

Mass dismissals – beware of the pitfalls

Contacts – Employment

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IN A NUTSHELL

Under Swiss law, mass dismissals require compliance with special procedures, which are stated in the Swiss Code of Obligations (CO). It is important to adhere to the rules, as non-compliance may result in lawsuits (for unfair dismissal) or the continuance of the employment relationships. However, when do we speak of mass dismissals and what are the required procedures?

DEFINITION OF MASS DISMISSAL

Notices of termination given by the employer within a period of 30 days for reasons unrelated to the individual employee and affecting the following numbers of employees are considered as 'mass dismissals' (art. 335d CO):

- 10 employees in a business usually employing more than 20 and less than 100 employees;
- 10 percent of the workforce in a business usually employing more than 100 and less than 300 employees;
- 30 employees in a business employing more than 300 employees.

While terminations for altered conditions and early terminations of a temporary contract are considered to be relevant for purposes of the rules on mass dismissal, terminations based on termination agreements or due to the employer's bankruptcy are not included within the coverage of the rules.

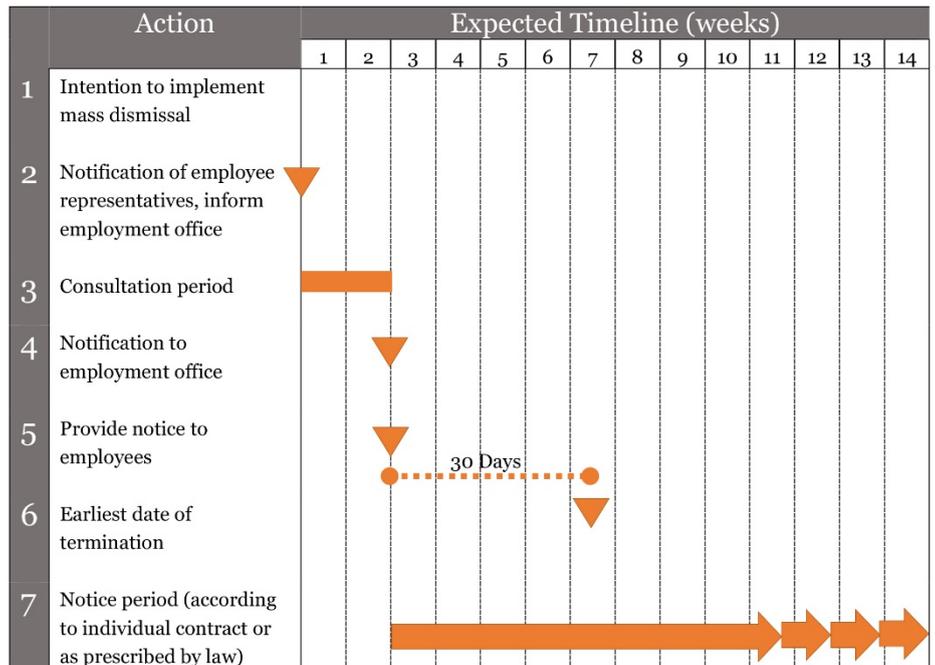
PROCEDURES FOR MASS DISMISSAL

a) Information and Consultation

The employer is required to consult the employee representation, or in absence thereof, the employees directly, as soon as it begins to consider implementing mass dismissal (see actions 1 and 2 in table below). It is required to afford the employees the possibility to submit proposals on how terminations can be prevented or their number reduced and how their consequences can be mitigated. The employer should carry out such consultation before making any final decision and in any event before serving notices. The employer is advised to set a deadline by which the employee proposals must be submitted. Pursuant to Swiss doctrine and case law, the timeframe for such consultations may vary between five days and two weeks, depending on the complexity of the situation. Furthermore, the employer must inform the employees of the reasons for the mass dismissal, the number of employees to whom notice may be given, the number of employees normally employed in the business and the time period in which the employer plans to issue the notices of termination (see action 2 and 3).

Simultaneously, the employer must forward a copy of the information on the planned mass dismissal it has handed out to the employees to the cantonal employment office (see action 2), and following expiry of the consultation period, it must also provide the results of that consultation to the cantonal employment office (see action 4).

Notice of termination should by all means only be given once the consultation period has ended and the employees have been heard (see action 5). In any case, the legal or statutory notice periods must be complied with. The employment ends no earlier than 30 days from the date of notification of the cantonal employment office (see actions 6 and 7).



b) Social Plan

Further requirements apply to businesses that normally employ at least 250 employees and intend to make at least 30 employees redundant within 30 days for reasons unrelated to these persons. These employers are obliged to negotiate with the employees the preparation of a social plan (a mutual agreement between employer and employee which sets out measures to mitigate the effects of the redundancies). The employees may be represented by the employee associations that are party to the collective bargaining agreement (if the employer is party to such agreement) or by the employee representation. The measures of the social plan are not defined by law and therefore its contents may vary, but it must not jeopardise the continued existence of the business. In cases in which the parties cannot agree on the contents of a social plan, a court of arbitration will decide on the provisions governing the social plan.

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