

LEGALINK QUESTIONNAIRE:

Cross-Border Layoffs: A Country By Country Summary Of Applicable Employment Laws.

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

BELGIUM

A. Individual layoffs

The Statute of 3 July 1978 on employment contracts requires any employer to give an employee an advance notice of his layoff (art. 37). A notice period, depending on the seniority of the employee, has to be respected before the employment contract can be terminated. The notice periods start at a minimum of 2 weeks, and amounts to 30 weeks for an employee with 10 years seniority, and to 62 weeks for an employee with 20 years seniority.

Notice periods for employment contracts entered into before 1 January 2014 will also take into account salary and the now abolished distinction between white collar and blue collar workers.

The employee is entitled to know the reason for his layoff (Collective Bargaining Agreement 109 of 14 February 2014). Should the layoff be considered as “obviously unreasonable” (i.e. based on reasons unrelated to the employees capacities or the employer’s economic adversity) by the court, the employee will be entitled to a compensation of three up to 17 weeks’ salary.

The employer who does not respect the notice period or who lays off an employee without advance notice must pay to the laid off employee a compensatory severance pay equivalent to the salary due during the such notice period (art. 39).

However, the Statute of 3 July 1978 allows to lay off an employee without advance notice and without severance pay in case of a serious fault committed by the employee during the working relationship (art. 35).

Furthermore, the Statute of 19 March 1991 on specific layoff treatment of employees’ representatives forbids employers to lay off employees’ representatives, unless they have committed a serious fault (recognized as such by established case-law) or unless they are laid off for an economic or technical reason, recognized by a joint committee, composed of employers’ and employees’ representatives.

Pregnant women, employees who have interrupted their career, employees who have filed complaints for harassment, discrimination or violence at work, employees exercising a political function are also protected for certain periods/aspects. Protected employees may not be laid off during the protected period for any reason linked to the reason for their protection.

B. Layoff in case of closing of place of business / Collective redundancy

1. Closing of place of business

Applicable legislation:

- Statute of 26 June 2002 on closing of place of business and its implementing Royal Decree of 23 March 2007
- Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses
- Collective Labor Agreement N° 32bis of 7 June 1985 safeguarding employees' rights in case of change of employer due to the contractual transfer of a business and regulating the rights of employees transferred with to the transfer of assets after bankruptcy or scheme of arrangement

Closing of place of business in the sense of the law means (i) a final closing of the main activity of a business or a department thereof, (ii) causing the number of workers to decrease to less than one quarter of the number of workers employed the calendar year before the closing.

The change of location of the business, a merger, sale or restructuring can be considered as a closing of place of business for the application of the law. In case employees are transferred along with assets and change employers as a consequence, the Collective Labor Agreement N° 32bis of 7 June 1985 will safeguard the rights of these employees (e.g. no loss of seniority, severance pay to be paid by company acquiring the assets, etc.)

A “closing of place of business compensation” is attributed to certain workers laid off because of the closing (in general, employees with a seniority exceeding one year and not yet entitled to their pension).

The Closing of place of business Fund, established by the 26 June 2002 Statute, will guarantee the payment of some compensations to employees when the employer is no longer able to do so (in case of bankruptcy, etc.).

In case the closing of place of business entails a collective redundancy, the legal provisions with regard to the legally proscribed information/consultation procedures will apply (see below).

2. Collective redundancy

Applicable legislation:

- Council Directive 98/59 EEC relating to collective redundancies;
- Collective Labor Agreement N° 24 of 2 October 1975 on the information and consulting procedure of the employees' representatives in case of collective redundancy;
- Statute of 13 February 1998 including certain provisions to promote employment (Chapter VII, Collective redundancy)
- Royal Decree of 24 May 1976 on collective redundancy
- Collective Labor Agreement N° 10 of 8 May 1973 on collective redundancy.

For the application of the law, a collective redundancy is any layoff unrelated to the employee himself, affecting in a period of 60 days at least 10 employees (if the company employs between 20-100 employees), 10% of the employees (if 100-300 employees) or 30 employees (if over 300 employees). The total number of employees taken into consideration is the average number in the calendar year before the layoff. Layoffs related to the employee (mistakes, incompetence, etc.) are not taken into consideration.

If an employer wishes to proceed to a collective redundancy he must follow certain stringent procedures, where he informs and consults the employees' representatives prior to the layoff and where he informs the director of the regional employment administration of his intention to proceed to a collective redundancy. A breach of these procedures may have as a consequence that the employer must continue the employment and in any case continue to pay the salary for a period of 60 days.

The employer must furthermore pay a special compensation to the affected employees. Such special compensation and its payment are subject to several parameters, but in general it can be said to be equal to 50% of the difference between the affected employees salary after taxes and his unemployment benefits, to be paid for a period of 4 months.

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

A. Individual layoff

The employer has to give advance notice of termination of the contract (see above under 1.A.).

B. Collective redundancy

Applicable legislation requires the employer to respect a very specific procedure, where he informs and consults the employees' representatives prior to the layoff and where he informs the director of the regional employment administration of his intention to proceed to a collective redundancy (see above under 1.B.2).

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

No.

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

Yes. A laid-off employee may use the anti-discrimination legislation to challenge his/her inclusion in the layoff.

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

A. Civil sanctions:

1. Individual layoff

The employer who does not (fully) respect the notice period or who infringes upon the anti-discrimination legislation will most likely be challenged before the court by the laid off employee and may be ordered by the court to pay a compensatory severance pay equivalent to the salary corresponding to the missing notice period, damages (no punitive damages), increased with costs of the procedure, attorney's costs, etc.

2. Collective redundancy

If an employer has failed to respect the regulations regarding the information and consultation procedures, he may be challenged by each individual employee affected by the collective redundancy and forced either to continue the employment during a limited period of time or to pay additional compensation to employees.

B. Criminal sanctions:

1. Collective redundancy

If an employer has failed to respect the regulations regarding the information and consultation procedures, he may be subject to imprisonment and/or a fine in application of the Social Criminal Code.

2. Discrimination

If an employer is found to have infringed the anti-discrimination legislation, he is subject to imprisonment and/or a fine.

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

Most often, conflicts arise with regard to the duration of the given notice period or the qualification of a fault as a “serious fault” (allowing the employer to lay off the employee in question without a notice period). Since the Collective Bargaining Agreement n° 109 of 14 February 2014, more and more claims have been filed by employees challenging the reasons for their layoff.

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?

Problems also arise with regard to the exact nature of the employment: self-employed vs. employee. Such conflicts often arise when managers or other well-paid individuals, “hired” as self-employed by the company, later claim to have been employed as an employee in order to claim social benefits and (additional) severance pay. The court will decide taking into account the factual circumstances of the case (who did the “employee” have to report to, was permission needed for holidays, manner in which the “employee” was listed on the website of the company, etc...).