EVERSHEDS SUTHERLAND

Collective redundancies: The information you need for every country

Issues	Austria	Belgium	China	Denmark	France	Germany	Great Britain (excl NI)	Ireland	Italy	Netherlands	Poland	Singapore	Spain	Sweden	Switzerland	UAE (excl DIFC)
Is there a concept of "collective redundancy" and what is the definition?	Yes, there is a concept of collective redundancy in Austria which imposes additional obligations. Collective redundancy obligations apply where a certain number of redundancies take effect within a 30 day period (or longer according to applicable collective agreement). The thresholds are: a) 5 employees in a company with 21-99 employees; b) 5% of the employees in a company with 100-600 employees c) 30 employees in a company with more than 600 employees d) 5 employees if aged 50 or over, irrespective of the company size	Yes, there is a concept of collective redundancy in Belgium which imposes additional obligations. Collective redundancy obligations apply where a certain number of redundancies take effect within a 60 day period. The thresholds are: a) more than or equal to 10 employees in companies with more than 20 employees but fewer than 100 employees. b) more than or equal to 10% of the employees in companies with more than or equal to 100 employees but fewer than 300 employees. c) more than or equal to 30 employees in companies with more than or equal to 300 employees.	Yes. Where 20 or more employees or 10% or more of the total number of employees employed by the employer are to be made redundant for one of the reasons below: – the employer is undergoing restructuring pursuant to the PRC Enterprise Bankruptcy Law – the employer has encountered serious difficulties in production and business operations – the employer has switched production, introduced new major technological innovation or adjusted its business operation method, and after implementing amendments to the employment contract, finds it is still necessary to reduce the workforce – other major changes in the objective economic circumstances relied upon at the time of concluding the employment contracts occurs so as to render the employment contract impossible to be performed	Yes, there is a concept of collective redundancy in Denmark which imposes additional obligations. Collective redundancy obligations apply where a certain number of redundancies take effect within a 30 day period. The thresholds are: 10 or more employees in a business employing between 20 and 100 employees; or 10% of the employees in a business employing between 100 and 300 employees; or 30 or more employees in a business employing more than 300 employees.	Yes, there is a concept of collective redundancy in France which imposes additional obligations. Collective redundancy obligations apply where more than 9 redundancies are considered in a company with at least 50 employees - a social plan must be negotiated.	Yes, there is a concept of collective redundancy in Germany which imposes additional obligations. Collective redundancy obligations are triggered where a certain number of redundancies take effect over a 30 calendar day period. The thresholds are: – where there are 21-59 employees in the business, 6 redundancies triggers the obligation; – where there are 60 -499 employees in the business, redundancies of 10% of the workforce or 26 employees triggers the obligation; – where there are 500 or more employees in the business, 30 or more redundancies triggers the obligation.	Yes, there is a concept of collective redundancy in the UK which imposes additional obligations. Collective redundancy obligations apply where the employer proposes to dismiss 20 or more employees at one establishment within a 90 day period. Where 100 or more redundancies are proposed, consultation must begin at least 45 days before the first dismissal takes effect. For 20 to 99 redundancies, the consultation must begin at least 30 days before the first dismissal takes effect. In this context, collective redundancy means that the reason for the dismissal does not relate to the individual employee concerned.	Yes, there is a concept of collective redundancy in Ireland which imposes additional obligations. Collective redundancy obligations apply where a certain number of redundancies take effect within a 30 day period. The thresholds are: a) 5 redundant where 21-49 employed b) 10* where 50-99 employed c) 10% where 100-299 employed d) 30 where 300+ are employed * there is a lower limit in some cases	In the event that an employer (with more than 15 employees) proposes to dismiss at least 5 employees (including executives) in the same business unit or in different units located in the same county ("province") within a period of 120 days, the Company has to comply with a specific procedure, which includes information and consultation with the unions.	Yes, there is a concept of collective redundancy in the Netherlands which imposes additional obligations. Collective redundancy obligations apply where 20 employees or more who are being dismissed for redundancy take effect within a 3 month period.	Yes, there is a concept of collective redundancy in Poland which applies to employers with 20 and more employees. Collective redundancy obligations apply where within a 30 day period the number of employees to be dismissed for reason of redundancy is as follows: a) 10 (if headcount is 20 - 99) b) 10% (if headcount is 100 - 299) c) 30 (if headcount is 300+)	N/A as there is no statutory definition of collective dismissal or collective redundancy.	Yes, there is a concept of collective redundancy in Spain, which imposes additional obligations. Collective redundancy obligations apply where a certain number of redundancies take effect within a 90 day period. The thresholds are: a) 10 workers in companies with less than 100 employees; b) 10% x of the employees (in businesses with 100-300 employees; and c) 30 workers in companies with more than 300 employees. Following a recent ECJ ruling, it has been established that Spain has not correctly implemented the European Directive relating to collective dismissals (Council Directive 98/59/EC of 20 July 1998). Therefore, it is also important to consider if information and consultation obligations will be triggered because of redundancies affecting either: i) over a period of 30 days: – at least 10 workers in establishments normally employing more than 20 and less than 100 workers – at least 10 % of the number of workers in establishments normally employing at least 100 but fewer than 300 workers – at least 30 workers in establishments normally employing 300 workers or more ii) or, over a period of 90 days, at least 20 workers, whatever the number of workers normally employed in the establishments in question.	Not applicable.	Yes, there is a concept of collective redundancy in Switzerland which imposes additional obligations. Collective redundancy obligations apply where a certain number of redundancies take effect within a 30 calendar day period. The thresholds are: a) 10+ employees (in businesses with 21-99 employees) b) 10% + of the employees (in businesses with 100-299 employees) c) 30+ of the employees (in businesses with 300+ employees)	The UAE Labour Law does not recognize the concept of redundancy. However, the term is understood in the UAE. As a result an employer would simply follow a process for dismissal – ie provide the minimum notice period. In 2009/10, due to the global financial crisis, companies were making redundancies on a very large scale in the UAE and the Ministry of Labour has been forced to take a stance. At one stage the Ministry of Labour did not treat redundancy for economic reasons as a 'valid reason' instead treating it as arbitrary dismissal and awarding three months salary to employees who brought a claim. The Ministry of Labour has gradually stepped away from this position, presumably as a result of complaints from companies. They have now softened their approach and determine on a case-by-case basis whether the termination of employment is valid. To minimize the risk of complaints, the Company could pay three months' compensation to the employee, but should require the employee to enter into a settlement agreement waiving the employees' rights to bring claims. This does not eradicate the risk altogether, but it reduces the risk of employees bringing claims.
Are there any bodies which an employer must inform and consult with in the event of a collective redundancy dismissal?	Where there are Works Councils within an employer, the employer must consult with the Works Council. In addition, they must also consult with the Labor Market Service ('AMS').	Yes, the employer must consult with the employee representatives when the company has the intention to proceed with a collective dismissal. The employer must consult the works council, if there is none, it must consult with the trade unions and, if there are no trade unions, it must consult with the committee for prevention and protection at work. If none of these bodies exist, the employer must consult directly with the employees concerned.	Either the trade union or all employees. It is mandatory to consult with a trade union where one exists. Employees need only be consulted directly therefore where there is no trade union.	– works council – yes – trade union – no – other employee representatives – yes	The works council and health and safety committee must be consulted. Where unions are present within the company discussions should generally be held with them with a view to negotiating a social plan. The company may, however, unilaterally issue a social plan.	Information and consultation is required with any Works Councils. There is no obligation to inform and consult with Trade Unions (although unions may strike to force negotiations). There is no obligation to inform and consult with other employee representatives.	The employer must consult appropriate representatives of the affected employees in the event of a collective redundancy situation. Where the employees are represented by recognized trade unions, the employer must consult with the trade union. In the absence of a recognized trade union, the employer has the choice of consulting with directly elected representatives (elected by employees affected for the purpose of this consultation) or a an appropriate, pre-existing body of elected or appointed representatives.	Employers must inform and consult employees in the event of a collective redundancy situation. Where there are recognized Trade Unions or Works Councils within an employer, the employer may choose to consult with such body and it is usual for them to do so. Where employers do not consult with a Trade Union or Works Council, employees must be given an opportunity to elect a representative(s) from amongst their body. Information and consultation must then be carried out between the employee representatives and the employer.	The employer must inform and consult, with Trade Unions and Work Councils.	Works councils and trade unions must be consulted within the event of a redundancy or collective redundancy dismissal. Other employee representatives will need to be consulted if there is no works council in existence.	Yes, Works Councils, Trade Unions or other employee representatives in the absence of Trade Unions, must be consulted with.	Where there is a collective bargaining agreement involved, the union should be informed of any redundancy situation in accordance with the terms of the collective bargaining agreement. In cases where no collective bargaining agreement is involved, it is recommended by the Ministry of Manpower ("MOM") through the Tripartite Guidelines On Managing Excess Manpower ("Guidelines") that employers carry out any retrenchment exercise in consultation with the union (if the company is unionized). The Guidelines are a voluntary set of guidelines for employers issued by the MOM, the National Trades Union Congress and Singapore National Employers Federation.	– works council – yes – trade unions – maybe – other employee representative – yes, (under certain conditions)	Where there are recognized trade unions to which the employer is bound by a collective bargaining agreement, then there is an obligation to inform and consult; otherwise the obligation to inform and consult is with all affected trade unions.	Employers must inform and consult employees in the event of a collective redundancy situation. Information and consultation must occur between the employer and the employee representatives; if there are no employee representatives the employer should deal with all affected employees.	Not prescribed by law.
Key elements of the information and consultation process	The Works Council has to be informed and consulted with, if the Works Council so requests – no consent is required. The Labor Market Service ("AMS") should also be provided with information only.	1. Preliminary information and consultation aiming at avoiding the collective dismissal and/or reducing the number of employees affected. Obligation on the company to reply to all questions raised by the employee representatives. 2. Once the preliminary stage is concluded, confirmation of the company's intention to proceed with a collective dismissal. 3. From the confirmation, there is a cooling off period of 30 days (can be extended to 60 days). No terminations can take place during this time. 4. Set-up of an employment cell and negotiation of a social plan. 5. Potentially additional steps to be undertaken if reduction of the early retirement age is demanded. 6. Filing requests for approval of the social plan and of the outplacement measures.	The detailed redundancy plan should be presented to the trade union or all employees. Their consent is not required to the redundancies but their opinion should be listened to and if necessary cause the redundancy plan to be revised. In practice, good communication with the trade union is recommended so as to obtain its co-operation.	Information and negotiation for agreement, but the employer is not obliged to be influenced by negotiations.	The staff representatives must issue their opinion on the economic rationale behind the redundancy, on the social plan (if any), on the selection criteria, on the redeployment leave (if any).	Negotiation for agreement.	Information and consultation with a view to reaching agreement. Certain information, prescribed by law, must be provided to the representatives.	Information and consultation with a view to reaching an agreement.	Information and negotiation for agreement. There are potentially benefits for the company if an agreement is reached.	Consultation with a view to reaching an agreement with trade unions regarding a social plan, and right to be consulted of works council.	Information and consultation with a view to reaching an agreement with Trade Unions/employee representatives and Works Council.	This will depend on the terms of the collective bargaining agreement involved (if any). any), as this will dictate the key elements of the information and consultation process.	Information and consultation with a view to reaching an agreement.	Consultations with the affected trade union(s) – no decision until consultations have been finalized.	Written information (about reasons, number of employees affected and normally employed, time period) and consultation. The employer must hold negotiations with the employees with the aim of preparing a social plan if (1) normally at least 250 employees are employed; and (2) it is intended to make at least 30 employees redundant within 30 days for reasons that have no connection with their persons.	Not prescribed by law.
Prescribed timescales for informing and consulting	The Labor Market Service ("AMS") should be informed 30 days prior to first notice being served. The Works Council should be informed prior to notification to AMS (early enough to enable consultation), further information once notice to AMS has been issued.	No, but formal information and consultation must take place before the intention to proceed with a collective dismissal is confirmed.	30 days, however in practice it will normally take a minimum of 3+ months). There is a risk the process could take significantly longer if the redundancy program causes employee unrest or "serious impact" on local economy. Although the trade unions/ employees do not have to consent to the end of the consultation period, the redundancy plan does have to be endorsed by the local labor bureau.	If 100+ employees and the business is dismissing more than 50% of its workforce, then at least 21 days consultation prior to notifying the Labour Council is required.	– 2 months if the redundancy impacts fewer than 100 employees – 3 months if the number of redundancies is between 100 and 250 employees – 4 months if more than 250 dismissals are considered	No prescribed timescale – in practice informing and consulting will take between 4 weeks and 6 months.	30 days or 45 days before the first dismissal takes effect depending on the number of dismissals.	At least 30 days prior to first dismissal.	That procedure consists of two phases: the first phase sets out to negotiate with the unions and it has to be ended within 45 days from the start of the procedure (that period is halved if the number of involved employees is less than 10). If there is no agreement within 45 days, then upon notifying the relevant Labour Office, there is a further period of 30 days (15 if the number of involved employees is less than 10).	Trade unions: in due time where the trade unions have an effect on the decision of the employer. Works council: at a time where the advise can have a significant impact. Consultation period not limited.	The aim is for agreement with Trade Unions/ employee representatives within a 20 day period on various matters including: how to avoid redundancies; how to limit the number of redundancies; redeployment opportunities; selection criteria; and redundancy packages. There is no timescale for I/C with the Works Council.	Time constraints will be determined in accordance with the terms of the collective agreement where one is involved. Where no collective bargaining agreement is involved, the MOM, through the Guidelines, recommends that employers inform affected workers of their impending redundancy before notice of redundancy is given but no particular time frame for doing so is specified.	30 days (15 days if staff is under 50 employees).	No prescribed timescale.	No prescribed timescale.	Not prescribed by law.
Public authority involvement	The Labor Market Service ("AMS") notification.	Yes, the sub regional employment service and the federal employment services must be informed about the intention to proceed with a collective dismissal. In order to enforce the social plan, the company must be recognized by the authorities as a company in restructuring, once the confirmation to proceed is confirmed. Information must also be provided at the time of confirmation and requests for approval must be filed before the regional and federal employment services.	The redundancy plan must be reported to and accepted by the relevant local labor bureau. In practice, it is highly recommended that prior consultation with the relevant local labor bureau is carried out before the commencement of the collective consultation.	Yes, the local Labour Market Council.	Labour Authority notification/ control and specific authorisation for any protected employees. The Labour Authority has an important role regarding collective redundancies of more than 9 employees.	Local labor office notification only.	Department for Business Innovation and Skills (BIS) - notification only.	Department of Enterprise, Trade & Employment (DETE) - notification only.	Yes, the Ministry of Labour and/or Local Labour Office, but substantially for information purposes.	Yes, the Employee Insurance Agency (UWV) - detailed notification is required.	Yes the Local Labour Office must be notified.	Employers are encouraged, under the Guidelines, to notify the MOM (Labour Relations & Workplaces Division) as soon as possible of any impending retrenchment exercise.	Labour Authority- after 2012 Labour Reform it is not necessary to obtain authorisation but the Labour Authority has to be informed of the process.	Notification to the Swedish Public Employment Service if five or more employees are affected.	Yes, the Cantonal Labour Office in collective redundancies procedures.	Not prescribed by law.
What is the earliest point that an employer can dismiss an employee for redundancy or collective redundancy if a fair/lawful process is followed?	After informing the works council and after 30 days (or longer according to applicable collective agreement) following notification to Labor Market Service ("AMS").	Without exception, at the earliest after a period of 30 days following the employer's confirmation to the sub regional employment service and the federal employment services of its intention to proceed with a collective dismissal, provided certain procedural steps have been complied with. We would emphasize that under Belgian law, the concept of redundancy does not exist as such, except in a collective context.	Once the redundancy plan is formally reported to and accepted by the local labor bureau and the statutory 30 days' notice period has lapsed. The information and consultation process must have been concluded before notice of dismissal can be served on employees.	The earliest point at which the employer can dismiss is at least 30 days after the Labour Council has been informed following negotiations.	In practice: after the end of the consultation process. In addition, where a social plan must be implemented (i.e. in a redundancy of more than 9 employees in a company with more than 50 employees), the employer cannot notify the employees of dismissals until 30 days from: (i) the validation of the Social Plan by the Labour Authority or (ii) the end of the period given to the Labour Authority to validate the Social Plan.	After agreement with works council finalized and after having notified the labor authorities about the collective redundancy.	Following requisite period of consultation and RIS notification.	30 days after notification of public authority and beginning of consultation.	Once the I/C procedure is over; at least 75 days after notification had been made to public authority and Unions.	One month after notification to the Employee Insurance Agency (UWV) and after having obtained works council advice. The waiting period may be extended if more time is needed for I/C.	30 days after the second notification to the Labour Office, preceded by either agreement with trade unions, or adoption of by-laws on redundancies.	Following the requisite period for notification in accordance with the terms of the collective bargaining agreement where one is involved. In all cases, requisite notice of redundancy must be given in accordance with the terms of the employment contract or collective bargaining agreement.	Between the starting of the consultation period and the termination, 30 days are needed.	2-6 months depending on consultations and notifications. Less than 2 months if four or less employees are affected.	30 days after notice to the public authority.	Not prescribed by law.
Formula for calculating likely costs in carrying out a redundancy exercise.	There is no formula for calculating statutory redundancy payments. The level of costs is generally medium to high but it can be harder to estimate for older or protected employees.	There will be a variety of costs at the following levels: termination indemnities (individual employment indemnities), collective dismissal indemnity, outplacement costs, closure indemnities, outplacement packages and additional benefits as agreed in a Collective Bargaining Agreement between employee representatives and the employer.	Statutory severance must be paid, which is approximately 1 month's salary for every year of service (subject to a cap as prescribed by different local labor bureau). Any period of service greater than 6 months shall be counted as 1 year, and any period of service which is less than 6 months shall be counted as 6 months. For example, where an employee has 1 year and 8 months service, they would be entitled to 2 months' payment. Where an employee has 1 year and 3 months' service, they would be entitled to 1.5 month's payment. In practice, it is common for employers to offer an additional 1-3 months' salary to employees on top of the mandatory severance pay to incentivize the employees to agree to mutual termination of their employment and waive their right to bring a claim in front of the labor dispute arbitration committee.	There is no formula for calculating likely costs. If there are no objections by employees there will be low redundancy payment costs. If there are objections by the employees there will be high costs.	As a minimum, employees are entitled to the statutory dismissal indemnity which is 1/5 of a month's salary. For those employees with more than 10 years' service, that payment must be enhanced by a further 2/15 of the monthly salary. The CBA may also provide for additional payments. Where a social plan must be implemented, additional financial measures must be included within the social plan, which enhances the overall cost.	No formula: – costs to be agreed with Works Council if co-determination rights are triggered. Level likely to be medium-high	– costs are relatively predictable – level of costs: there is a relatively low level of statutory redundancy pay (subject to company redundancy policy) but a failure to consult trade union or employee representatives can lead to costly fines	There is a statutory redundancy payment based on a statutory calculation. This is calculated by multiplying 2 weeks' pay (capped at €600) for each year of service then adding an extra week. It is however common for employers to provide more than this by way of an ex-gratia payment subject to entering into a compromise agreement.	The level of cost of redundancies is based on the lawfulness of the collective dismissal. Should the dismissal be lawful, there is no obligation to set aside a budget as an incentive to leave for the applicable employees; as such the employees will be entitled only to what is due under Italian law, namely, the severance payments. On the contrary should the dismissal be considered unlawful by the Courts, then the employer shall prepare a budget to be paid simply as an incentive to leave taking into consideration the benchmarks provided by the law in cases of unlawful redundancies; Italian Law provides in some cases an indemnity the amount of which depends on the date of the employee's engagement and the type of violation. Particularly, if the dismissed employee has been hired before 7th March 2015, the violation of the procedure implies an indemnity between 12 and 24 monthly salaries. If the employee has been hired on or after 7th March 2015, the unlawful dismissal (for violation of procedure or the selection criteria) may imply an indemnity based on employee's length of service, between 4 and 24 monthly salaries.	From 1 July 2015, the Sub district Court Formula (the "Formula") – that was used by the Courts to calculate severance payments in cases brought before the court - no longer applies. It is replaced by the so called 'Transitional Remuneration' which applies in the event of termination to any employee – employed either under an indefinite term or a fixed term contracts – where the employee is employed for at least 24 months. The aim of the Transitional Remuneration is to enable employees to improve their employability and to mitigate the consequences of a dismissal. The Transitional Remuneration is based on the employees' years of service: – 1/6 month's salary for each 6 months' period of service during the first 10 years of service; – 1/4 month's salary for each 6 months' period of service during the years of service as from the first 10 years. The salary used for the purpose of calculating the Transitional Remuneration is the employee's monthly base salary including the 8% statutory holiday allowance and any other fixed emoluments, such as a fixed overtime allowance, a 13th month payment and 1/12 part of the average bonus payments received over the last 3-5 years. Only completely worked 6 month periods will be taken into account for the calculation of the Transitional Remuneration. Employment of 6 months and 1 day will not be rounded up to 1 year. In case of employment of 4 years and 5 months, the 5 months will not be taken into account for the calculation of the Transitional Remuneration. The Transitional Remuneration is capped by (i) EUR 75,000 gross or (ii) 1 gross annual salary if the employee's annual salary is higher than EUR 75,000 gross. Given their position on the labor market, until 1 January 2020 employees over 50 years old with at least 10 years of service, unless employed by an employer with less than 25 employees, will be entitled to a higher Transitional Remuneration. Over the years of service worked above the age of 50, those employees will be entitled to 1 monthly salary per year of service.	This will vary. It is one to three months' salary per employee with an overall cap of 15 times the minimum wage.	This will be set out in the employment contract or collective bargaining agreement involved (if any).	The employer must pay each affected employee at least the legal severance payment of 20 days' salary per year of service (pro rata by month for any period of time less than one year) up to a maximum of 12 months' salary.	No statutory right to redundancy payment.	No statutory right to receive a redundancy payment. Subject to company's redundancy policy	See concept of "collective redundancy" above.
Are there any sanctions for non compliance with information and consultation obligations?	There is criminal liability, in the form of an administrative penalty. This can be up to €2,180 and the termination can also be declared invalid. There is not an option for the employees to apply for an injunction though.	– criminal liability – yes – injunction – no – financial penalty/delay – yes	A labor dispute claim may be brought by the employee in front of the labor dispute arbitration committee. If the committee determines the termination to be illegal, it may award reinstatement (if requested by the employee). In the event the employee does not claim reinstatement or reinstatement is not possible, the committee may award compensation to be paid (which is two times statutory severance pay).	The sanctions are as follows: – criminal liability – no – injunctions – no – financial penalty/delay – yes	It is also a criminal offence (délit d'entrave) to fail to inform and consult.	Financial penalties and delay/injunctions are possible. Fines can be imposed of up to a maximum of €10,000 for administrative offences.	– criminal liability – no – injunction – no – financial penalty/delay – yes (protective award of up to 90 days' uncapped pay per affected employee)	Theoretically fines of up to €250,000 may be imposed (but in practice cases are rarely prosecuted). More common is a complaint to a Rights Commissioner by the employee. This can result in an award of up to 4 weeks' wages to each employee and the employer can be forced to comply with the consultation period. Injunctions are unlikely.	The Courts could impose a financial penalty of up to24 months' salary. An injunction is also possible.	The following sanctions will apply/not apply – criminal liability – no – injunction – termination of the employment contract is subject to nullification – financial penalty/delay - no penalties, but delay	The following sanctions will apply: – criminal liability – financial penalty/delay – compensation for illegal termination (not exceeding three months' notice) or reinstatement	This will be set out in the collective bargaining agreement involved (if any).	– criminal liability - no – injunction - possible – financial penalty/delay - yes	– criminal liability- yes, in respect of failure to provide correct information to the Swedish Public Employment Service – injunction- yes, under certain circumstances by the Swedish Public Employment Service – financial penalty/delay – yes, a) penalty to the state b) damages to the trade union(s) in case of violation of the obligation to consult prior to decision making	– criminal liability- no – injunction – yes – financial penalty/delay- yes, up to 2 months salary to each employee	Not prescribed by law.
Do any groups of employees have special protection in a redundancy/collective redundancy situation?	Yes, employees who are Works Council members/candidates, pregnant/on maternity leave/parental part-time, on military service, disabled (or with disabled relatives), in-plant safety officers, older employees, apprentices.	Yes, there are various protections including, for example, for pregnant employees and trade union representatives. However, it is possible for the company to suspend most of these protections, provided procedural steps are undertaken.	Yes.	Yes, for example, pregnant, trade union members and employees subject to discrimination considerations have specific protection. The protection is derived from general employment law.	Yes, employee representatives, pregnant employees, employees on sick leave, employee members of the Employment tribunal, adviser employees.	Yes – the usual groups of protected employees apply.	Employees must not be selected based on certain protected grounds (eg. pregnancy, maternity, trade union membership and others). Employees on maternity leave have preferential right to alternative employment.	No.	Yes, the following employees enjoy special protection against dismissal: – pregnant women until one year after the birth – women within the first year of marriage – employees on sick leave unless the dismissal is for gross misconduct disabled people, in case that, at the time of their dismissal, the number of the remaining disabled employees is less than the number established by law.	Yes, ill employees within the first 2 years of illness, pregnant employees, members of a a (European) works council.	Yes, specific categories of protected employees may not be terminated. Their terms of employment may be varied, save in respect of remuneration.	The employment contract or collective bargaining agreement involved (if any) may set out certain protections and statutory provisions regulating termination on certain grounds (e.g. age) or in certain circumstances (e.g. the employee is pregnant).	Yes, employees' representatives and those with maternity/paternity rights.	Yes, for example trade union representatives.	Yes, during periods of statutory protection.	Not prescribed by law.
Do employers have the freedom to determine selection criteria?	Yes, but in some cases a court will consider that social issues ('Sozialwidrigkeit') and categories of employees with special protection should be taken into account.	Yes, subject to discrimination law. Attention must also be paid to the age pyramid legislation which obliges employers to spread dismissals proportionately over the various age categories.	No. The following categories of employees must be retained with priority during the redundancies: – those with long fixed-term employment contracts (there is no specific definition of long term fixed contract and in practice it refers to fixed term contracts which are longer than other fixed term contracts of employees at risk of redundancy) – those with open-term employment contracts – those who are the sole income earners in a family with dependent children or elderly people There is no "hierarchy" applicable to the above criteria to choose employees.	Yes, but the criteria must be fair and objective.	Employers are free to determine the weighting of the selection criteria. However, they are not free to choose the criteria as they must use the legal or CBA criteria (length of seniority, age, professional abilities, level of difficulty to find new a job).	No. Selection criteria are determined by statute (age, length of service, maintenance obligations, marital status).	Yes, subject to discrimination laws and any contractual agreement.	Yes, subject to employment equality law and the rules of fair procedure.	Limited freedom, subject to agreement with unions. Failing that agreement, the employer is obliged to respect the following legal criteria: family responsibilities, length of service and technical, production-related and organizational requirements.	Limited by legislation: the employer has to respect the principle of 'proportionality'.	Limited, subject to consultation with trade unions – criteria must be objective and non-discriminatory.	Generally, yes.	Yes if non-discriminatory and taking in to account 7.9. The roles of the affected employees should be linked to the cause alleged for the dismissal.	Limited.	Yes.	Not prescribed by law.
What is the effect of an unfair dismissal?	The dismissal void and reinstatement is likely.	Yes, it is possible for the employee to claim reinstatement. If the employee is not re-instated, he can claim an indemnity for moral damages.	A labor dispute claim may be brought by the employee in front of the labor dispute arbitration committee. If the committee determines the termination to be illegal, it may award reinstatement (if requested by the employee). In the event the employee does not claim reinstatement or reinstatement is not possible, the committee may award compensation to be paid (which is two times statutory severance pay).	Financial compensation is the remedy for unfair dismissal.	Damages. The minimum damages will be 6 months of salary for employees with at least 2 years of service in a company that has at least 11 employees. Re-instatement only applies in situations where the dismissal is null and void (not when the dismissal is unfair).	The Courts could determine that the dismissal is void and order reinstatement.	Usually financial compensation based on loss suffered: only in very rare cases reinstatement or re-engagement.	Usually financial compensation. Reinstatement or re-engagement less likely.	Reinstatement and damages. Particularly, reinstatement is ordered in few cases (for example, when dismissal is not communicate in written form).	Financial compensation (in rare cases reinstatement.	Usually financial compensation of up to three months remuneration, alternatively reinstatement and compensation for period of unemployment. Protected employees are reinstated and entitled to remuneration for the entire period of unemployment.	Employees covered under the Employment Act who feel that they have been unfairly dismissed may appeal to the Minister for Manpower to be reinstated to their former employment.	Generally the employer will choose between the payment of severance compensation for unfair dismissal or reinstatement.	If notice of termination and summary dismissal declared invalid, damages and reinstatement.	Financial compensation up to two months salary; no re-instatement possible.	See concept of "collective redundancy" above.

evershеds-sutherland.com