This agreement must mention the date of its signature and also the date of the beginning of its effect. The employee can revoke the agreement up until the seventh working day after its signature provided that the employee gives the employer written notice. Should this situation occur, the employee shall return any amounts received. However, this right is not granted whenever the agreement is properly dated and the signatures of the parties are recognised before the Public Notary.

In reference to the compensation normally paid in these cases of termination, Portuguese law does not provide for either a minimum or a maximum entitlement for terminations by agreement between the parties. Nevertheless, in order to pressure the employee to sign the termination, compensation is, in most cases, paid. This payment normally reflects the amounts established by law for cases of collective dismissals and redundancy (severance pay) plus those credits which are due in every case of termination. In most cases the amounts negotiated are higher because it is only by raising the compensation that an employer is able to induce the employee to sign the termination agreement.