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Opinion on [Labor Code](#)

DOWNSIZING AS A CONSEQUENCE OF THE GLOBAL FINANCIAL CRISIS

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Today the global financial crisis is the most acute and discussed topic. In order to save finance, many companies are forced to decrease production volumes, reduce jobs or cut staff. Moreover, companies tend to turn out their employees literally in one day, first requesting them to submit a letter of resignation under the pretext that the company's financial condition has worsened as a result of the financial crisis. There are even precedents when employers exert psychological pressure on employees (for example, they may limit access to the company's documents or close e-mail accounts). Such cases of unlawful dismissal are the subject matter of the court hearing in the lawsuits filed by employees. That is why every company needs to know how to properly terminate the employment in connection with job or staff reduction and how to settle all required benefits and compensations for dismissed employees.

Initiating downsizing

The Labor Code of the Kyrgyz Republic (the "[Labor Code](#)[1]") specifies downsizing as the grounds for terminating the employment by the employer (regardless of whether the employment agreement is made for a definite or indefinite term). However, employers must observe the procedure established by the Labor Code for dismissing employees due to downsizing.

When making a decision on downsizing, employers are required to take the following steps:

- 1. negotiate with a representative body of employees ("trade union"), if any, about downsizing and get its consent to dismissals;
- 2. notify employees of impending dismissal due to downsizing by issuing a respective order and communicating it to employees against receipt at least one month prior, and to a seasonal worker[2]- at least seven calendar days prior to dismissal.

The order must state the reasons for the upcoming downsizing. Employers also must make respective changes on their staff schedule.

It should be noted that for a month (during the notice period) a dismissed employee may stay at work and discharge his or her responsibilities, follow internal rules of procedure,

work on same conditions and for same pay as other employees, have one free day a week to look for another job and have a right to an average salary.

Offering available vacancies to employees

It is important to note that previously, in the event of downsizing, employers *were required* to help their former employees to find new jobs and were able to dismiss employees only if the latter declined an offer to transfer to another job or could not be employed for other reasons in the same organization. Now, with the adoption of the Law of the Kyrgyz Republic “On Amending and Modifying the Labor Code No. 103 of the Kyrgyz Republic” dated March 30, 2009, in the event of downsizing, employers *may* offer to its employees another job, if any, in the same organization, relevant to their qualification.

Priority reemployment rights

When making a decision on downsizing, employers must take into account that the Labor Code grants the priority reemployment rights to those employees who demonstrate greater efficiency and qualification and meet the criteria stated in a collective bargaining agreement or employment contract. In addition, the Labor Code requires employers to give preference to disabled employees over other equally efficient and skilled employees while carrying out downsizing activities.

Limitations on Dismissals

The Labor Code specifies categories of employees that cannot be dismissed for redundancy. They include the following:

- employees on vacation;
- employees on temporary disability leave;
- pregnant employees;
- female employees having children under 3 years of age;
- single mothers having children under 14 years of age (or handicapped children under 18 years of age);
- other employees fostering motherless children under 14 years of age (or handicapped children under 8 years of age).

In addition to those mentioned above, the Labor Code specifies employees who are trade union members and whose dismissal requires prior written consent of the respective trade union of the organization concerned. The trade union must consider a request for dismissal of an employee within seven days. The employer may terminate the employment contract within not later than one month from the date of the trade union's consent.

Benefits and compensation

Upon dismissal of the employee in connection with the reduction in workforce or staff, the employer must pay him or her a severance in the amount of two-month average salary. In addition, if the employee files, within 10 calendar days of the dismissal date, with the employment agency for registration as the unemployed and presents to the employer a document confirming this status, the employer must pay him or her one-

month average salary for the second month of looking for job and one-month average salary for the third month of looking for job.

Other cases of severance payment, as well as increased amounts of severance pays may be set forth in the employment contract or collective bargaining agreement.

The employment contract may be terminated before expiration of the notice period subject to payment of compensation of not less than an average pay for each day left until the last day of the period of dismissal due to reduction in workforce or staff of an organization.

Completion of downsizing

On the last working day of dismissed employees, the employer must issue an order of their dismissal and communicate it to the employees against receipt, hand over to the employees, against receipt, their employment record cards stating the fact and reasons for dismissal using the language strictly compliant with the provision of the Labor Code (“in connection with reduction in workforce and/or staff”), making reference to the respective article and point of the Labor Code (Article 2.83 of the Labor Code) and carry out settlements with dismissed employees (pay salary for the days worked, compensation for unused leave days, severance pay and other compensation envisaged by law).

Consequences of unlawful dismissal

When dismissing employees, it is vital to know and take into consideration that unlawful dismissal may bring to certain consequences of both pecuniary nature (financial losses: payment of outstanding amounts, penalty fees, fines, court fees, payment for the period of forced absence, moral damages and other expenses) and non-pecuniary nature (making changes in the employment record card, issuance of orders, negative influence on the company’s reputation).

Thus, for instance, in accordance with labor law, the employer must pay to the employee an average daily payment for each day of delay in giving the employment record card and a penalty of 0.15% of the outstanding amount for each day of delay and must pay all sums owed to the employee.

If it impossible to restore the unlawfully dismissed employee to his previous position (for example, because of cut of such position in the company), the court must, in accordance with law, impose on the employer or its legal successor an obligation to pay to the employee a monetary compensation of not less then twelve times the average monthly salary of such employee.

Thus, in order to avoid the above risks and losses, the employer must strictly and clearly follow and execute the requirements of the employment law, including the dismissal of employees due to reduction in workforce or staff. The employer’s losses and costs may be several times greater when the employees are dismissed unlawfully, than they would be if the requirements of the employment law were followed.

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[1] The Labor Code of the Kyrgyz Republic dated August 4, 2004 (as last amended March 30, 2009).

[2] Seasonal works are those which, due to climate and other natural conditions, are performed during a certain period (season) not exceeding six months. The list of seasonal works is contained in Resolution No. 679 of the Government of the Kyrgyz Republic "On Approval of the List of Seasonal Works" of November 1, 2001.