

ALTERNATIVES TO REDUNDANCY PROCEDURES RESULTING IN DISMISSAL - SAGARDOY

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Various positive measures are now available as alternatives to making redundancies. Rather than provide an analysis of the various measures as outlined in Article 51 of the Spanish Workers Statute here we set out some of our recent experiences where negotiations with workers representatives have avoided, as far as possible, the definitive termination of employment contracts and a loss of jobs.

Functional mobility

Recently we advised a privatised company, previously under the umbrella of the Spanish National Institute for Industry (INI) which had an inverted pyramid workforce with excess volume at the top. There was a structural surplus of 900 highlevel employees (including indirect jobs) and the need to recruit for direct (production) jobs.

Agreement was reached with the employees legal representatives setting out a number of alternative measures that employees could voluntarily opt for within a specific given time period. Employees who did not expressly opt in were deemed to have chosen to keep their jobs with functional changes (one of the keys to the success of the subsequent lawsuits).

Las alternativas a la supresión de un contrato laboral son claramente posibles cuando una situación surge directamente como resultado de cuestiones financieras, técnicas, organizacionales o de producción. José Manuel Martín, socio del bufete Sagardoy Abogados, destaca varios ejemplos recientes en los que tales alternativas han sido utilizadas.

Several measures were agreed including pre-retirement, definitive termination with 24 months salary, disability proceedings, outsourcing, and substantial modification of employment terms including functional mobility – all measures were justified (causation) and employees were able to 'become familiar with' the circumstances of their new jobs (at a lower category) for a limited time (months).

Functions and employee categories were modified; however what was guaranteed, on an 'ad personam' basis, was the Social Security contribution rate group and the basic remuneration (base salary and length of service).

If the employee had not expressly chosen any of the termination measures by the final deadline it became a definitive substantial modification (Article 41 of the Workers Statute).

Geographic mobility

In a second example, a merger occurred between two companies both of which maintained central services in Madrid although the acquired company's main offices were in Barcelona – its sales network was unaffected because its geographic distribution was maintained. The aim of the company's proposal (and subsequent agreement) was to offer 'employment' where there were jobs (notably in Madrid) which included a relocation package.

The grounds of the offer were 'organisational' and the affected employees were only those

working at the Barcelona site and in the 'support structure' . The company notified each employee of the decision to transfer them and they were given a time period to either relocate or opt for termination in either case under the company's terms (which were better than the terms required by law).

The relocation compensation package included a lump sum (payment on account, fully accruing after the employee had been in Madrid for three years, with a pro rata temporis refund for employees who left before this time), assistance with finding new accommodation and schools (if required) plus moving assistance.

The termination option included compensation as well as conditional additional compensation subject to collaborating in the integration of the businesses and its know how and maintaining harmonious labour relations, as well as outplacement opportunities.

Outsourcing of services (contractors and subcontractors)

Outsourcing is a measure envisaged in Article 42 of the Workers Statute, and in a recent matter the company had a dual corporate aim: to remove a specific autonomous production unit without losing definitive control and to reduce operating costs.

Additional guarantees were offered for 'transferred' employees including time parameters, employment terms and the possibility of return in cases of work-related health problems – as well as arrangements for creditors and redundancy procedures. New employees were thereafter contracted as subcontractors.

Certain services that had previously been outsourced, such as cleaning and logistics, were recovered as a way of maintaining employment in the company. This naturally required an adjustment of employment terms and duties in order to avoid definitive dismissal.

The range of options seen in these examples, may either be a temporary measure resulting in the suspension of contracts for a specified time, or as a result of the provisional nature of the situation at hand, or a specific business goal – ie to temporarily reduce ordinary production costs to overcome a situation of damage or difficulty.

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