

Legal News in brief

- **Employment safeguarding plan**
- **Alternative measures to avoid dismissals**

In times of crisis, companies tend to turn to dismissals in an effort to match staff levels with decreased activities and/or the necessity to reduce their costs.

In a recent declaration, the Government has appealed to companies, on the basis of corporate social responsibility, to encourage them to consider using alternative measures to avoid dismissals and to allow employees to continue in employment.

It is a fact that if legal mechanisms which are at the disposal of companies as an alternative to dismissals are employed in an appropriate manner, it is possible to decrease employment costs while maintaining staff that have been recruited and trained.

A legal framework, the « Employment safeguarding plan» was put in place at the beginning of 2007. While it has not really been used until recently, it has attracted renewed attention in recent months. The Plan is a mechanism by which employer and employees' representatives of companies with economic or financial difficulties which could have a negative impact in terms of employment agree to implement alternative measures to dismissal. If the representatives reach an agreement, the Plan takes the form of a convention to be subject to consultation of the committee of conjuncture and approved by the Ministry of Work and Employment.

In addition to the legal framework, it is also possible for a company, which wishes to reduce its costs in the interests of prudent management of the company over a period of time, to take one or several specific measures, in compliance with the legal provisions and taking notably account of the role of the employees' representatives.

The measures hereafter mentioned may be approved in the framework of an Employment safeguarding plan or outside such framework. In the first case, it shall be noted that the financial support of the State may be more important in some measures.

1. Partial unemployment for economic reasons

Partial unemployment is the measure which attracts most media coverage, being the most well known measure. It allows employers to decrease temporarily the working time of their employees. Please refer to our legal news of February on this issue for further explanation concerning the applicable conditions and the new crisis provisions added at the beginning of the year. It should be noted that a bill has just been approved, providing for the extension of the crisis measures put in place for 2009 till the end of 2010.

2. Management of working time

A decrease in costs may be achieved through a reduction in the working time of employees, in particular if the company is faced with a decrease in its activity. If a flexible working time scheme is in force within the company, one of the first tools to be employed is to request employees to empty their credit of hours accrued in the months to come.

In addition, the company may decide to encourage employees to work on a part-time basis or to take unpaid leave. These measures, which should be well defined, backed with guarantees by the company (eg. guarantee of employment following a period of unpaid

leave) and financial incitements (eg. payment of an indemnity with a view to maintaining the social coverage of the employee, sponsoring of a personal project, etc.) can serve the interests of the company and employees well in terms of offering a better work-life balance or a career break.

The agreement of the employees is of course required for the implementation of particular measures to reduce working time. It will also be important to ensure that the system offers the necessary flexibility for the company to cope with the increase of activity due to improved economic conditions when these arise.

3. Leave subsidized by the State

In the same way, the employer can encourage employees to take leaves which are subsidized by the State. The possibilities include parental leave (full time or part time), leave for individual training or linguistic leave, the latter having been recently created by the law of 17 February 2009.

During these periods of leave, the employee benefits by maintaining his entire salary in addition to his social security rights. The employer may offer financial incitements to take such leave. For the employer, this is a period during which it will not have to bear the entire remuneration costs, even if this is for a limited period of time only.

4. The review of remuneration schemes

The company can undertake a review of its remuneration system to reduce its costs. Where the system of remuneration is complex, it may be necessary to undertake an audit in order to distinguish between benefits and bonuses which are discretionary and remuneration which has a contractual basis. The discretionary benefits and bonuses are often the first target of employers as these can be easily reduced.

On the other hand, the employer may consider it necessary to modify the terms and the conditions for the award of a variable remuneration scheme, or to reduce the contractual remuneration of all or some of its employees. If these reductions are not agreed to by the employees, these measures must be implemented in compliance with certain legal procedures and the principles of non-discrimination.

5. Reclassification of position

In some companies, the decline in activities related to the crisis is sometimes offset by increased demand for other services. In this case, it may be useful to draw on the expertise already within the company, by reallocating the employees who are under utilized to the departments who need them. From a legal point of view, it is important to ensure that this change of function is not viewed as a unilateral modification of the employment contract which is less favorable for the employee, or at least to implement the legal procedures effecting this.

The reassignment may also be external in nature, particularly through the temporary redeployment of staff to external companies, provided that ministerial authorization is granted.

Whatever the case, the reassignment measures may require a reorganization of the company and/or the provision of training, which may be coordinated with other measures described above.

6. Early retirement.

Early retirement may be used as a means to renew staff or to effect a reduction in payroll numbers.

In terms of staff renewal, the employer may encourage his employees over 57 years old to apply for early retirement, whether immediate or gradual in nature. The State contributes financially to the costs of the preretirement, in return for which the employer is required to employ a job seeker.

The employer may also request that its staff be eligible for the “adjustment “ early retirement agreement with the Ministry of Employment, in particular to avoid the dismissals which would result from a reorganization of the company. The contribution of the State ranges between 25% and 70%, is dependant upon the economic and financial situation of the company, and may be increased within the framework of an Employment Safeguarding Plan.

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The various measures outlined above are not exhaustive. In some cases, they are also not sufficient and the company may be forced to resort to layoffs. The implementation of the various measures requires in any case an in-depth analysis of which measures are the most appropriate to the structure of the company. It is also imperative to carry out a legal analysis on a case by case basis on the feasibility and conditions of implementation of these measures.

In this framework, we are at your disposal to carry out a legal audit tailored to the situation of the company with regards to the conditions of implementation of the different cost reduction measures as well as, to the key points relating to the contractual provisions and to policies in force within the company.

Please feel free to contact us for any further information or for any questions.

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