

Important Procedures to Follow Under Reduction of Work Force

Description

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This brief article will look into the reduction of workforce as envisaged by the Labour Proclamation 1156/2019(hereafter the Labour Proclamation) and Reduction of Work Force Directive No.43/2013(hereafter the Directive). The Directive is a registered directive at the Federal Attorney General's portal. An attempt to elaborate what reduction of work force means and the procedure of implementing the reduction will be looked in detail. A brief conclusion shall follow.

“Reduction of Workforce” has been defined in the Labour Proclamation as termination of workforce of an undertaking affecting a **number of workers** representing at least ten percent of the number of workers employed or, in the case where the number of workers employed in an undertaking is between twenty and fifty, termination of at least five employees over a continuous period of not less than ten days.

The expression “number of workers” will have the meaning of the average number of the workers employed by an employer concerned within the twelve months preceding the date when the employer took measures of reduction of workers.

Good causes that justify reduction are stated under Article 28(3). The first one involves any event which entails direct and permanent cessation of the worker's activities in part or in whole resulting in the necessity of a terminating a contract of employment. The second good cause involves decrease in sales of goods or services. Without prejudice to the provisions of Article 18 (5) and (6) i.e. (full or partial suspension, due to force majeure, of the activities of the employer for a period of not less than 10 consecutive days; or financial problems, not attributable to the fault of the employer, that requires the suspension of the activities of the employer for not less than 10 consecutive days) fall in demand for the products or services of the employer resulting in the reduction of the volume of the work or profit of the undertaking and thereby requiring termination of a contract of employment. The third and last good cause involves the acquiring of new technology. A decision to alter work methods or introduce new technology with a view to raise productivity, is a good cause that justifies reduction of work force.

The general procedure set forth in the Labour Proclamation is that whenever a reduction of workforce takes place, the employer shall conduct consultation with a Trade Union or workers' representatives. However, under the Directive, whenever there is no trade union or existing workers' representative, the workers shall select their representatives using a selection workers' committee. Those elected worker's representatives should obtain majority vote of the workers.

Then the employer shall notify the trade union or workers' representative in WRITING 30 days prior to implementation of the reduction. The content of the letter shall be reasons for the reduction of work force, how many workers will be affected, which positions are affected, how long the reduction lasts and the criteria for the implementing the reduction.

The employer and workers representative or trade unions shall be holding discussion on the reduction or seeking other options available given the status of the employer that can avoid reduction of workers. Such discussion has a time limit. And it should last within 30 days.

The discussion should enable to release those involved in the reduction with pension, if the option is available. If the employer has new positions opened, then so long as those reduced are compatible, the reduced workers will get priority.

In case of comparable skill and rate of productivity, the workers to be affected first by the reduction shall be in the following order: a) Those having the shortest length of service in the Undertaking; b) Those having fewer dependents; c) The reduction shall affected first workers except those that are listed under (d) up to (e) of this Sub-Article; d) Those employees with disability; e) Those who sustained employment injury in the Undertaking; f) Workers' representatives; and g) Expectant mothers and mothers within four months post-natal.

Before, implementing the reduction, the employer shall NOTIFY in writing to the Ministry of Labour and Social Affairs office the reasons for the reduction of work force, how many workers will be affected, how many workers are working in the enterprise, which positions are affected, how long the reduction lasts and the criteria for the implementing the reduction.

There are exceptions. The procedure laid down in the Labour Proclamation shall not apply to the reduction of workers due to normal decrease in the volume of a construction work. Successive completion of the construction work guarantees lawful reduction of work force. However reduction of workforce cannot happen if the reduction affects workers employed for parts of the work before the work for which they are employed is completed. Here "construction work" includes the construction, renovation, upgrading, maintenance and repair of a buildings, roads, rail-way lines, dams and bridges, installation of machinery and similar works.

To sum up, reduction of workforce should follow the Labour Proclamation 1156/2019 and its implementation directive Directive No 43/2013. The employer should give in writing an invitation for the workers' representatives for discussion and the Ministry details about the reduction of workforce. The workers should have their representatives assigned to discuss the reduction of work force with the employer. The employer should initiate the procedure 30 days prior to implementing the reduction and the result of the discussion should last within the 30 days.

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