EUROPEAN WORKING GROUP ON LABOUR LAW

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Termination of a contract at the initiative of the employer based on economic grounds (individual and collective termination)

Spanish Report

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GENERAL LEGAL FRAMEWORK:

a. What are the main rules on termination of a contract at the initiative of the employer?

The dismissal in Spain is always causal, and for it, is required the concurrence of a cause established by law in labor law reference, in other words, the Workers' Statute, hereinafter the ET. This law has been altered many times since its adoption in 1980. The latter has been produced at February 10th of 2012 and the dismissal has affected significantly.

It is common in the doctrine and Spanish jurisprudence understand that dismissal is a termination of an employment contract produced by the unilateral will of the employer. But that business extinctive will, to have value, must be based on a standardized cause, subject to certain requirements of form and be open to judicial review. And all this, for the possibility and need of the internal balance requirements of the contract itself. (covered by Art. 1,256 of the Spanish Civil Code).

It should be noted that when the cause is not attributable to the conduct of the employee, he will have the entitled to a compensation if the case is not given the right to reinstatement to the job. In addition, claims for damages or reinstatement depend on the classification of the dismissals. Note that the freedom of the enterprise (Article 38 of the Spanish Constitution, hereafter the EC) is not absolute and does not imply freedom to dismiss. In other words, in Spain there is no freedom "ad nutum of dismissal", as stated by the Constitutional Court in its judgment 192/2003.

The requirement of just cause to fire in Spain is, among other things, a manifestation of the individual aspect of employment rights recognized in the art. 35.1 of the Spanish Constitution (STC 22/1981) and it should be expressed, for legality, by fulfilling requirements (STC 192/2003). There are also dismissals based on objective reasons not attributable to the worker, in other words, dismissals and collective goals. In these cases, the employee shall be entitled to a period of notice and compensation. It is vital the need for a written communication to the employee indicating the causes

which lead to dismissal. Now, when the dismissal is without cause or existence of any breach of the formal requirements required, shall be deemed Unlawful dismissal, and it results in the obligation to restore or compensate the employee in his job. Furthermore, when the dismissal takes place in breach fundamental rights, then you are considered null and void, and will involve the reinstatement of the worker in his job.

b. What is the personal scope of these rules?

Under the provisions of Article 1.1. of the ET, the scope of the rules on termination of employment contracts in Spain, extends to all workers who voluntarily provide their services for remuneration as an employee and within the scope of organization and direction of another person, whether an individual or legal called an entrepreneur.

c. Is there additional protection provided through collective bargaining/agreements?

In practice, there is little additional regulation in collective agreements on termination of the contract of employment of employees, however, one can identify certain additional safeguards, such as the extension to all workers of the guarantees provided for representatives of workers in cases of disciplinary dismissal, in other words, an obligation to open a contradictory record prior to dismissal.

TERMINATION OF THE CONTRACT BASED ON ECONOMIC GROUNDS:

1. (Social Actors: Which actors are involved with the termination of a contract at the initiative of employer based on economic grounds? What are their functions (trade unions, works council, governmental authorities)?

In the procedures of the coletive dismissals is involved the following subjects: the representatives of workers, the labor authorities, labor inspection and, only for information, the managing body of unemployment benefits.

The company and employees, through their legal representatives shall have the status of an interested part and shall be legitimated to intervene in the regulatory process of the coletive employments or dismissals. Indeed, the intervention of the representatives of the workers as partners to manage the company in the consultation process, it is corresponded to the sindical sessions when they decide to go on that way and if they have the majority representation of the committee of the company or the staff delegates. Otherwise the intervention will correspond to the organs of unitary representation, preferably through the Committee Intercenter or similar organ created through collective negociation and that had always attributed this function.

In the case of absence of legal representation of workers in the company, they may give their representation to the consultation period to a commission chosen by them, and may decide to assign its function to their representation:

a. A commission of up to three members composed of employees of the company and these democratically elected.

Notwithstanding the foregoing, the legal representatives of the workers in a workplace of the same company may assume for this purpose and by the same designation system representation of the workers in the center that needs legal representation.

b. A committee of equal number of a designated members by its representative, for the most representative trade unions and the representatives of the sector which belongs to the company and have been entitled to join the negotiating committee of the collective agreement applicable to it.

In the latest case, the employer may assign his representation to business organizations in which he is a part of it , may be those ones the same but most representative at a regional level, and totally independent of the organization in which he has been integrated cross-sectoral or sectoral

The intervention of the Labour Authority has the function of monitor the process and ensure the effectiveness of the consultation period, and from it, if necessary, can refer warnings and recommendations to the parties. Also, its intervencion in the

procedure does not involve the cessation or suspension. And if at the end of that labor the authorities consider that the agreements have been achieved by fraud, deceit, coercion or abuse of law may challenge them.

Because of its extremely importance, should be noted that with the approval of Royal Decree Law 3/2012 away the requirement that the Labour Authority has to approve the employment regulation file for suspension or termination of contract of employment for economic reasons.

The information about the beginning of proceedings to the managing body of the unemployment benefit has the function to prevent fraud in cases of obtaining such benefits for lack of motivating cause of the legal situation of unemployment. In these cases, the labor authority also may challenge the agreements reached in the consultation period.

Meanwhile, the Inspectorate of Labour and Social Security shall make a report on the motivating causes or reasons of the record and on the measures proposed by the company. If an agreement is reached between the representatives and the employer, the Inspectorate will check if that procedure does not concur fraud, an intent, coercion or abuse of law in concluding the agreement and it is not intended to improperly obtaining unemployment benefits by of workers.

2. <u>Procedural requirements</u>: What are the main procedural requirements in case of dismissal (individual/collective) and what are their aims?

An employer who intends to make an individual dismissal must notify the employee with a written letter explaining the cause (economic reasons) as well as the rest of the requirements of Art. 53.1 of the ET (see point 5.a) Consequences of a lawful dismissal). When the employer intends to make a collective dismissal must start the regularization procedure provided in Article 51 of the ET and its implementing regulations. Currently the Royal Decree Law 3/2012, in addition to modifying the collective desmissal, provides the establishment of a new regulation to develop this

procedure for dismissal with special attention "to the aspects of the consultation period, the information provided to the representatives of workers in the same, the actions of the labor authorities to ensure their effectiveness and relocation plans and the accompanying social measures taken by the employer. " This means that, by the moment, should be applied only when the provisions of the new Article 51 and the regulations currently in force in what has not been repealed by the new regulations of Article 51 ET.

Beginning of Proceeding and documentation:

The procedure will begin by a writing by the employer to the employee representatives that will be accompanied by a report explaining the causes of collective dismissals, on the following aspects.:

a) The specification of the causes or reasons of collective dismissals.

b) Number and professioal classification of workers affected by the dismissals.

c) Number and professional classification of workers normally employed in the last year.

d) Period provided for the realization of the dismissals.

e) The criteria considered for the designation of workers affected by the dismissals.

The explanatory report shall certify the results of the company which emit a negative economic situation. It can be followed by all the necessary documentation and in particular must provide annual accounts for the last two complete financial years. When the alleged negative economic situation consists of a forecast of losses, the employer shall provide the criteria used for estimation. It should also provide a technical report on the nature and evolution of this case of losses.

The obligation of information and requirements documents referred to apply regardless of whether the decision regarding collective dismissals is taken by the employer or the company that exercises control over it. Any justification by the

employer based on the fact that the company that made the decision has not provided the necessary information can not be taken into consideration for this purpose.

The employer must submit a written copy of the report to the competent labor authority. This shall record the beginning of the managing body of the unemployment benefit and seek, with a mandatory type, report of the Inspectorate of Labour and Social Security.

If the termination would affect more than 50 per 100 workers, it will notice by the employer from the sale of company assets, except those that constitute normal traffic thereof, to the legal representatives of workers and also to the competent authority.

Negotiating company/workers:

The communication of the opening of the consultation period takes place when the company gives to the representatives of the workers the notice of beginning.

The consultation with the legal representatives of the workers will last no more than thirty days, or fifteen in the case of companies with fewer than fifty employees, and must cover the possibility of avoiding collective redundancies or reducing and mitigating the consequences by recourse to accompanying social measures such as relocation measures or actions for training or retraining. During the consultation period, the parties shall negotiate in good faith with a view to achieving an agreement. Such agreement shall require the concurrence of a majority of the members of the committee or committees, the staff representatives as appropriate, or union representatives, if any, in whole, represent most of those.

At the end of the consultation period the employer notify the labor authority the result. If it had reached agreement, the employer will have to give a complete copy of it. Otherwise, is refered to the representatives of employees and labor authorities the final decision taken redundancies and conditions.

The company carrying out collective redundancies affecting more than 50 employees must offer affected workers outplacement plan through authorized

relocation companies. This plan, designed for a minimum period of 6 months, shall include measures for training and career guidance, personal attention to the employee concerned and active job search. Failure to comply with this requirement may give rise to the claim of compliance by employees subject to the administrative responsibilities that come by default.

3. The economic reason for the dismissal

a. How is this "economic" reason described, what should be understood by "economic " reason?

Currently, the dismissals for economic causes in Spain is regulated in Articles 51.1 and 52.c of the ET. Both from the collective perspective, and from their individual perspective or plural, the dismissal follows the same legal basis. As we shall see, its causes are defined in Article 51.1 ET, affecting equally to individual and collective redundancies. However, both dismissals differ mainly in the number of workers affected by business decision. In that way, the dismissal will be considered collectively when a 90-day period affecting at least:

1 Ten workers in companies employing fewer than one hundred workers.
2 10% of the number of workers in those companies employing between one hundred workers and three hundred workers.
3 Thirty workers of the company in those holding three or more workers.

Being understood as a collective dismissal, all the termination of employment contracts affecting the entire workforce of the company, when that occurs as a result of the cessation of its business.

For its part, dismissal for economic reasons, as specified in Article 52.c of the ET., will be considered individually or plural when it affects a number of workers newly

exposed below. All this under the will of the employer to terminate employment contracts citing financial difficulties.

Until the year 2010, there was in the Spanish labor law clearly defined the reasons justifying the dismissals. In practice, this required the courts, in applying the doctrine of the Supreme Court to interpret and determine whether the situation of the company in question was likely to be considered a "negative economic situation" and therefore the dismissal could contribute to overcoming it. In this regard, there are two important Supreme Court rulings that have come to form the redundancy from the year 2008, in a context of widespread loss of business and an exponential growth of economic dismissals in Spain unprecedented. These statements declare that it is sufficient to prove the existence of continuing and substantial losses to believe that the redundancy is appropriate, provided that the depreciation of the job contribute to overcoming the negative economic situation.

Later, after the labor reform of 2010, the legislature eliminated the Article 51.1. of the ET, so the reference to the dismissals should help overcome or improve the negative situation of the company. Accordingly, thereafter, the dismissals based on the existence of economic losses credited by the company, is sufficient grounds for dismissal. This follows from the provisions of new Article 51.1 of the ET which says that "(...) the company must prove the allegations and justify results thereof follows the reasonableness of the decision either to preserve or promote their competitive position in the market." In that way, the burden of proof tilted on, almost exclusively around accreditation and justification of losses by the company, regardless of the connection between the dismissal and their contribution to the improvement of the negative situation.

The new labor reform, approved by the Royal Decree on February 10th, 2012, not yet very clearly, defined what the concept of economic causes, however, if unified regulation of dismissals for economic reasons, identified the assumptions that are which may cause a negative economic situation in the company and, therefore, be invoked to carry out a redundancy in case of crisis or economic difficulties of the

company. Indeed, the new Article 51.1 of the ET., determines that, "means that there are reasons when the economic performance of the company reveals a negative economic situation, in cases such as the existence of current or anticipated loss, or persistent decline of their income or sales. In any case, it is understood that the decline is persistent if it occurs in three consecutive quarters."

So, the economic reasons for making dismissals in Spain since the last labor reform of 2012 are as follows:

1. Existence of current economic losses.

   If losses are justified by the company, this is sufficient cause for dismissal. It's important to remember that, there is no specific law about the necessary volume loss, and duration thereof. Where appropriate, the case will clarify this aspect.

2. Existence of economic losses previews.

   Under the new labor law that defines the dismissals for economic reasons in Spain since February 2012, it is not necessary that the company has current losses to claim that cause of dismissal. Simply declaring and attesting, a forecast future losses although these have not materialized yet.

3. Lowered persistent level of entry.

   It will be justify if redundancy is credited by the company reduced the overall level of income during a consecutive period of 9 months. It requires the existence of economic losses.

4. Persistent decline in the level of sales.

It will be justify if redundancy is alleged a reduction in sales of the company during a consecutive period of 9 months. Losses are not required to effect a dismissal legal basis in this case.

Consequently, judicial review of economic dismissals from the last labor reform of 2012 was limited almost exclusively to the assessment of the occurrence of certain facts, in other words, causes or economic reasons legitimating the dismissal.

b. Could transnational relocation be considered as an "economic" reason?

As outlined above and from a strictly legal point of view, a transnational relocation is not a legal argument that can justify a dismissal for economic reasons. In no case could be regarded as a justification to conduct a dismissal for economic reasons in Spain. Termination of employment contract for this cause, would be considered an unfair dismissal with payment of 45 days salary per year of service with a maximum of 42 months, or possibly 33 days of salary with a maximum of 24 months. The reason is that there is order in the Spanish labor, a specific provision to dismiss procedentemente for economic reasons related to the occurrence of a crime or cause relocation of productive decentralization.

c. Based on this reason, can the dismissal be either, individual, plural or collective? In this case, is the meaning of the "economic reason" changing in any way? (a less strict requirements, for instance)

As said before, the dismissal at the initiative of the employer based on economic reasons, has the same legal treatment in Spain, both from the standpoint of individual or plural, as a collective. The economic reasons are not modified or altered in any sense as the dismissal of individual or collective. In fact, as from the labor reform of 2010, both figures are unified, so that the legal treatment receives the dismissal based on economic reasons, is set out in Article 51.1 of the ET, called, redundancies,

however, this same article based on redundancy from the individual point of view, in accordance with Article 52 c). of the ET.

d. Is the employer obliged to justify the dismissal or to prove the economic situation and how?

The dismissal at the initiative of the employer, must always be causal and duly justified in Spain. Until now, to make the dismissals, the company must prove the alleged results through accounting documents, and must also prove that it followed the same economic situation of loss, which also affected its viability or its ability to maintain the volume of employment. Accordingly, it should prove sufficient evidence of the reasonableness couses of the dismissal, linking the measure with the ultimate goal of preserving or promoting the company's competitive position in the market.

The labor reform of 2012 has altered the economic causes to effect dismissals so that no longer requires the reasonableness of the measure, that is, its relationship to improve the competitive position of the company. From now on, to carry out by the company to redundancy, you only have accreditation from the crisis or financial hardship through loss of justification, the decline in orders or the persistent decline in the level of income or sales for three consecutive quarters.

Although there is no normatively mandatory submitted with the dismissal, financial documentation proving the negative situation of the company, in practice and in order to prove the alleged economic reason, when the dismissal is subject to judicial review is usually delivered the annual accounts of the last two complete financial years (balance sheet, profit and loss account, report, statement of changes in equity, cash flow statement and management report) and tax statements companies performed throughout the year, such as corporation tax and the statement of value added tax (VAT). This documentation serves as evidence that, where appropriate, to demonstrate conclusively the economic crisis in the company because the employer

must prove the occurrence of the cause alleged in court to make a redundancy. In short, the burden of proof in termination of the employment contract at the request of the employer, it is for the business side and not the worker.

It is noteworthy for its significance, to talk about the Additional provision 20 of the Workers' Statute, incorporated from the labor reform of 2012. It comes to realize the implementation of layoffs for economic reasons in the public, specifically labor personnel in the service of the entities, agencies and entities within the public sector, both from the standpoint of individual and collective. Under the provisions of the rule, from February 2012 in Public Administration will be dismissals for economic reasons "when there is a supervening situation and persistent budget shortfall for the funding of public services concerned." Adding the provision also added that "means that the shortfall is persistent if it occurs during three consecutive quarters."

4. Social and economic interests

a) is one of the aims of the rules to consider all the parties interests? For instance, is the employer obligated to examine alternatives to dismissal?

There is a relative and mitigated obligation to consider the interests of the social, as required in a previous period of non-binding negotiations with representatives of workers, employers consider certain ends. The art. 51.2 of the ET. explains:

"*The collective dismissal must be preceded by a period of consultation with legal representatives of workers for a period not exceeding thirty calendar days, or fifteen in the case of companies with fewer than fifty workers. Consultation with the legal representatives of the workers must cover at least the possibilities to avoid or reduce redundancies and of mitigating the consequences by recourse to accompanying social measures such as relocation measures or actions of training or retraining professional to improve employability*". [our translation]

It's important to say that in the previous regulation was the employer's decision conditional agreement with the representatives of workers or the authorization of the labor administration. This was intended to minimize the negative consequences for workers by forcing the search for other solutions or reducing the number of layoffs.

Currently, the employer may decide to collective redundancies but not agreement is reached. Arguably, this supports more regulation of business interests.

It must be said that are some mechanisms that try to protect worker's rights but their own interests not actually come to compensate for the loss of employment, such as compensation, notice or the right to seek employment during the notice.

b) Is there a duty of adaptation or reinstatement of the workers?

There is no obligation as such, in other words, understood as an obligation of the employer to a worker necessarily adapt or assign a different job when the dismissal is for economic reasons, so it can be collective redundancies or objective dismissal.

c) Is there a priority list for dismissals?

The priority of staying in business or employment in cases of collective redundancy, dismissal goal for economic, technical, organizational or productive, the Court has reiterated that the priority of stay conceptually involves the concurrence of two or more workers for the same job that exists, being inherent in her professional qualifications for their performance, in which case the preference of the representative places. That is, priorities remain in the company in cases of collective redundancy, the ET only provides for the legal representatives of workers:

The Article 51.5 of the ET says: "*The legal representatives of the workers will have priority of staying in the company in the cases referred to in this article. By collective*

agreement or agreement reached during the consultation period to establish priorities for retention of other groups, such as workers with family responsibilities, above a certain age or people with disabilities. " [our translation]

d) Is the employer allowed to hire new employees once the dismissals have taken place?

The Article 8 c) of Law 14/1994 says: "*When in the twelve months immediately prior to hiring the company has amortized the jobs to be met for unfair dismissal or for the reasons specified in Articles 50, 51 and 52, paragraph c, of the Workers' Statute, except in cases of force majeure* " [our translation]

The Supreme Court has indicated that it can fire for objective reasons, and then hire temporarily when there are justifiable causes. Another thing is that dismissals have been made fraudulently, and then facilitate a release of workers at lower cost. Such a situation would imply at least an administrative offense, and maybe even a crime.

There is a limitation in performing contracts for an indefinite period of support for entrepreneurs. These contracts are characterized by the following:

It is a contract for businesses with fewer than 50 employees, the probationary period is one year (during the trial period may terminate the contract by the will of the employer without the concurrence of a legal case, with a limit of not constitute a dismissal discriminatory), the company will have significant tax benefits and rebates to corporate social safety when using this kind of mode.

Therefore, the limitation is the following:

" *You can not enter into the employment contract of indefinite duration to support entrepreneurs referred to in this Article, the company that in the six months before the contract had engaged extinctions contract for objective reasons stated inadmissible by court order or have held a collective dismissal. in both cases, the limitation only affects extinctions and redundancies after the entry into force of this Royal decree, and to cover those jobs in the same professional group for those affected by the termination or dismissal, and to the center or workplace*. " [our translation]

e) What are the guarantees for the employees prior to dismissals taking place and how are they implemented: social plan, (colletive) negociations?

Along with the notice of dismissal, the employer shall make available to affected workers compensation provided by law (twenty days of salary per year of service, prorated for months periods shorter than a year, with a maximum of twelve months - art. 51.8 ET). The Guarantee Fund pays Salaria eight days of pay, so that the employer only has to bear the rest. Corresponds also to the employer to pay workers the full twenty days of compensation, with the employer who must go further to the Fund to perceive those eight days a year old. labor authority may exempt wholly or partially on the employer to pay compensation, which is payable by the Wage Guarantee Fund (Art. 51.12 ET). In companies with fewer than 25 workers, the social fund pays 40% of the corresponding legal compensation.

In collective redundancies where it exceeds the threshold of art. 51.1 of the ET, the decision should be preceded by a non-binding consultation period. In addition the employer must communicate certain information to the representatives of workers to establish negotiations (51.2).

In companies with more than 50 employees, the company must provide an outplacement plan through a specialized company says under Article 51.10 of the ET and for workers aged 50 years or more, the company must make a contribution to the

Treasury, and if they were 55 or older who were not mutual, certain protective measures.

There are also guarantees during the period of notice. The Article 53.2 of the ET. says:

"During the period of notice the employee, or his legal representative if it's one that I had fallen, shall be entitled, without loss of pay, to a license from six hours per week in order to seek new employment" [our translation]

5. Consequences of dismissal based on economic grounds and access to the Court

a. What are the consequences of a lawful dismissal?

Under the provisions of the Spanish labor law, the dismissal is appropriate when the alleged cause is accredited by the employer on the termination letter and meet the requirements of Art. 53.1 of the ET which are as follows:

- Given to the employee a **written notice** stating the cause.

- Available to the employee, simultaneously with the delivery of written communication, **compensation of 20 days per year of service**, prorated for months, the time periods less than one year and a **maximum of 12 months**. When the decision either to be will found in Article 52 c) of the ET, in other words, to claim economic reasons, and because of this situation could not be made available to the worker's compensation referred to above, the entrepreneur, putting in written communication, you can stop, without prejudice to the worker's right to require that their payment takes effect when the decision is extinctive.

- **Provision of a notice period of fifteen days**, computed from the delivery of personal communication to the employee until the expiry of the contract. In the case referred to in Article 52 c) of the ET, of written notice shall be furnished to legal representation for knowledge workers.

Indeed, the consequences of lawful dismissal is the final extinction of the employment contract, with the consequent loss of jobs, and the payment of workers compensation equivalent to 20 days salary per year of service, prorated for months periods shorter than one year, with a maximum of 12 months.

b. When is the dismissal considered to be unlawful and what are the consequences?

In general, the Spanish labor law, defines two types of redundancies that could be considered Unlawful dismissal (not adjusted to the right). In any case, the assessment of the extinction of the employment contract provided for the judge, who under the provisions of law, the Unlawful dismissal qualify as inadmissible or invalid.

Consequently, the redundancy will be qualified as unfair when not fulfill the formal requirements of Article 53.1 ET, but not granting the error notice or excusable error in the calculation of compensation will not determine the unfair dismissal, without prejudice to the employer's obligation to pay wages for that period or payment of compensation in the correct amount.

On the other hand, and within the so-called Unlawful dismissal, dismissal will be considered void, one that violates fundamental rights and public freedoms of workers, and those made in fraud of law. It will also be considered null, the mobile termination which has one of the prohibited grounds of discrimination in the Spanish Constitution or the law, and the following:

- The workers during the period of suspension of the employment contract for maternity, risk during pregnancy, risk during breastfeeding, illness caused by pregnancy, childbirth or breastfeeding, adoption or foster care or paternity referred to the letter d) paragraph 1 of Article 45, or notified on a date such that the advance notice ends within that period.

- The pregnant workers, from the date of commencement of the pregnancy until the beginning of the period of suspension referred to in subparagraph a), and the workers who have applied for one of the permits referred to in paragraphs 4, 4a and 5 of Article 37, or are enjoying them, or have applied for leave of absence or are referred to in paragraph 3 of Article 46 and the workers who are victims of domestic violence by the exercise of the rights of reduction or reorganize their working time, geographic mobility, change of workplace or suspension of employment, on terms and conditions in this Law.

- The workers after her return to work at the end of the periods of suspension of the contract for maternity, adoption or foster care or parental leave, provided that there had been more than nine months from the date of birth, adoption or fosterage.

Finally, note that when successive periods of 90 days and in order to circumvent the provisions contained in Article 51 ET for the so-called collective redundancies, the company perform terminations of contracts under the provisions of Article 52 c) of the ET, in a number less than the thresholds specified, and unless there are new reasons to justify such action, these new extinctions treated as made in fraud, and will be declared null and without a legal effect.

Therefore, the Law 36/2011 of October 10th, is regulating the labor courts in Article 124 introduces a new "nullity of the collective termination of contracts" in that it states that "the court declared invalid, ex officio or request, the business decision of extinction collective labor contracts for economic, technical, organizational or

production, force majeure or termination of the legal personality of the entrepreneur, if he had not handled the administrative permission or obtained authorization judicial bankruptcy judge, in cases where it is legally provided, as well as when the business was made in violation of fundamental rights and civil liberties. In such cases the sentence imposed shall be as provided in Article 113. "

Consequences:

Unfounded dismissal:

Whether the individual or collective dismissal, once declared by the judge as unfounded dismissal, the employer will be condemned to "choose" between reinstate the worker under the same conditions governing dismissal occurs before or pay him compensation of 45 days salary per year of service up to a maximum of 42 months, or if, 33 days' salary per year worked, up to 24 months.

So far, the sentence also included the employer unpaid wages from the date of dismissal to the notice of judgment to declare the invalidity in any case, that is, and he opted to reinstate the worker or pay compensation. However, the RD-Law 3/2012 of February 10 introduces new wording of Article 56 ET, on the one hand, it reduces that compensation for unfair dismissal of 45 days salary per year worked to 33 days salary (up to 24 months) for all contracts signed from now and on the other hand, unlike the cases of reinstatement or compensation to the employee for payment of wages or no processing, respectively. That is, now, with the reform made by the Spanish Government, the employer must pay the worker wages for processing only if you choose to readmit him, with the only exception that the worker is an "employee representative or union delegate" . If this is the dismissal of an employee representative or a union representative, in addition to receiving wages during the proceedings in any case also falls on him, and not the employer, the right to choose, within 5 days in writing or by appearing before the Judge of the Social-if you want to be reinstated or compensated.

Null Dismissal

The declaration of nullability by the court produce the immediate reinstatement of the worker to his job in the same conditions that existed before extinguishments contract by the company and the payment of unpaid wages from the date the termination of the employment relationship, until the date that reinstatement occurs.

c. Do the employees and the employee´s representative body have access to a Court in case of termination at the initiative of the employer?

Against business decision for which a dismissal occurs founded in Economic Causes can be made two types of claims:

By representatives of workers, claims that challenge the entire business decision, with general effects on all workers. It has a preferential processing of individual claims. On the other hand, individual claim of dismissal for workers affected is to review the justification for their extinction.

The worker who had been the subject of a dismissal for economic causes and consider the termination of the employment contract does not conform to law, may challenge the decision in court. It should be noted that the Spanish Social Jurisdiction Act, hereinafter LJS, contains a specific form for such procedures in their arts. 103-113.

Under the provisions of Article 59.3 of the ET, the employee may claim from dismissal, within twenty working days on which would have occurred. Indeed, claims payments, in addition to the general requirements, shall contain the following elements:

- Antiquity, specifying the periods during which services were rendered; professional, salary, time and form of payment, place of work, method and duration of the contract day, professional category, characteristics, if any, of the work performed before dismissal occurs.

- Effective date of the dismissal, how it is produced and facts alleged by the employer, following the communication received, if any, or sufficient mentioning its contents.

- If the employee holds or has held in the year prior to dismissal, the quality of legal representative or union of workers and any other relevant circumstances for revocation or invalidity or the ownership of the option resulting in its case.

After trial, the dismissal will be classified as appropriate, inappropriate or no, in accordance with Article 108 of the LJS and the Judge in his judgment shall qualify the dismissal of any of these forms, without the fault may contain a different rating.

Under the provisions of Article 20 LJS, it allows unions to act in the process, and interest on behalf of workers and staff and regular staff "affiliates" to them to do so authorize, for the defense of their rights, and these affiliates in the effects of that action. In the lawsuit, the union must prove the status of worker or employee affiliate and the existence of the communication to a member of their wish to initiate the process. The authorization shall be deemed granted unless otherwise stated affiliate. In the event that had not been granted such authorization, the worker or employee may request the appropriate union responsibility, to be decided in a separate process.

If at any stage of the process the member expressed in the judicial office had not received notice from the union or had denied having received the authorization to act on their behalf, the judge or court, after hearing the union, agree on the file proceedings without further proceedings.

The unions are exempt from deposits and appropriations in all its dealings with the social order and receive the legal benefits of legal aid when exercising a collective interest in defense of workers and social security recipients.

Against business decision that takes place by collective dismissals can be made two types of claims:

By representatives of workers, claims that challenge the entire business decision, with general effects on all workers. It has a preferential processing of individual

claims. On the other hand, individual claim of dismissal for workers affected is to review the justification for their extinction.

Because of its importance should be noted that with the approval of the Royal Decree Law 3/2012 away the requirement that the Labour Authority has to approve the employment regulation file for suspension or termination of contract of employment for economic reasons.

The employer (after the consultation period and if no agreement) may suspend or terminate contracts of employment for economic reasons, regardless of the number of employees of the company and the number affected by the suspension or termination. Thus, you only need to notify the Labour Authority opened a period of consultation with legal representatives of workers, duration not exceeding fifteen days.

d. Where does the burden of proof lie?

In accordance with Article 105 of the LJS, "will be up-to-defendant the burden of proving the truth of the facts alleged in the termination letter as evidence of it." To justify dismissal, the defendant is not admissible at trial other grounds for contesting the claim that the contents of the written notice of such dismissal.

Note that only will be a "reversal of the burden of proof" in cases in which attend some form of discrimination or violation of fundamental rights and liberties of the worker.

6 Draft legislation

Are there any law changes projected or new draft legislation on dismissal based on economic grounds? If that is the case, which are the main objectives and new rules?

As has been describing in this report, in Spain there have been changes in scope in labor legislation as a result of the severe financial and economic crisis experienced by global finance and the country in particular. Based on this fact have been carried out legislative innovations in the context of labor relations that inevitably affect the Spanish economy at the macro level and society as a whole. Before listing the modifications on the dismissals on economic grounds through the 2012 labor reform should collect some data on the Spanish labor market and the objectives set out in the Royal Decree-Law 3/2012:

According to the latest Labour Force Survey unemployment rate in Spain is 22.85%, in the case of children under 25 years the unemployment rate stands at almost 50%. The number of unemployed was estimated at more than 5,300,000 persons, the population of approximately 23,000,000 people. The temporary rate is 25%, ie 1 in 4 workers have temporary contracts.

In general, the main objectives of the labor reform are, in this order: *promoting employability, promote permanent contracts and job creation, promote internal flexibility as an alternative to job losses, promote efficiency labor market and reduce labor duality.*

However, major changes in labor law reference linked to the extinction of the employment contract at the request of the employer for economic reasons and, as stated by the Royal Decree, *intended to promote efficiency and reduce labor market duality work*, are as follows.:

- Review of economic reasons for dismissing, eliminating any reference to elements that justify the issuance of judgments by the courts. Judicial control of economic layoffs will be restricted, exclusively, to an assessment of the concurrence of facts: the causes.

- Reduced severance described as inappropriate. Is generalized to all qualified as unfair dismissal compensation of 33 days salary per year worked, up to 24 months. This eliminates the compensation of 45 days salary per year worked, up to 42 months existing so far.

- Elimination of interim wages if the dismissal is considered unfair and the employer chooses not readmission.

- Changing the legal status of collective dismissals and elimination of the need for administrative approval by the Labour Authority and removal of the requirement of agreement between the employer and employee representation during the consultation period for the dismissals

- Extension of economic dismissal labor personnel in the service of the government by the occurrence of situations of insufficient budget for 9 consecutive months.