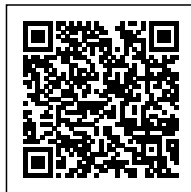


REFORMS RESULTING IN A NEW EMPLOYMENT LANDSCAPE

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Historic reforms make dismissals much easier for troubled companies resulting in a wave of announcements

Recent publicity surrounding the collective dismissal of thousands of Spanish workers has been relentless, with a wave of redundancies already announced, and many more on the horizon, say lawyers. Bankia is claiming up to 4,500 workers could be laid off, while Iberia is looking to shed up to 3,800 jobs. It is a similar story for companies such as CEMEX, Banco de Valencia and NH Hoteles, all of which have announced scores of potential job losses. While the Spanish economy and its companies are clearly struggling, businesses are using recent reforms to undertake massive internal restructurings that were not possible under the previous legislation.

Cuatrecasas, Gonçalves Pereira Employment Law Expert Salvador del Rey says the reforms have resulted in "an historic change" in the way companies look to restructure. "For many years, the first choice was collective dismissal; but now, for the first time, Spanish companies are looking at legal tools to adopt greater flexibility, such as changing wages, contracts and hours."

Many of the workforce restructurings are a consequence of the real estate and construction crisis, explains Vicente Calle, an Employment Partner at Garrigues. "While it was initially developers that were hit, we are now seeing suppliers go through the process. Other companies that were able to refinance debt a few years ago are now facing the prospect of not meeting the terms of those loans and will have to go through an insolvency."

Lawyers expect this pattern to continue in other sectors. Print media, for instance, is facing challenges from a steep decline in sales and advertising revenue, and the advent of technological alternatives. This is likely to affect journalists and sales staff initially, but will filter down to printers, suppliers, distributors and sellers.

It would be easy to assume that the first option to turn to is a collective dismissal, and that the increase in volume of dismissals – as illustrated in the above examples – have been accelerated because of last year's reforms making mass redundancies much simpler. Companies now no longer needed administrative authorisation from the relevant public bodies but just had to notify the labour authorities. The consequences of this, however, are still not clear cut.

"The reforms meant that companies did not need administrative authorisation for collective dismissals but the courts are able to intervene to judge the reasonability of the dismissals," Calle continues. "Judges have not been keen on the reforms and taken a tough stance by ruling many collective dismissals as null and void. As such, while there was an uptake of interest when the reforms were brought in, companies are more cautious in launching collective dismissal programmes."

According to del Rey, out of the 45 decisions regarding collective dismissals in the Labour Court, 21 have been declared void because of formal violations. Courts are ensuring that there must always be good grounds for dismissals, he adds, and they must be subject to real judicial control.

"Companies are increasingly aware that – despite theoretically being easier to launch a redundancy programme – collective dismissal carries additional risks."

Companies, and consequently their advisers, are having to look for creative legal solutions that give a greater level of flexibility with a lower level of risk, say lawyers. As such, there has been more emphasis on temporary measures, such as salary reductions and early retirement initiatives, either in place of or in conjunction with collective dismissals. Bankia, for example, is working towards reforms such as altering working conditions, places of work, pension contributions and benefits while Iberia has a "plan of social support" that also covers reductions in pay, pay freezes and changes in productivity.

"Employment law departments are very active but it is not just advising on collective dismissals," del Rey concludes. "There are many other rules and regulations that have been adopted, including issues such as the type of contracts and early retirement, which are quite complex for companies to adapt to and require expert legal advice."

All of which is proving a unique challenge for business and for law firms as clients look towards more sophisticated solutions.