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EMPLOYMENT PROTECTION LEGISLATION TESTED BY THE ECONOMIC CRISIS

A global review of the regulation of collective dismissals for economic reasons

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Dismissals for economic reasons – individual, and more frequently, collective – are one of the most direct and visible consequences of the global economic crisis. Although in 2011 we are apparently on the way to economic recovery, the global economy nonetheless remains fragile and not many new jobs have been created. This fragility is particularly apparent in those countries which are subject to economic austerity plans and where redundancies resulting from enterprise restructuring are an ongoing reality.

Assessing the impact of the international financial and economic crisis on social policy and employment, and with the prospect of a long-term rise in unemployment, poverty and inequality, and the widespread failure of businesses throughout the world, the International Labour Conference unanimously adopted the "**Global Jobs Pact**" in June 2009. This international policy instrument advocates productive recovery based on **investment, employment and social protection**, and appeals to States, among other things, to help enterprises in retaining their employees by seeking solutions through social dialogue.

In this context, the function of labour law is to lay down the legal rules that guarantee equitable restructuring processes, by minimizing as far as possible the negative effects of collective dismissals on individuals, enterprises and the community as a whole.

This note identifies the principal elements of the regulation of collective dismissals for economic reasons in over 125 countries,² together with reforms introduced between 2008 and 2011. It considers the national legislative provisions regulating the seven subject areas of the **employment protection legislation (EPL)**:

- quantitative definition of collective dismissals,
- procedure for consultation of workers' representatives,
- notification to the competent public authority,
- intervention of third parties in the process of collective redundancies,
- obligation of the employer to consider other measures before termination of employment,
- criteria for selection of employees to be dismissed,
- priority of rehiring.

These seven subject areas are covered by ILO Convention No. 158 and Recommendation No. 166 on Termination of Employment, which are the principal sources of international labour law concerning dismissals at the initiative of the employer. On 1 July 2011, Convention No. 158 was ratified by 35 ILO member States.

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² The majority of examples are taken from **EPLex**, an ILO database on employment protection legislation (www.ilo.org/dyn/epl/termmain.home). The original text of national labour laws can be accessed on **NATLEX**, the ILO database on national labour legislations.

Are dismissals for economic reasons always collective?

Dismissal for economic reasons may be either individual or collective. In some countries, the rules for dismissal for economic reasons apply regardless of the number of employees involved.

In the majority (81.6 per cent) of the 125 countries reviewed in this study, labour law provides specific rules for collective dismissal for economic reasons.

Quantitative definitions relate most frequently to the number of employees involved (more than five, 10 or 20 persons) or to the percentage of the enterprise workforce. Dismissal defined in this way must take place within a given period, which is frequently limited to two or three months.

The quantitative definition of collective dismissals is particularly important in that it triggers the legal obligation to comply with specific procedures, such as consultation with workers' representatives and notification to public authorities.

Table 1.
Legal definition of collective dismissals for economic reasons triggering specific procedures (125 countries)

Legal definition of collective dismissals for economic reasons triggering specific procedures	Countries
<i>The law provides a quantitative definition of collective dismissals for economic reasons and provides specific procedures to be followed (51.2%)</i>	Albania, Angola, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Canada, China, Colombia, Congo (Democratic Republic of), Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark (with Greenland), Estonia, Ethiopia, Finland, France, Gabon, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (Republic of), Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macedonia (former Yugoslav Republic of), Montenegro, Morocco, Mozambique, Netherlands, Niger, Norway, Pakistan, Peru, Poland, Portugal, Romania, Russian Federation, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Uganda, United Kingdom, United States of America, Venezuela, Zimbabwe
<i>The law does not define collective dismissals for economic reasons, but provides procedures to be followed by the employer in the event of collective dismissals for economic reasons (30.4%)</i>	Afghanistan, Algeria, Azerbaijan, Bangladesh, Cambodia, Cameroon, Central African Republic, Comoros, Egypt, Ghana, Honduras, India, Iran, Jordan, Kazakhstan, Madagascar, Mauritius, Mexico, Moldova, Mongolia, Namibia, New Zealand, Nigeria, Panama, Paraguay, Philippines, Rwanda, Seychelles, Sri Lanka, Syria, Tanzania, Thailand, Tunisia, Turkmenistan, Ukraine, Vietnam, Yemen, Zambia
<i>The law does not provide any definition of collective dismissals for economic reasons and does not provide any specific procedure (18.4%)</i>	Antigua and Barbuda, Brazil, Chile, Costa Rica, Cuba, El Salvador, Georgia, Guatemala, Indonesia, Israel, Jamaica, Kuwait, Lesotho, Libya, Malawi, Malaysia, Maldives, Nicaragua, Saint-Lucia, Saudi Arabia, Singapore, United Arab Emirates, Uruguay

**Legal definition of collective dismissals for economic reasons
triggering specific procedures**



The analysis of national legislation reveals that, for the most part, countries lay down specific regulations governing collective dismissals for economic reasons. The above table illustrates the geographical distribution of the three categories of regulation. The largest group is composed of countries whose legislation provides a quantitative definition of collective dismissals for economic reasons, which triggers the obligation to comply with specific procedural requirements in carrying out such dismissals: all countries in the European Union, together with most countries in Central and Eastern Europe, Australia, Canada, China, the United States of America and Japan.

The second group is composed of the countries of Asia and Africa, together with Mexico and Honduras in Latin America. In these countries, the law lays down specific procedures but does not quantify collective dismissals.

The smallest group of countries consists of those with no relevant legislation; they are located primarily in Latin America, the Caribbean and the Middle East.

Definition of collective redundancies by the European Union Directive of 1998

The countries of the European Union are required to transpose Directive 98/59/CE of 1998 on the approximation of the laws of the Member States relating to collective redundancies.

For the purposes of this Directive, "collective redundancies" means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

- (i) either, over a period of 30 days:*
 - *at least 10 in establishments normally employing more than 20 and less than 100 workers,*
 - *at least 10 per cent of the number of workers in establishments normally employing at least 100 but less than 300 workers,*
 - *at least 30 in establishments normally employing 300 workers or more,*
- (ii) or, over a period of 90 days:*
 - *at least 20, whatever the number of workers normally employed in the establishments in question.*

Which countries have revised their definition of collective dismissals for economic reasons in the context of the crisis?

In the **Russian Federation**, the Labour Code provides that the detailed regulation of collective dismissals for economic reasons falls within the purview of collective bargaining. Currently, several dozens of regional collective agreements exist. For example, in Volgograd, a tripartite agreement was concluded for 2009-2011, for the purpose of defining new criteria for collective dismissals which lower existing thresholds. Employers have accepted this measure, arguing that, in light of the shortage of skilled workers, they were ready to make an effort to keep their employees because they will be needed after the crisis.

In the **former Yugoslav Republic of Macedonia**, pursuant to amendments introduced in 2009-2010, a quantitative definition of collective dismissals was incorporated into the Labour Code.

In **Spain**, the labour market reform of 2010 broadened the definition of dismissals for economic reasons, in particular to clarify the concept of "negative economic situation".

In **Greece**, the law of 2010 raised collective dismissal thresholds (i) from four to six employees dismissed in enterprises with more than 20 employees, and (ii) from two per cent to five per cent in enterprises employing more than 150 persons.

In **Belarus**, following tripartite consultations in 2009, the new decree issued by the Labour Minister revised the criteria adopted in 1995. Minor changes related to the territorial criterion for large cities; trade unions are of the view that thresholds are still very high and should be revised downwards.

In **Moldova**, in 2009, social partners discussed a draft national collective agreement, but failed to achieve consensus and decided to postpone the introduction of a quantitative definition of collective dismissals.

In **Kyrgyzstan**, the proposal made by international financial institutions to raise the threshold for collective dismissals was rejected in 2009 by the tripartite working group responsible for reforming labour law.

In **China**, with a view to strengthening the provisions of the Labour Law, the State Council issued a circular in 2009 requiring any employer who intended to dismiss more than 20 employees or more than 10 per cent of the labour force to inform and consult workers' representatives 30 days in advance. A social plan must also be submitted to the local administration.

Singapore has no legal rules in this connection, although its legal apparatus does include national Tripartite Guidelines on Managing Excess Manpower. The directive was adopted in November 2008 and revised in May 2009. Tripartite teams were established to promote the effective implementation of the agreement by enterprises. The government also set up a managing-excess-manpower hotline to advise enterprises on dismissals, restructuring and other anti-crisis measures.

In **Chile**, amendments to the Labour Code were proposed in 2009 in order to introduce a definition of collective dismissals (more than 10 employees dismissed within a three-month period).

In **Brazil**, controversial public debates were sparked by a legal case in 2009 regarding the absence of legislation governing dismissals for economic reasons. The trade union in the Embraer company submitted a complaint following a 20 per cent staff reduction by the company. From a strictly legal point of view, the employer was not required to consult with workers' representatives. While upholding the dismissals, the tribunal ordered the company to pay additional severance benefits. The grounds advanced by the court included the fact that the employer had not carried out consultations with the trade union on alternative solutions to avoid dismissals. Although the Supreme Labour Court partially overturned this decision in 2010, similar rulings were handed down by other regional courts. These major precedents cannot be ignored by the companies considering collective dismissals. It should be emphasised that the Supreme Labour Court explicitly recognises the importance of collective bargaining in avoiding significant job losses.

In **Iran**, an amendment was tabled in 2010 to incorporate "reduction of production and structural changes" in the list of reasons justifying termination of an employment contract.

In **Syria**, the Labour Code of 2010 contains a new chapter consisting of six articles which regulate downsizing.

Which countries require the intervention of third parties in collective dismissals for economic reasons?

Discussions on the rigidity of EPL frequently focus on the extent to which third parties (trade unions and/or public employment services) intervene when redundancies take place.

Table 2 demonstrates that legislation in most countries provides one or two main procedures, specifically, (i) consultation with workers' representatives, and (ii) notification to the competent authorities. Some countries also require prior authorisation by the public authorities.

Table 2.
Summary of legal procedures specific to collective dismissals for economic reasons (125 countries)

Specific legal procedures for collective dismissals for economic reasons	Countries
<i>The law requires the employer to consult workers' representatives and inform the competent public authorities (67%)</i>	Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, China, Comoros, Congo (Democratic Republic of), Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Gabon, Germany, Ghana, Greece, Hungary, Iceland, Iran, Ireland, Italy, Japan, Jordan, Kazakhstan, Korea (Republic of), Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macedonia (former Yugoslav Republic of), Madagascar, Mauritius, Mexico, Moldova, Montenegro, Morocco, Mozambique, Namibia, Netherlands, Niger, Norway, Paraguay, Peru, Poland, Portugal, Romania, Russian Federation, Senegal, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, United Kingdom, United States of America, Ukraine, Venezuela, Vietnam, Zambia, Zimbabwe
<i>The law only requires the employer to inform the competent public authorities³ (9.6%)</i>	Afghanistan, Chile, Colombia, Honduras, Panama, Philippines, Rwanda, Seychelles, Sri Lanka, Thailand, Yemen
<i>The law requires only an information/consultation procedure with workers' representatives (5.6%)</i>	Ethiopia, Indonesia, Mongolia, New Zealand, Nigeria, South Africa, Tanzania
<i>The law does not require consultation with workers' representatives, nor notification to relevant public authorities (17.6%)</i>	Antigua and Barbuda, Brazil, Costa Rica, Cuba, El Salvador, Georgia, Guatemala, Israel, Jamaica, Kuwait, Lesotho, Libya, Malawi, Malaysia, Maldives, Mongolia, Nicaragua, Pakistan, Saint Lucia, Saudi Arabia, Singapore, United Arab Emirates, Uruguay
<i>Dismissals must be authorised by the public authorities (17.6%)</i>	Afghanistan, Angola, Colombia, Congo (Democratic Republic of), Egypt, Gabon, Greece, Honduras, India, Iran, Jordan, Mexico, Morocco, Netherlands, Pakistan, Panama, Seychelles, Spain, Sri Lanka, Syria, Zimbabwe
<i>Approval by workers' representatives</i>	None ⁴

³ In addition to the individual notification to each worker affected by the dismissal.

⁴ In some countries (e.g. Azerbaijan, Moldova, Slovenia and Ukraine), in order to dismiss a trade union member, the employer needs the approval of the trade union.

Some countries with no legal procedural requirements have a code of good practices (**Lesotho, Malaysia, Tanzania**). These instruments serve as reference for companies and for judges. In **South Africa**, the Code of Good Practice on Dismissal is an integral part of labour law.

Case law may also serve to clarify legislation and to fill legal gaps (**Lesotho, Malawi**). In **Israel**, most procedures and rules applying to collective dismissals are established by jurisprudence.⁵ In **Pakistan**, the Labour Tribunal must authorise any dismissal affecting more than 50 per cent of the total number of employees.

In a small number of countries, employers must apply to the public authorities to obtain authorisation to carry out dismissals.

- In some countries, the government steps in when negotiations break down between the employer and the workers' representatives (**Angola, Greece**).
- In others, the decision must be taken by a tripartite committee (**Egypt, Tunisia**) or by the administrative authorities, following consultation with a tripartite committee (**Jordan, Seychelles, Syria**).
- In some countries, the public administration, in consultation with the local employment services and trade unions, may suspend collective dismissals for a given period, to take into account the situation on the labour market (60 days in **Cambodia**, six months in **Russia**, one year in **Belarus**, and without any statutory time limit in **Venezuela**).

How has the economic crisis impacted the obligations to inform, consult and notify, and to obtain prior authorisation?

Two types of legislative reforms may be identified: first, countries seeking to make existing obligations more flexible and, second, countries seeking to introduce obligations to inform, consult or notify.

⁵ See report of the XVIII Meeting of European Labour Court Judges organised under the auspices of the ILO in October 2010 in Jerusalem, Israel, on the topic « Employment Protection Legislation »: www.ilo.org/public/english/dialogue/ifpdial/events/judges/jeruxviii.htm

1) Countries that have made legislation more flexible

In **Belarus**, following the reform of 2009, the Labour Code confines the obligation to inform the public labour authorities to cases of collective dismissals. Previously, the public authorities also had to be notified of individual dismissals.

In **Malaysia**, the employer must inform the Department of Labour of any dismissal for economic reasons. The circular of 2009 limits this obligation to dismissals of five or more employees.

In **Estonia**, the employer previously had to obtain permission from the Labour Inspectorate to carry out collective dismissals. The new law of 2009 only requires notification to the unemployment insurance fund, and gives the employer authority to effect the dismissal 30 days later.

In **Spain**, any employer intending to carry out collective dismissals must consult with workers' representatives. The 2010 reform limits the duration of consultations to 30 days (and 15 days in enterprises employing less than 50 persons), whereas this was previously set respectively at a minimum of 30 and 15 days. The law enacted in 2010 allows the employer and workers' representatives to engage in arbitration or mediation, in place of consultations. Moreover, the employer is also legally obliged to obtain authorisation from the relevant administrative authority. The new legislation of 2010 provides that, where an agreement is reached between the parties, the administrative authority must authorise collective dismissals, except in the case of fraud or coercion, which cases must be brought before a judge.

In the **Central African Republic**, the new Labour Code that came into force in 2009 removes the obligation to obtain the labour inspector's authorisation to effect collective dismissals.

In **Rwanda**, the Labour Code of 2009 devotes an article to procedures governing dismissals for economic reasons, whether individual or collective. Consultation with workers' representatives has been eliminated. The obligation on the employer to notify the Labour Inspector of intended dismissals is the only provision carried over from the 2001 Labour Code.

In **Kyrgyzstan**, the 2009 reform of the Labour Code eliminated the requirement to consult workers' representatives and notify the public employment service in the event of individual dismissals for economic reasons.

In **Mauritius**, the 1975 Labour Code provided for notification of the Ministry of Labour which consulted a tripartite committee in the event of redundancies. If the dismissal was found unjustified, the employer was required to reinstate the dismissed worker or pay a sum equivalent to six times the amount of severance allowance. The new Employment Rights Act adopted in 2008 provides only for notification of the relevant ministry of any contemplated redundancy. The 2008 Employment Relations Act adds that the employer must consult the workers' representatives in cases of collective dismissals for economic reasons.

II) Countries that have introduced new obligations

In **Belgium**, a 2009 Royal Decree introduced the obligation to notify the federal employment service, in addition to the existing procedure for informing and consulting workers' representatives in the event of collective dismissals.

In **Ireland**, the Protection of Employment, (Exceptional Collective Redundancies and Related Matters) Act of 2007 was adopted pursuant to a tripartite social partnership agreement "Towards 2016" which established, in particular, a Redundancy Panel to examine different cases of dismissals for economic reasons.

A review of national legislation should not overshadow the important role of collective bargaining

In Germany, in 2010, Siemens renewed the 2008 collective agreement on restructuring, whereby the employer committed to avoid dismissals for economic reasons, by giving priority to measures of internal mobility and work sharing. Where redundancies are inevitable, the company agreed to go beyond the legal obligation to consult and to obtain prior approval by the trade unions of any termination of employment for economic reasons.

In the **Democratic Republic of Congo**, the Labour Code lays down an obligation to inform the public authorities in case of collective redundancies. A ministerial decree on dismissal procedures was adopted in 2010. It includes the obligation to notify the Labour Inspectorate and the National Employment Office of any recruitment or dismissal, whatever the reason.

In **Iran**, tripartite discussions in 2010 focussed on new provisions regarding dismissals in the event of reduced production, restructuring and technological changes. Under the proposed amendment, for companies with more than 50 employees, economic reasons must be confirmed by a committee made up of public authorities, the employer and trade unions.

In **Jordan**, an amendment to the Labour Code adopted in 2010 requires the employer to apply for authorisation from the Ministry of Labour.

In 2009, in the **United Arab Emirates**, a Ministry of Labour decree required employers to provide the Ministry of Labour with 30-day notice for dismissal of any national employee, accompanied by a reasoned explanation.

Is the employer required to consider other measures before dismissal?

Convention 158 provides that the employer must consult workers' representatives on measures to be taken to avert or to minimise the dismissals. The employer must further consider all measures to mitigate the adverse effects of dismissals, including in particular finding alternative employment.

Recommendation 166 provides that all parties concerned must seek to avert or minimize, as far as possible, dismissals for economic reasons, without prejudice to the efficient operation of the enterprise, and to mitigate the adverse effects of such dismissals on the workers concerned.

Recommendation 166 lists measures which should be considered with a view to averting or minimising terminations of employment for economic reasons. These may include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit a natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

Table 3.
Legal provisions requiring the employer
to seek alternatives to dismissals (109 countries)

Obligation on the employer to seek alternatives to termination	Countries
<i>The employer is under a legal obligation to seek alternatives to dismissals (training, transfers) (54%)</i>	Afghanistan, Algeria, Angola, Armenia, Australia, Austria, Belarus, Belgium, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, China, Cyprus, Denmark, Estonia, Finland, France, Gabon, Germany, Ghana, Greece, Hungary, Indonesia, Italy, Japan, Korea (Republic of), Kyrgyzstan, Luxembourg, Mauritius, Moldova, Montenegro, Morocco, Mozambique, Namibia, Pakistan, Netherlands, Peru, Czech Republic, Romania, Russian Federation, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Switzerland, Tanzania, Tunisia, Turkey, Ukraine, United Kingdom, Vietnam, Zambia, Zimbabwe
<i>The employer is not under a legal obligation to seek alternatives to dismissals (46%)</i>	Antigua and Barbuda, Argentina, Azerbaijan, Bangladesh, Brazil, Chile, Colombia, Comoros, Congo (Democratic Republic of), Costa Rica, Côte d'Ivoire, Cuba, Egypt, El Salvador, Ethiopia, Georgia, Guatemala, Honduras, Iran, Israel, Jamaica, Jordan, Kazakhstan, Kuwait, Lesotho, Libya, Madagascar, Malawi, Malaysia, Maldives, Mexico, Mongolia, New Zealand, Nicaragua, Niger, Nigeria, Panama, Philippines, Saint Lucia, Saudi Arabia, Singapore, Sri Lanka, Sweden, Syria, Thailand, Turkmenistan, Uganda, United States of America, Uruguay, Venezuela

As indicated in Table 3, the law in some countries does not require the employer to seek alternative solutions and opt for dismissal only as a last resort (e.g. **Egypt, Jordan, Niger, Syria, Venezuela**). However, the legislation in these countries provides that any redundancy proposal must be reviewed by a tripartite committee tasked with formulating alternatives.

In some countries, in the absence of legal provisions on the employer's obligation to consider other alternatives, these matters are settled through collective bargaining (**Sweden**) or based on the code of good practices (**Lesotho, Malaysia**).

In **Australia**, pursuant to the new 2009 Fair Work Act and the 2010 National Employment Standards, the employer must first consider the feasibility of reassigning a worker to another position before resorting to dismissal for economic reasons.

In the **former Yugoslav Republic of Macedonia**, the obligation to seek alternatives to dismissal was removed in 2009.

In some countries, the law envisages the possibility of offering a lower position or a reduced wage, which is considered a change in the conditions of employment and must therefore be jointly agreed between the employer and the worker.

In 2010, **France** adopted a law specifying that any offer of alternative employment abroad must be accompanied by equivalent remuneration. This law was adopted in response to certain instances of

collective dismissals where employees were offered jobs in other countries with much lower wages than those paid in France. The Court of Cassation further ruled in 2011 that all contracts terminated by mutual agreement for economic reasons and in the context of workforce reduction must be counted within the number of intended redundancies, in order to determine whether an employment safeguard plan is to be established by the employer. Thus, termination of employment by mutual agreement may not serve to circumvent the implementation of a social plan.

What are the most common criteria in the selection of workers for redundancy?

Recommendation 166 suggests that the selection by the employer of workers whose employment is to be terminated for economic reasons should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the enterprise and the interests of workers. These criteria, the order of priority and their relative weight, should be determined by national laws or regulations or collective agreements.

The criteria most frequently employed in comparative law are skills, productivity and social considerations.

When the law does not explicitly specify criteria, the selection process is frequently conducted through collective bargaining (**United States of America**) or on the basis of the code of good practices (**Lesotho, Malaysia**). When the decision is taken by the public employment authority, it frequently takes into

account the views of all stakeholders through tripartite discussions (**Jordan, Seychelles**). In **Japan**, jurisprudence refers to "reasonable standards" of selection of employees for dismissal.

Table 4.
Criteria for selecting workers for dismissal for economic reasons
(111 countries)

Criteria for selection of workers in case of redundancy	Countries
<i>Selection criteria are specified in the law (38%)</i>	Algeria, Angola, Argentina, Bangladesh, Belarus, Cambodia, Cameroon, Central African Republic, China, Comoros, Congo (Democratic Republic of), Estonia, Ethiopia, France, Gabon, Germany, Greece, Italy, Korea (Republic of), Kyrgyzstan, Lithuania, Madagascar, Mexico, Moldova, Montenegro, Morocco, Netherlands, Niger, Nigeria, Pakistan, Panama, Romania, Russian Federation, Senegal, Slovenia, Spain, Sweden, Syria, Tunisia, Turkmenistan, Ukraine, Vietnam
<i>The law provides that selection criteria must be defined through collective bargaining (15%)</i>	Austria, Belgium, Bulgaria, Burkina Faso, Côte d'Ivoire, Czech Republic, Egypt, Hungary, Lesotho, Luxembourg, Malaysia, Namibia, South Africa, Serbia, Slovakia, Tanzania, United Kingdom
<i>The law makes no mention of criteria for selecting workers to be made redundant (47%)</i>	Afghanistan, Antigua and Barbuda, Armenia, Australia, Azerbaijan, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Cyprus, Denmark, El Salvador, Finland, Georgia, Ghana, Guatemala, Honduras, Indonesia, Iran, Israel, Jamaica, Japan, Jordan, Kazakhstan, Kuwait, Lesotho, Libya, Malawi, Maldives, Mongolia, Mozambique, New Zealand, Nicaragua, Peru, Philippines, Saint Lucia, Saudi Arabia, Seychelles, Singapore, Sri Lanka, Switzerland, Thailand, Turkey, Uganda, United States of America Uruguay, Venezuela, Yemen, Zambia, Zimbabwe

In **Syria**, the new labour law of 2010 provides that where no collective agreement exists on the subject, the employer must consult the Labour Directorate and the trade unions on the choice of criteria such as, among others, capacity and professional skills, seniority, family responsibilities and age.

In **Estonia**, the new labour law of 2009 no longer features the detailed list of selection criteria. The new law provides instead that the principle of equal treatment must be observed during the selection process. Workers' representatives and employees with children under the age of three years have priority in retaining their jobs.

In **Kyrgyzstan**, amendments made to the Labour Code in 2009 reduce the list of criteria to those relating to productivity and skills. The law now makes explicit reference to the criteria provided in collective agreements and employment contracts.

In **Romania**, following the reform of the Labour Code in 2011, selection criteria are to be applied after assessment of the employees' performance.

Legislation in some countries (**Argentina, Bangladesh, Malaysia, Mexico, Netherlands, Nigeria, Pakistan, Panama, Sweden, United States of America**) refers explicitly to the selection criterion "last in, first out".

In the **United Kingdom**, recent case law in 2009-2010 has questioned this selection criterion. It is considered to be valid only if embodied in the collective agreement and under the express condition that it is not the only criterion employed in the selection process. Otherwise, this criterion may be challenged as indirect discrimination on the grounds of age. Even if loyalty should be rewarded, young workers are particularly prejudiced by this rule. Moreover, the criterion of absences, particularly those relating to illness or childbirth, should be used with circumspection, in that it may constitute discrimination based on state of health, gender or maternity.

In **India**, the Supreme Court decreed in 2010 that the seniority rule may be disregarded by the employer in cases of inefficiency or loss of confidence, with the burden of proof falling on the employer who must be able to justify this decision.

In **Sweden**, waivers exist to the principle of selection based on seniority. Indeed, in companies with fewer than 10 employees, the employer has the discretionary power to exclude two employees from this rule. In 2009, a labour tribunal decided that this principle should not be applied to employees who had turned down alternative job offers that were reasonable in terms of remuneration and responsibility.

In 2009, in the **United Arab Emirates**, the Ministry of Labour issued a decree rendering illegal any dismissal of national employees, other than for disciplinary reasons or for prolonged absence. The decree specifies that it is illegal to dismiss a national if any foreigner is employed in a similar position.

Is a worker who has been dismissed for economic reasons entitled to priority of rehiring?

Recommendation 166 provides for priority of rehiring, whereby workers whose employment has been terminated for economic reasons should be given a certain priority of rehiring if the employer again recruits workers with comparable qualifications. The recommendation limits this priority of rehiring to workers who have, within a given period of time from their dismissal, expressed a desire to be rehired.⁶

Table 5 reveals that the legislation of 32 countries retains the principle of priority of rehiring. In five countries, the principle is embodied in collective agreements or in the code of good practices.

⁶ ILO, *Protection against Unjustified Dismissal: General Survey by the Committee of Experts on the Application of Conventions and Recommendations*, 1995.

Table 5.
Priority of rehiring

Period during which priority of rehiring applies to dismissed employees	Countries
1.5 months	Romania
6 months	China, Netherlands, Serbia, Turkey
8 months	Cyprus
9 months	Finland, Sweden
1 year	Bangladesh, Congo (Democratic Republic of), France, Gabon, Italy, Jordan, Luxembourg, Morocco, Pakistan, Peru, Slovenia, Tunisia, Ukraine
2 years	Burkina Faso, Cambodia, Cameroon, Comoros, Niger, Senegal
3 years	Republic of Korea
No time limit	Afghanistan, Mexico, Sri Lanka, Yemen
The law makes express reference to collective agreements	Côte d'Ivoire, Madagascar
This right is embodied in the code of good practices	Lesotho, Malaysia, Tanzania
The law contains no legal provisions on the right to rehiring	Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Bulgaria, Canada, Central African Republic, Chile, Colombia, Costa Rica, Cuba, Czech Republic, Denmark, Egypt, El Salvador, Estonia, , Ethiopia, Georgia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Indonesia, Iran, Israel, Jamaica, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Macedonia (former Yugoslav Republic of), Malawi, Maldives, Moldova, Mongolia, Mozambique, Namibia, Nicaragua, Nigeria, Panama, Philippines, Portugal, Russian Federation, Saint Lucia, Saudi Arabia, Seychelles, Singapore, Slovakia, South Africa, Spain, Switzerland, Syria, Thailand, Trinidad and Tobago, Turkmenistan, Uganda, United Kingdom, United States of America, Uruguay, Venezuela, Vietnam, Zambia, Zimbabwe

In **Estonia**, the 2009 reform of the law governing employment contracts removed the priority of rehiring which was possible during six months following dismissal.

In **Romania**, the Labour Code reform of 2011 reduces the priority of rehiring from nine months to 45 calendar days.

In **Brazil**, the Labour Tribunal afforded the right of preference to dismissed workers if positions were reopened within two years (*Embraer* case).

In the **United States of America**, although the law makes no provision in this regard, in those companies where trade union representation exists, collective agreements frequently include a clause providing for the recall of dismissed employees.

In the **former Yugoslav Republic of Macedonia**, the priority of rehiring for a period of one year was removed in 2009.

In **Slovakia**, under the Labour Code, the employer may not, for a period of three months, establish a position and recruit another employee in place of the employee dismissed for economic reasons. In 2011, the government proposed to reduce this period from three to two months for companies with fewer than 20 employees.

In **Antigua and Barbuda**, an amendment was proposed in 2010 to introduce a preferential right to be rehired for dismissed employees if similar positions were to be reopened in the company.

Conclusions

A comparative review of legislation reveals that labour law in most countries embodies specific rules in regard to collective dismissals for economic reasons. In many countries, legislation provides for either one or both key procedural requirements, namely consultation with workers' representatives and notification to competent authorities.

Several trends may be identified in an analysis of the labour law reforms enacted since 2008.

The general labour law reforms occurring in 2008-2011 were all initiated prior to the economic crisis. In some cases, the objective of these reforms was to modernise labour law and adapt it to political and economic changes. Within the context of these reforms, regulations on collective dismissals did not undergo any major changes concerning the seven components of EPL examined in this study (Afghanistan, Australia, Kuwait, Laos, Libya, Maldives, Syria, Turkmenistan). Some countries opted for greater flexibility (Central African Republic, Estonia, Mauritius, Montenegro, Portugal, Rwanda).

The review further reveals that a relatively limited number of labour law reforms related to collective dismissals were introduced during the world economic crisis, particularly when compared to the number of reforms introduced in regard to regulations governing working time and social security (particularly unemployment insurance). It may be concluded therefore that the legal rules governing collective dismissals for economic reasons have passed

the economic crisis test by demonstrating their relevance in guaranteeing equitable procedures, and proving their responsiveness and adaptability during periods of rapid restructuring of the economy.

Other components of EPL have been reformed in 2008-2011, with the shared purpose of making labour relations more flexible. Reforms relate to:

- **Fixed-term contracts** (Burkina Faso, Gabon, Jordan, Kuwait, FYR Macedonia, Montenegro, Poland, Portugal, Romania, Rwanda, Slovakia, Spain);
- **Probationary period** (Portugal, Romania, New Zealand);
- **Specific rules for small enterprises** (Australia, Spain);
- **Notice period for dismissal** (Armenia, Belarus, Estonia, Greece, Hungary, Jordan, Kuwait, Mauritius, Moldova, Romania, Slovakia, Slovenia, Syria, Uruguay);
- **Severance pay** (Australia, Belarus, Belgium, Estonia, Honduras, Jordan, Kuwait, Luxembourg, Mauritius, Moldova, Peru, Spain);
- **Compensation for unjustified dismissal** (Estonia, Jordan, Oman, Portugal).

On the basis of these conclusions, it would be useful to undertake a subsequent evaluation of the effects (in terms of costs and advantages) of national reforms of employment protection legislation, with the objective of achieving sustainable economic recovery that generates productive and decent jobs.

Sources of information

EPLex. ILO database on employment protection legislation: www.ilo.org/dyn/eplex/termmain.home

NATLEX. ILO database on national labour legislation.

ILOLEX. ILO database containing the texts of ILO Conventions and Recommendations, list of ratifications, comments by the Committee of Experts and the Committee on Freedom of Association, general surveys and other documents.



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