

Employment & Labour - Spain

Alternatives to Termination of Employment Contracts

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Introduction

The global financial situation has obliged companies to minimize costs, including employment costs, in order to overcome the crisis. Termination of employment contracts is the most direct way to reduce costs. Collective redundancies allow companies to terminate employment contracts, thus minimizing costs. However, decisions that involve making employees redundant have the highest social cost. Therefore, this measure should always be considered as a last resort only, when other, less drastic measures have proved ineffective.

Employment law outlines measures that may help companies to overcome the crisis without terminating employment contracts.

Changing Employees' Roles

Employees are generally assigned roles according to their professional training and skills. In a normal context, the job originally assigned to the employee does not change during the employment period. An employee may be promoted or transferred to another workplace within the company, but the assigned job usually remains the same, with little variation. Nevertheless, this is a general rule and not an obligation on the employer. Employers can change their employees' roles according to employment law.

The possibility of modifying the role originally assigned to an employee can prove useful when certain jobs within a company become unnecessary while others remain profitable. In such cases the company has the option to modify originally assigned roles to employees in order to transfer them to more profitable jobs.

For companies that are interested in adopting this measure, the procedure is not a difficult one. The only requirement that the company must meet is informing the employee representatives in cases where the employees are to be transferred to a role that carries a lower status. In accordance with objectives to protect employees' interests, an employee who is transferred to a lower professional status must receive the salary that corresponded to his or her previous job while carrying out the lower-status work.

The usefulness of this measure lies in the possibility to use existing resources more efficiently within the company. However, since the salary to be paid to the transferred employee remains the same, the company experiences no direct savings. The employee may also be transferred to a role corresponding to a higher professional status. If this transfer lasts longer than the period outlined in law, the transferred employee is entitled to seek promotion.

In this case the company will have the opportunity to review whether the employee should be promoted. If the promotion is to go ahead, the company must wait until the time period set out in law has elapsed. Alternatively, the company may revoke the transfer before the period has elapsed and thus save the money it would have paid to the transferred employee. This can be a positive measure for the employee, as it gives him or her the opportunity to take on greater responsibilities while receiving the salary corresponding to his or her existing role.

Thus, there are many opportunities to optimize the resources within a company without

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following lengthy procedures.

Geographic Mobility

A financial crisis may mean that a company has workplaces where there are not enough employees and others where there are too many. In such circumstances one option is to transfer employees between the workplaces. This option is useful for companies with several workplaces.

Usually, employees are hired in order to render their services in a certain workplace. However, employment law does not prohibit the introduction of changes to this norm. Moreover, the law sets out a variety of alternatives for making changes to the place in which employees render their services.

In certain circumstances the employer may wish to transfer employees to a different workplace. This possibility is particularly flexible for the employer, especially for transfers that are to take place within the same town, city or region (ie, where an employee need not move to a different location). In such circumstances the employer may adopt this decision whenever it is considered necessary by simply communicating the decision to the affected employee.

Where the transfer decision affects the same number as or a greater number of employees than that set out in applicable law, the employer must open a consultation process with the employee representatives.

Thus, employers can optimize human resources within a company without terminating employment contracts by either assigning different jobs to employees or transferring employees to another workplace that belongs to the company.

Substantial Modification of Working Conditions

Employers' rights to modify working conditions are not limited to changing the aspects of employment outlined above. The employer can change the majority of original working conditions at its own will.

The first thing an employer must consider is whether the modification is substantial. Although no legal definition of 'substantial modification' exists, according to case law, a modification of working conditions is substantial when it alters the main aspects of the labour relationship, replacing them with others that are manifestly different.

If the modification of working conditions is not substantial, the employer may make such modification without having to fulfil any legal requirements. However, employment law outlines a procedure to facilitate the making of substantial modifications to employees' working conditions. The procedure varies according to whether the condition to be modified was established by individual or collective agreement (and is more complicated in the latter scenario).

Therefore, companies have a wide range of possibilities to adapt employees' working conditions to the new economic situation. The adoption of such modifications is subject to different requirements.

Taking into account individual employers' legal rights, companies may be tempted to adopt measures that ensure a reduction in employment costs, such as lowering salaries.

However, although the law allows employers to modify many working conditions, certain conditions are considered essential and cannot be modified at the employer's will. These include salary reductions. Hence, the employer may introduce modifications indirectly to reduce salaries, according to certain requirements.

In a dire financial situation it is usually necessary for companies to carry out substantial modifications to originally assigned working conditions. When the condition to be altered was made by individual agreement, the adoption of the modification measure is simple as it requires only that the employee be notified of the change. However, when the working condition to be modified was established by collective agreement, the procedure will undoubtedly take longer. Therefore, the employer must consider the urgency of adopting the measure.

Certain modifications that are outside the employer's legal right to change can be adopted through individual agreements. In such cases the employer must consider the viability of such agreements.

Suspension of Labour Contracts

In certain cases the financial situation may be so dire that the company is unable to continue to render its services. Although this is a worst-case scenario, employment law establishes alternatives to termination of contracts.

In certain cases a company cannot continue to employ its employees. However, in

certain cases the company may be able to predict that this situation will not last long. Where overcoming the crisis is just a question of time, termination of all labour contracts is too drastic a measure.

In such circumstances the law offers the possibility to suspend labour contracts instead of terminating them. Employees will cease to render their services for the duration of the situation and the company will cease to pay their salaries during this period.

For example, a company may have different businesses according to the prices of the products that it offers or manufactures. In a crisis context, the business linked to the products that command higher prices may suffer unnecessarily. The employer may adopt one of the measures outlined above (eg, transferring workers employed in this business to a corresponding job in a more profitable business). The company may also transfer employees to another workplace where the fall in demand is less noticeable. Additionally, the employer may alter the original working conditions in order to adapt them to the crisis context.

Nevertheless, if these alternatives are considered unsatisfactory to overcome the situation, the employer may suspend the employment contracts of workers where there are reasons to believe that the situation will improve shortly.

However, according to the gravity of a crisis situation and the proposed measure (suspension of contracts), its adoption requires administrative approval, as well as the opening of a consultation period with employee representatives. The procedure in this case is the same as applies to collective redundancies. Once these requirements have been met, the employer will be authorized to stop paying salaries until the situation is resolved and the company's activity recommences.

Early and Partial Retirement

Generally, the highest salaries within a company are paid to the oldest employees. Therefore, avoiding payment of such salaries inevitably involves a reduction of costs.

The regular retirement age is 65 years. Nevertheless, employment law offers a number of ways to lower the retirement age. However, any measure proposed by the company to lower the retirement age must be agreed with affected employees.

An alternative for the company and its employees aged between 61 and 65 is early retirement.

The company may offer its employees various options in order to settle this agreement. For example, both parties can sign an agreement in order to guarantee that the employees will suffer no reduction to their pensions. This type of agreement involves a cost for the company. Therefore, the employer must consider whether it is preferable to continue paying the salaries until the employees reach 65. Another alternative is to offer the employees compensation for early retirement. There are also several other options.

An employer must compare the high salaries that it would be obliged to continue paying with the cost that it would incur from forming agreements on early retirement, which may also be high.

Another option is termination of labour contracts, which allows employees to obtain unemployment compensation. Once the period established to receive the compensation has elapsed, the employees may take early retirement. In this case the company can protect employees' interests by negotiating agreements that guarantee that the employees are paid the same salaries during the period of unemployment compensation as before, as well as the best possible pension when they reach regular retirement age.

Another alternative is partial retirement, whereby employees continue to render their services, but with reduced working hours. The company pays proportionally lower salaries, calculated on the basis of the new reduced working time. This is not detrimental to employees, as they begin to receive reduced retirement pensions to supplement their salaries. Thus, employees continue to receive the same salaries as before. Furthermore, the company must hire new employees in order to make up the hours. This measure can be beneficial for the employer as the company lowers its highest salaries and employs individuals with less seniority.

Therefore, the company has options to bring forward the retirement of employees who represent the highest labour costs. However, in order to reach a mutually acceptable agreement, the company may be obliged to incur certain expenses.

Comment

Employment law offers several alternatives to avoid termination of employment contracts in a crisis situation, including measures to:

- improve the use of existing resources within a company;

- introduce changes to labour conditions;
- minimize some of the highest costs within a company; and
- suspend contracts for the duration of a crisis by ceasing to comply with certain obligations.

Thus, employment law offers certain flexibility to companies in order to overcome a difficult financial situation. Therefore, termination of employment contracts should be a last resort.

The alternatives to termination set out in law allow for the adoption of various measures that can be adapted to the specific situation of individual companies in order to tackle economic difficulties. Consequently, even if the objective of a measure is to minimize employment costs, during implementation the employer should consider not only the potential savings, but also other important elements, such as the time needed to implement the measure and any future obligations that it might entail.

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