SACKED, HUH?

Guide for Change Negotiations

INDUSTRIAL UNION PRO YTN

Contents

Sacked, huh? Guide for Change Negotiations is the 6th, updated edition of the previously published Sacked, huh? Guide for Change Negotiations. Legal Counsel Susanna Holmberg from the Industrial Union, Head of Legal Services, Master of Laws with Court Training Patrik Stenholm and Legal Counsel Mira Strömmer from Trade Union Pro as well as Eeva Salmi, Legal Counsel from the Union of Professional Engineers in Finland on behalf of YTN have been involved in updating and editing this guide.

GUIDE FOR CO-OPERATION NEGOTIATIONS WITH PERSONNEL IMPACTS

The Act on Co-Operation within Undertakings (2021/1333) entered into force on 1 January 2022.

Pursuant to the Co-Operation Act, change negotiations must be conducted concerning any substantial personnel impacts and the reduction in the use of workforce. The Act on Co-Operation within Undertakings (2007/334) that was previously in force stipulated for co-operation negotiations to be conducted. The negotiation procedures are substantially the same as under the Act that was in force prior to 2022.

This concise guide provides practical guidance for change negotiations. Change negotiations are conducted and the Act on Co-Operation within Undertakings is applied in companies and entities that regularly employ a minimum of 20 employees.

The guide has been devised particularly with a view to situations where the measures contemplated by the employer may have an impact on personnel. Pursuant to Chapter 3, Sections 20–23 of the Act on Co-Operation within Undertakings, the employer must conduct change negotiations when contemplating measures that may result in the dismissal, layoff, part-time layoff and modification of an essential condition of the employment contract of one or more employees based on financial or production-related grounds. Under certain conditions, the employer is also obligated to conduct negotiations if the employer is contemplating substantial changes in the duties, working methods, work arrangements, workspace arrangements or arrangements for regular working hours that fall within the scope of the employer's right of supervision and affect the position of one or more employees, please refer to the situations listed in Section 16(2).

The guide discusses preparations for co-operation negotiations under Chapter 3 of the Act on Co-Operation within Undertakings, the content of the negotiations and of the employer's statutory obligation to negotiate, the content and impacts of various support packages, as well as the implications of failing to observe the obligation to conduct change negotiations.

Detailed information on the Act on Co-Operation within Undertakings can be found, for instance, in the co-operation guides devised by SAK and its member unions, Trade Union Pro or Association of Senior Salaried Employees YTN, available from the websites of the said unions.

1. BACKGROUND INFORMATION

1.1 Financial background information and training

When change negotiations begin, it is important that employee representatives have up-to-date background information on the conduct of the negotiations and the matters to be discussed in the negotiations. Indeed, the purpose of the regular **dialogue** between the employer and the employee representative referred to in Chapter 2 of the Act on Co-Operation within Undertakings is to promote the sufficient and timely flow of information between the employer and the personnel. Continuous training also serves to improve the readiness to negotiate and reinforces the position of personnel in circumstances of change. The Act on Co-Operation within Undertakings contains provisions to facilitate the maintenance of preparedness. The employer must be required to comply with these regulations even when dark storm clouds have not yet started gathering on the horizon. Continuous dialogue also provides an opportunity to discuss in a free-form manner possible **developments** in which the employer must at a later stage initiate change negotiations pursuant to Chapter 3 of the Act on Co-Operation within Undertakings.

Section 11 of the Act on Co-Operation within Undertakings contains stipulations on the provision of financial information to be disclosed regularly. Twice a year, the employer must provide:

- the employee representative with information on the number of employees of the enterprise by business unit or other similar disaggregation; as well as
- the number of employees employed under fixed-term or part-time contracts.

Unless otherwise agreed, the employer shall annually

- provide the representatives of the personnel groups with the

financial statements and the Board of Directors' Report, provided the employer is obligated to devise same.

A coherent account of the financial standing of the company must be provided no less than twice a year. Furthermore, the employer must inform employee representatives and, in certain cases, all employees, of any material changes in such information. The collective agreement also recommends the provision of information separately for each operating unit.

Pursuant to Section 9 of the Co-Operation Act, the company must as part of the dialogue devise in collaboration with the personnel a plan for the development of the work community and maintain it for the purposes of the systematic and long-term development of same. The **work community development plan** must contain entries of the current state and the anticipated development costs that may have an impact on the skill needs of the personnel, or workplace wellbeing, objectives and measures to develop and maintain the competence of the personnel and to promote the occupational well-being of the personnel, the allocation of responsibilities and the timing of the measures, along with the follow-up procedure. In devising and maintaining a work community development plan, attention should be afforded to technological development and other similar changes in the work community, as well as to the special needs of employees in different life situations, and particularly the needs to maintain the working ability of those at risk of work disability and of the elderly employees, and the labour market eligibility of employees at the risk of unemployment, as well as the management of the work community.

Information on the company's fixed-term and part-time employment relationships must be provided twice a year (Section 11(1) of the Co-Operation Act). Unless otherwise agreed, the employer must annually provide the employees' representatives with statistical data on wages and salaries (Section 11(2) of the Co-Operation Act) and, upon request, itemised by occupational group. Similarly, with regard to the use of external workforce, information must be provided annually on work sites and tasks, as well as on the period during which external workforce has been utilised, if it fell under the scope of the Act on the Contractor's Obligations and Liability when Work is Contracted Out. The active and spontaneous requesting of information is naturally advisable.

1.2 Getting your networks in order

In addition, in corporate groups and companies with multiple operating locations, readiness for change negotiations requires the forging and maintenance of trade union networks that transcend domestic and international personnel groups. Representatives on European works councils should not be changed too often, so as to allow the networks sufficient time to become established and representatives should remain in contact also between meetings. All companies require good and open cooperation between all personnel groups.

Archiving all information and aggregating same temporally and geographically allows for the creation of an overall understanding of the company's financial standing and development prospects. It is advisable to compare the cost structure of different operating locations or subsidiaries already in advance.

1.3 Who negotiates?

The co-operation referred to in the Act on Co-Operation within Undertakings is of a representative nature. The employee representative negotiates on behalf of the personnel group they represent. Personnel groups are typically represented either by a shop steward elected on the basis of a collective agreement or by a shop steward stipulated under the legislation. In case a personnel group lacks the above-mentioned representative, a co-operation representative as stipulated for under Section 5 of the Co-Operation Act shall be elected as the negotiator. Such a representative shall be elected for a specified term of office not exceeding two years. The personnel group should never agree to a negotiator being elected only for the purposes of a specific negotiation (a so-called ad hoc representative). This is because in individual cases, the elected negotiator does not enjoy the special protection against dismissal as set forth under Chapter 7, Section 10 of the Employment Contracts Act.

2. BEFORE THE CHANGE NEGOTIATIONS

2.1 Information to be provided prior to the co-operation procedure

If the measure to be negotiated upon is likely to have an impact on personnel, a written negotiation proposal must be submitted no later than five days prior to the commencement of the negotiations (Section 19 of the Co-Operation Act). The said time period affords the personnel the opportunity to prepare for the negotiations and does not count towards the 14-day or six-week negotiation periods. In some collective agreements (e.g. Technology Industries of Finland, Design and Consultancy), the time period of the negotiation proposal has been at least partially included in the negotiation periods, and so the matter should always be verified by consulting the applicable collective agreement.

The negotiation proposal must indicate the time and place of the commencement of the negotiations and a proposal on the matters to be discussed in the negotiations, itemised per main headings.

Furthermore, where the employer is contemplating the reduction of workforce, the employer must also provide the employees' representatives with no less than the minimum information specified in Section 19 of the Co-Operation Act, including:

- details of the grounds for the contemplated measures (see sub-heading 2.1.1)
- preliminary estimation of the dismissals, layoffs, part time layoffs, or, similarly, of any unilateral modification of a material condition of the employment contract, itemised per personnel group and measure (see sub-heading 2.1.2);
- an account of the principles governing the determination of the employees subject to dismissal, layoffs, part-time layoffs or the unilateral modification of a material condition of the employment contract (see sub-heading 2.1.3) as well as
- an estimate of the time period within which the dismissals, layoffs, part-time layoffs or the unilateral modification of a material condition of the employment contract will be implemented (see sub-heading 2.1.4).

The information must always be provided in writing (Section 19(3) of the Co-Operation Act). The information must be attached to the negotiation proposal, unless it has already been separately provided beforehand.

Any information received by the employer following the submission of the negotiation proposal must be provided latest at the commencement of the change negotiations. If the omitted information is relevant to the matter to be discussed at the first meeting, the handling of the matter shall, at the request of the employee or employee representative, be postponed so as to afford them the opportunity to prepare for the consideration of the matter. At the latest at the commencement of the negotiations, the employer must also submit the information to the employment office.

If the change negotiations under Chapter 3 of the Act on Co-Operation within Undertakings pertain to a substantial change affecting the employee's position, the employer must provide the concerned employees or employee representatives with the information necessary for handling the matter before commencing the change negotiations. In case law and legal literature, terms of a pecuniary nature have been considered to constitute material conditions, e.g., salary or other financial benefit. Also other considerations may constitute a material condition. Pursuant to the case law of the Supreme Court, a material condition may also constitute a certain status related to the position (Supreme Court ruling KKO2017:26) or a substantial increase in the complexity of the work (Supreme Court ruling KKO 2010:60).

Even if the employer declares certain information to be confidential (Section 40 of the Co-Operation Act), also such information may be processed between all the employees concerned and their representatives and to the extent necessary. Information concerning confidentiality can be found in paragraph 3.7 of this guide.

In this context, it should also be noted that it is considerably easier to require additional relevant information when the background information mentioned under paragraph 1.1 above is up to date. You can also try to compare and "test" the information received from the employer in the trade union network.

2.1.1 Information on the grounds for the contemplated reduction

This information primarily refers to the production-related and financial reasons underlying the measures contemplated by the employer. The information may concern the company's financial standing or, for instance, management decisions made by the employer, such as any organisational change being implemented. Depending on the grounds presented (production-related/financial), the information provided by the employer must sufficiently disclose, for instance, the order backlog, customer, production and performance volumes, cost structure,

competitive landscape, profitability, subcontracting and the retention of external workforce, or various production technology-related matters and the strategical alternatives of the company.

2.1.2 Preliminary estimate of the number of employees and salaried employees in different groups affected by the reduction

The employer must also provide a preliminary estimate of the number of employees and salaried employees affected by the reduction by personnel group and measure. It is precisely these personnel impacts that are being negotiated upon, so it is natural that the estimates will change as the negotiations progress. For instance, if the objective of the negotiations is to achieve a certain savings target, the employer may also have a detailed view of the personnel effects of the various savings measures being negotiated. In cases where the personnel groups are identifiable, it was not even under the old Act on Co-Operation within Undertakings considered sufficient to present the itemisation only in the report pursuant to Section 53 of the Act on Co-Operation (Statement of the Co-Operation Ombudsman of 22 May 2015, docket number 8/2015).

2.1.3 An account of the principles governing the determination of the employees affected by the measure

Such principles may potentially already be derived from the work community development plan devised in the company (see subsection 1.1.). Objective and equitable principles can still be agreed upon as negotiations progress, after examining the criteria. In determining such principles, consideration must be given not only to the stipulations governing redundancies contained in any termination protection agreement of a collective agreement, but also to the various grounds for discrimination (e.g., state of health, age, gender, etc.)

2.1.4Estimated time period within which the contemplated reductions are to be implemented

The minimum duration of co-operation negotiations is stipulated in the Act on Co-Operation within Undertakings. Where necessary, the statutory minimum periods may be exceeded.

The grounds for the redundancy and the modification of an essential condition of the employment contract and the contemplated measures must have not only a financial or production-related connection, but also a temporal connection. The employer may and is even obligated to make preliminary plans for the number of personnel already prior to the commencement of the negotiations. In fact, the employee representative has the opportunity to submit in writing their own alternative proposals and solutions for consideration in the change negotiations. This must be done well in advance of the meeting at which the matter is to be discussed.

If the employer does not consider the proposal or alternative solution to be expedient or feasible, it must in the course of the negotiations explain in writing, to the extent necessary, the underlying reasons.
Commencing negotiations "just in case" or prolonging same creates constant uncertainty for the personnel. Such a course of action may be viewed as a form of exerting pressure on the personnel. Generic communication of information concerning the company's financial standing and any changes being considered, as well as regular dialogue between the employer and the employee representative, is distinct from actual change negotiations concerning redundancies.

2.1.5 Additional considerations

As stated above, the employer may and is even obligated to make preliminary plans concerning the number of employees already prior to the commencement of the change negotiations. However, the employer may not make any final decisions on the subject matter of the negotiations before appropriate and genuinely interactive negotiations have been conducted. The employee representative has the right to consult and obtain information from experts within the employer's operating unit and, where possible, from other experts when preparing for the regular dialogue and change negotiations, as well as in the actual negotiations where this is necessary for the matter under discussion. Possible developments may already have been discussed informally as part of the dialogue. The employee representative should always draft written questions even before the negotiations. As a general rule, it is worthwhile for employee representatives already at the beginning of the negotiations to seek to ensure through appropriate questions that the matter under negotiation has not been already unlawfully decided upon (e.g., in the parent company) before the obligation to negotiate has been fulfilled. The questions are contingent upon the nature of the contemplated measures. It is always possible for the employee representative to turn to their union in case they require assistance in preparing for the negotiations.

2.2 What if the employer fails to comply with the negotiation period or to provide adequate information?

Non-compliance with the provisions of Sections 17–23 of the Act on Co-Operation within Undertakings intentionally or negligently may entail for the employer the obligation to effect compensation pursuant to Section 44 of the Co-Operation Act to employees who have been dismissed, laid off, rendered part-time employees or subjected to unilateral changes to an essential condition of the employment contract (max EUR 35,000, the amount is updated through a Government Decree). If the employer fails to provide the information set forth in paragraph 2.1 above, the negotiations cannot take place in the manner prescribed by law. In such a case, the personnel groups must jointly inform the employer in writing (e.g., by e-mail) that the negotiations cannot continue until the necessary information has been provided. At the same time, the employer must be required to extend the negotiation period. Should the employer fail to comply with the negotiation periods, the personnel groups must remind the employer in writing of the fact that failure to comply with the negotiation period will result in compensation obligation stipulated under Section 44 of the Co-Operation Act.

2.3 Action plan and principles for action

When preparing for co-operation negotiations, the employer must identify, in collaboration with the employment authorities, the public employment services supporting employment. Furthermore, at the commencement of the negotiations, the employer must provide the representatives of the personnel groups with either an action plan to promote employment or principles for action, depending on the number of employees affected by the contemplated redundancies. Failure to comply with this obligation entitles the dismissed, laid-off employees, or employees rendered part-time employees to claim compensation from the employer in accordance with Section 44 of the Co-Operation Act. If the redundancies concern a minimum of ten employees, the employer must submit to the employee representatives a proposal for an action plan to promote employment immediately after submitting the negotiation proposal. The plan is to be devised together with the employment authorities. It must consider the statutory provisions concerning the reduction of workforce or the stipulations of collective agreements concerning same, such as the order of dismissal.

Content of the action plan:

- contemplated timetable for the change negotiations
- the procedures to be followed in the negotiations (e.g., minutes, negotiators, external experts, etc.)
- principles for action to be followed during and after the termination notice period when utilising the services of the Employment and Economic Development Office along with the principles for promoting job search and training
- a proposal for principles for action must be submitted when the need to reduce the workforce concerns fewer than 10 employees.

Content of the principles for action:

- principles for supporting employees' spontaneous seeking of other employment or training during the termination notice period
- principles for utilising the services of the employment office promoting the finding of new employment

The action plan and principles for action cannot serve to disregard the provisions of the law or of collective agreements, and they must not be discriminatory! In this context, efforts should be exerted towards agreeing that employees who find new employment or are admitted to training can terminate their employment relationship flexibly without having to observe the termination notice period so that any failure to observe the termination notice period does not result in the employee being obliged to pay the employer compensation referred to in Chapter 6, Section 4 of the Employment Contracts Act. At the same time, it is advisable to bear in mind the employees' right to employment-seeking leave under Chapter 7, Section 12 of the Employment Contracts Act and to coaching or training promoting employment as stipulated under Section 13 of the Employment Contracts Act.

2.4 Employment-seeking leave and employment plan as well as coaching or training promoting employment

The objective of the operating model entailed by change security is to enhance cooperation between the employer, employees and the TE Office in circumstances where an employee is at risk of dismissal owing to production-related or financial reasons. Change security is geared towards the individuals involved rapidly finding new employment or

undertaking entrepreneurship in a change situation and, in particular, towards improving and maintaining the jobseeker's professional competence. An essential component of change security is the employment-seeking leave and the employment plan, devised in collaboration with the TE Office. The paid employment-seeking leave provided for in Chapter 7, Section 12 of the Employment Contracts Act may be utilised, for instance, for job seeking or devising an employment plan.
Pursuant to Chapter 7, Section 13 of the Employment Contracts Act, an employer is obligated, provided certain conditions are met, to offer an employee who has been dismissed for production-related and financial reasons the opportunity to participate in coaching or training that promotes the finding of new employment, paid for by the employer.

Change security in the event of termination (TE Services, www.te-palvelut.fi)

2.4.1 Employment-seeking leave

During the termination notice period, every employee who is dismissed for production-related or financial reasons is entitled to paid employment-seeking leave. The duration of the employment-seeking leave is 5-20 working days, and the leave can also be taken as parts of a working day.

The number of days of employment-seeking leave is determined on the basis of the termination notice period:

- Termination notice period no more than 1 month → 5 working days
- Termination notice period over 1 month but under 4 months → 10 working days
- Termination notice period over 4 months → 20 working days

Employment-seeking leave is intended for independent job seeking. The employee may also utilise the leave to devise up an employment plan or to carry out the measures agreed upon in the employment plan, such as participating in training. Dismissed persons are also entitled to paid leave when they apply for a job with the assistance of the TE Office, attend a job interview or participate in outplacement coaching. The leave must not cause any significant inconvenience to the employer, and the employer must always be notified of same as early as possible. Persons aged 55 or over have a special right to employment-seeking leave.
In case, on 1 January 2023 or at the time of a subsequent termination of employment, the employee has reached the age of 55 and the employment relationship has persisted no less than five years without interruptions or with interruptions of no more than 30 days, the length of the employment-seeking leave shall be determined, by way of derogation from Section 12, as follows:

1) a maximum of 5 working days in total, if the period of notice is no more than one month;
2) a maximum of 15 working days, if the period of notice is longer than one month, but no more than four months;
3) a maximum of 25 working days in total, if the period of notice is more than four months.

2.4.2 Employment plan

The employment plan serves to improve the employee's chances of finding employment, for instance through training. The employment plan is devised together with an expert from the TE Office. It includes a survey of the jobseeker's situation along with a plan for independent job seeking and support for the seeking of work, as well as TE services that promote the jobseeker's chances of swiftly finding permanent employment in a new place of work. Increased earnings-related or basic unemployment allowance may be granted for the duration of the services promoting employment, if the service has been agreed upon in the employment plan.

2.4.3 Coaching or training promoting employment

If the employer regularly employs a minimum of 30 people and the employee has been employed by the employer for a minimum of five consecutive years before the termination of the employment relationship, the employee is entitled to coaching or training. The coaching or training must correspond to no less than the employee's imputed remuneration for one month or to the average monthly earnings of personnel working in the same place of business as the dismissed employee, whichever is higher.

The employer and the employee may agree that the employer fulfils its obligations by paying for all or part of the training or coaching acquired by the employee themselves.

Dismissed persons over 55 years of age

Change security training serves to support the rapid re-employment of persons aged 55 or over who have been made redundant from their work on production-related or financial grounds by improving their professional skills or entrepreneurial skills.
Change security training is arranged for persons dismissed from their employment relationship:

1. who were dismissed by the employer on production-related or financial grounds;
2. who, at the latest on the date of dismissal, have reached the age of 55 years;
3. who, at the latest on the date of dismissal, have been continuously or with interruptions not exceeding 30 days in total within the meaning of paragraph 1, been employed by the employer for no less than five years; and
4. who has registered as a jobseeker at the Employment and Economic Development Office within 60 days of the date of termination.
5. For the prerequisites for change security training, the organisation of the training and the termination of the right to training, see Act on the Public Workforce and Corporate Service (2012/916), Chapter 5 a, Change Security Training (8.7.2022/670).

2.5 Experts

Pursuant to Section 36 of the Co-Operation Act, employee representatives have the right to consult and obtain information from an expert when preparing for dialogue or change negotiations concerning the development of the company's operations and work community, as well as in the negotiations themselves, when this is necessary for the matter under discussion. An expert primarily refers to a person working in the operating unit in question. To the extent possible, the expert may also be another person employed by the company. The assessment of the necessity of utilising an expert is made by the employer.

There is nothing to prevent suggesting also other experts, including those from outside the company, or at least consulting them (at own expense) in staff meetings. It is common for representatives of the union to be consulted at the very least on procedural matters. The participation of specialists that are not part of the personnel in change negotiations is subject to the approval of the employer. Consultations at the European level are open to the representatives of the relevant international trade unions.

During the course of the change negotiations, the employment office and the unemployment fund may organise information sessions for those under the threat of unemployment. Occupational healthcare can be linked to the process on a general level, but also at the level of individual employees, in case they are experiencing stress-induced symptoms.

3. MATTERS TO BE NEGOTIATED IN THE EVENT OF CHANGES, DISMISSALS AND LAYOFFS

3.1 Obligation to negotiate

The subject matter of the change negotiations relates to the grounds for and the impacts of any workforce reduction measures (redundancies, layoffs, part-time layoffs, unilateral change of an essential condition of the employment relationship) ensuing from the business decisions being contemplated by the employer, as well as the alternatives for limiting the circle of persons affected by the redundancies and mitigating the implications of the reduction for employees.

When the employer considers dismissing one or more employees, the negotiations must also address the action plan or principles for action referred to in Section 49 of the Co-Operation Act.

Change negotiations must also take place when the employer is contemplating material changes in the employee's position within the scope of its supervisory powers, changes in work duties, working methods, work arrangements, arrangements of working premises, or arrangements for regular working time resulting from:

1) the closure, relocation, extension or reduction of the activities of an undertaking or organisation or a part thereof;
2) the purchase of machinery or equipment or the introduction of new technologies;
3) changes in the organisation or organisation of work;
4) changes in service provision or product range;
5) the introduction or modification in the use of external workforce;
6) other comparable changes referred to in paragraphs 1 through 5.

Supreme Court ruling KKO 2021:17

An employer who had unilaterally modified an essential condition of the employment relationship of employees without negotiating the change as required by Chapter 8 of the Act on Co-Operation within Undertakings (the old Act on Co-Operation within Undertakings) was obligated to effect compensation under the Act on Co-Operation within Undertakings, even though the employment relationships of the employees were not terminated.

3.2 Grounds for the measures

The grounds for the measures refer to the reasons why the employer is contemplating the dismissal, layoff, part-time layoff or a unilateral modification of an essential condition of the employment relationship of employees. The negotiations must address the grounds, effects and targeting of the management solution contemplated by the employer in the company and/or other factors due to which the work or the employer's ability to offer work has been reduced in such a way that the employer is considering measures to reduce the workforce.
In practice, it is most often a question of addressing the grounds for dismissal or layoffs resulting from production-related or financial grounds and/or from the reorganisation of the employer's operations underlying the measures to reduce the employer's workforce and the targeting of same.

When discussing the grounds for the measures, the representatives of the personnel groups must jointly ask the employer for answers to the following questions, to name a few:

1. For what reasons is work decreasing?
2. Which work or tasks will be affected by the reduction? Why?
3. By how much is work expected to decrease? What is the estimate based on?
4. During what time period will the work decrease? In the employer's assessment, will the decrease be permanent or temporary? What is the estimate based on?
5. Are the business operations profitable or unprofitable?
6. On what figures and calculations is the employer's need for savings based?
7. Are there plans to change the company's production? If so, what will change?
8. Are jobs going to be relocated? Where?
9. What is the plan for re-organising work/tasks?
10. How many fixed-term employees does the company have?
11. Does the company use temporary agency workers? If so, how many? What are the company's principles for the use of temporary agency workers?
12. What kind of work does the company subcontract? What are the principles for subcontracting in the company?

3.3 Implications of the measures

The implications of the measures refer in particular to their effects on the personnel, i.e., the extent to which it is justified and necessary to dismiss, lay off or render employees part-time employees, or modify an essential condition of the employment relationship as a result of a management decision being contemplated by the employer or external factors affecting the company's operations.

Even before the start of the change negotiations, the employer must inform the employee representatives not only of the reasons for the contemplated reduction measures, but also of an estimate of the number of employees and salaried employees to be affected in the different groups, an estimate of the period within which the redundancies or other measures are to be carried out, as well as the principles according to which the employees to which the measures relate will be determined. In the course of the negotiations, it should be clarified, above all, whether the personnel impacts entailed by the grounds for dismissal or lay-offs mentioned in the negotiation proposal have been estimated correctly and whether the need for personnel reductions has been correctly proportioned.

When discussing the implications of the measures, attention should also be afforded to any stipulations in the collective agreement concerning the order of redundancies and the effects thereof on the targeting of the measures.

The negotiations should also address the impact of the measures on the position, work arrangements and training needs of employees who continue to work. Once the change negotiations have ended, the necessary changes must be made to the work community development plan referred to in Section 9 of the Act on Co-Operation within Undertakings.

The following are some of the questions personnel groups should pose in the negotiations:

1. What is the employer's assessment of the need for personnel reductions based on?
2. How are the employees affected by the redundancies determined? What concrete factors affect the allocation of measures between different employees?
3. What are the effects of the reduction and savings?
4. Who will do the work of those made redundant and/or laid off in the future? What will be left undone?

3.4 Alternatives for reductions and mitigation of the implications of the reduction

The negotiations should also address alternatives for reducing the workforce. The objective is to limit the number of employees affected by redundancies, layoffs and part-time layoffs and to mitigate the implications of the measure for the employees. The negotiations shall at the very least address the employer's possibilities of assigning other work or training required by same to employees under the threat of redundancy. Other alternatives for mitigating the consequences can be explored through questions such as:

1. Could another type of reorganization of work entail fewer redundancies?
2. Could the implications of the reduction for employees be mitigated, for instance, through work and working time arrangements or pension solutions? Or could there perhaps be employees in the company who would like to voluntarily transition to part-time work or study leave?
3. How should a possible reduction be implemented? E.g., will some employees be laid off completely or all of them on a part-time basis, will employees be laid off for entire weeks or on a part-time basis? What are the effects of the different measures on unemployment security?
4. Must annual leave be taken (to the extent that the employer may order same to be taken under the Annual Leave Act) during the termination notice period or will the corresponding holiday compensation be paid to the employee at the cessation of the employment relationship?
5. Do the employees who are being dismissed have an obligation to work during the termination notice period or can the notice period be used for active job seeking?

The employee representative or employee participating in the negotiations has the right to submit in writing proposals and alternative solutions to be discussed in the change negotiations. The proposal or alternative solution must be submitted in good time prior to the meeting. The proposal or alternative solution must be addressed in the negotiations.

Representatives of personnel groups are advised to be active and proactive in presenting alternatives. If employees are dismissed as a result of co-operation negotiations for financial and production-related reasons, the outcome of the negotiations should indicate that the dismissals to the extent feasible have been a measure of last resort, and that every effort has been exerted to avoid same.

3.4.1 Applying for your own position?

Sometimes during co-operation negotiations, the employer proposes that all the jobs affected by the change be declared open and that employees must apply for their own position, even if the dismissals have not yet been implemented. This should not be agreed to in the co-operation negotiations. Should the employer nevertheless proceed in this manner, it is not advisable to not apply for your own position. Such an application procedure does not remove the employer's statutory obligation to offer work and training. Pursuant to Chapter 7, Section 4 of the Employment Contracts Act, an employee must primarily be offered work corresponding to their employment contract as an alternative to dismissal.

3.5 Timeliness of negotiations and actualisation of dialogue

By virtue of its authority as the party conducting the business operations, the employer has the right to decide the activities that are carried out in the company, as well as the scope and manner of conducting same. However, the employer must fulfil its obligation to negotiate under the Act on Co-Operation within Undertakings before making a decision on the matters under negotiation, having an effect on the reduction of workforce. The actualisation of dialogue and adequate opportunities for personnel to influence require for the negotiations to be conducted in a timely manner, so that employee representatives are still able to influence the decision to be made. Until it has fulfilled the obligation to negotiate, the employer may not, for instance, make any management decision resulting in personnel reductions or any decision as to the number of dismissals. A decision made by the company exercising control over the employer is equated with the decision of the employer.

Supreme Court ruling KKO 2010:20

Following co-operation negotiations in the Finnish subsidiary of a Dutch parent company, the subsidiary had dismissed approximately 450 employees of its production facility. The subsidiary should have conducted co-operation negotiations before the parent company had made the final decision on the concentration of production within the group, entailing a substantial curtailment of the subsidiary's activities. The parent company was considered to have actually taken such a decision before co-operation negotiations within the subsidiary had commenced. In its capacity as the employer, the subsidiary had neglected its obligation to negotiate under the Act on Co-Operation within Undertakings.

See also Supreme Court ruling KKO 2010:8, TT:2011-73 and TT:2011-74.

On the other hand, co-operation negotiations cannot be conducted "just in case", in an effort to condone personnel reductions to be implemented at some point in the future. There must be a temporal connection between the reason and the measure. The preparation of the matter must have progressed to a stage where the employer is able to fulfil its obligation to provide information stipulated in Section 19 of the Co-Operation Act before the negotiations begin. If information is provided only orally and not until at the negotiation event, the interaction requirement provided for under the Act on Co-Operation within Undertakings may not materialize (Helsinki Administrative Court, ruling of 19 November 2015, No 1657).

It has, furthermore, been deemed in the case law that, in order to fulfil the obligation to negotiate, the employer must devise its own plan on how the business is to be organised and what the effects of same will be on the personnel. For the facilitation of the co-operation negotiations, the plan devised by the employer may also be detailed. The employer may also submit its own proposal for resolving the matter. However, the employer's plan should not be presented as the only possible solution, but, rather, the parties must be given the opportunity to propose other solutions in the course of the negotiations. (TT:2010-52).

The criteria, implications and alternatives to the negotiated solution must be discussed carefully and personnel must be given a bona fide opportunity to influence the decision to be made through presenting their knowledge, experience and viewpoints. The actualization of adequate interaction is a prerequisite for fulfilling the employer's obligation to negotiate. The Act on Co-Operation within Undertakings requires for the negotiations to be conducted in the spirit of co-operation in an effort to reach unanimity.

3.6 Negotiation periods

The employer is deemed to have fulfilled its obligation to negotiate when the negotiations stipulated under Chapter 3 of the Co-Operation Act have been conducted in accordance with the procedural provisions of the said chapter. If the change negotiations concern redundancies, layoffs, part-time layoffs or unilateral changes to an essential condition of an employment contract that are being contemplated on production-related or financial grounds, the negotiations shall be conducted for no less than the statutory period, being either 14 days or six weeks, unless otherwise agreed during the negotiations. The minimum negotiation period applicable is dependent on the estimated number of persons affected by the contemplated measures.

If the dismissals, layoffs, part-time layoffs or unilateral changes to an essential condition of the employment contract being contemplated by the employer pertain to under ten employees/salaried employees, or the employer is considering laying off employee(s) for no more than 90 days, the minimum consultation period is 14 calendar days from the commencement ofthe negotiations, i.e., from the first day of negotiations, including the commencement day.

If the redundancies, layoffs lasting more than 90 days, part-time layoffs or unilateral changes to an essential condition of the employment contract being contemplated by the employer affect no less than ten employees/salaried employees, the minimum negotiation period is six weeks.

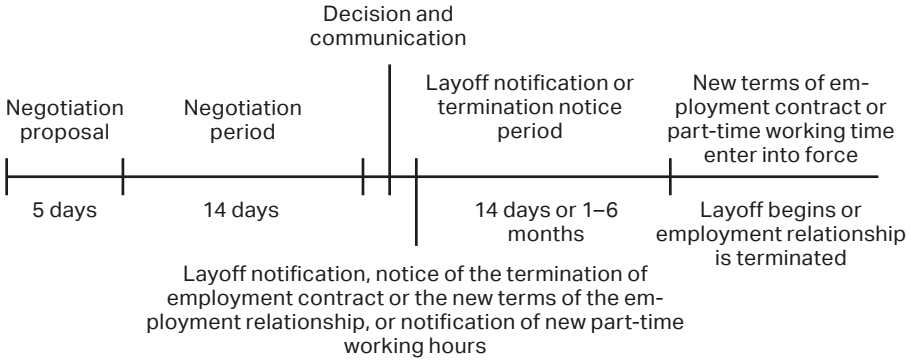
In an enterprise where the number of employees is regularly a minimum of 20 but less than 30, the negotiation period is always 14 days, regardless of the number of employees subject to the measures. The negotiation period is 14 days even when the company is undergoing corporate restructuring proceedings.

In certain collective agreements (e.g., technology industry, planning and consultancy sector, chemical industry), the deadlines for change negotiations have been agreed otherwise. In some collective agreements, the negotiation proposal period has been at least partially included in the negotiation periods or even deviations from the statutory negotiation periods (2/6 weeks) may have been agreed. For this reason, negotiation periods should always be verified from the applicable collective agreement. The negotiation period and/or fulfilment of the

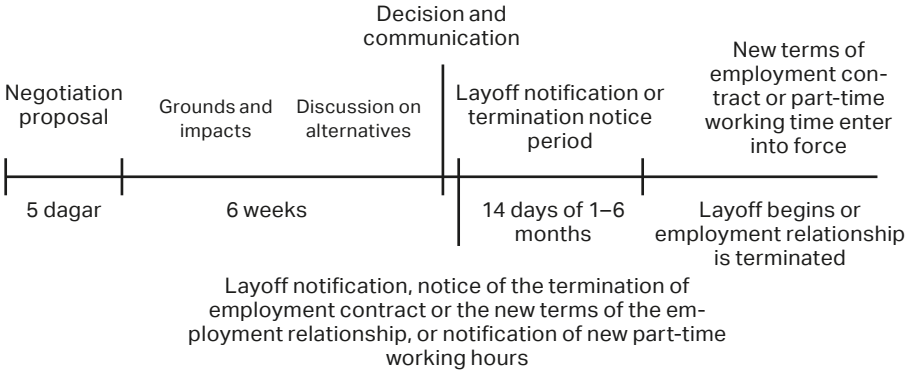
negotiation obligation may be agreed otherwise between the parties to the negotiations (Section 23 of the Co-Operation Act). However, it is advisable to conclude such an agreement only in exceptional cases, and before concluding the agreement, it is advisable to contact a trade union representative.
The employer may not divide the measures to be negotiated upon into smaller parts in order to avoid a six-week negotiation period, but, rather, the negotiation period is determined in advance according to the identified need for reductions and the total numbers (Supreme Court ruling KKO 1994:21).
The course of the negotiations as per the statutory negotiation schedule may be illustrated by the following diagrams:

Negotiation period

a) an enterprise with under 30 employees, or
b) an enterprise with a minimum of 30 employees where dismissals, layoffs, part-time layoffs or unilateral changes to an essential condition of an employment contract concern fewer than 10 employees or the employer is considering layoffs for up to 90 days
c) The employer is subject to restructuring proceedings



Negotiation period
(a) an undertaking with a minimum of 30 employees, where dismissals, layoffs of more than 90 days in duration, part-time layoffs or unilateral modification of an essential condition of an employment contract contemplated by the employer target no less than 10 employees



3.7 Negotiation levels and times

In referring to negotiation levels, what is meant is that the first stage involves discussing the reasons for and impacts of the need for a reduction, and once this has been carefully discussed, the next phase entails the consideration of the alternatives at the level of the individual. The Act on Co-Operation within Undertakings does not stipulate any minimum number of negotiation rounds, but the actualisation of the purpose of the Act always requires several rounds of negotiations, the timetable for which is agreed upon in the action plan referred to in paragraph 2.3.

It has often been held that one negotiation round per one level of negotiation suffices (principle of exclusion of negotiation levels). In Supreme Court ruling KKO 1994:17, the reduction in the workforce had affected all units of a factory and personnel groups at a factory and approximately one third of the 600 employees. In that case, it was considered sufficient that the negotiations were conducted on a general level, and it was not necessary to name the persons to be made redundant already in the co-operation negotiations concerning the grounds, effects and alternatives of the redundancy.

However, the solution involved a fairly extensive measure, and no meaningful alternatives were left to be discussed at the individual level. According to the reasoning of the ruling, negotiations as to the effects of

and alternatives to measures to reduce the workforce may sometimes also require a detailed analysis of the employees who need to be made redundant and those who can be redeployed or trained. Therefore, if there are alternatives to the measures at the individual level, further negotiations concerning such alternatives at the individual level should take place after negotiations concerning personnel in general have taken place. The co-operation procedure would thus consist of two stages and levels. The second phase would involve a detailed examination of the redeployment, training, pension, etc. alternatives.

3.8 Confidential information

The Act on Co-Operation within Undertakings stipulates that confidential information includes:

- professional and trade secrets, consisting of:
  - financial information such as company contracts, marketing information and pricing policy
  - technical data (e.g., material compounds) or information on methods, computer programs, production volumes, formulae, customer registers or working methods
- information concerning the employer's financial position that is not public under other legislation and the dissemination of which would be likely to cause detriment to the employer or its business or a contractual partner
- information concerning corporate security and similar security arrangements, the dissemination of which would be likely to cause detriment to the employer or its business or a contractual partner

N.B.! The employer must inform the employee representative of the information that constitutes a business and trade secret and state that the information concerning the employer's financial standing and business security is confidential.

Furthermore, the following are confidential without any additional notice:

Information concerning the health, financial standing or otherwise personal status of a private person, unless the employee has given their consent to the publication and disclosure of such information.

N.B.! The employer can NOT declare change negotiations confidential in their entirety!

The employee representative has the right to process even confidential information with the employees concerned, but only to the extent necessary for those employees in order to achieve the purpose of the co-operation. The point of departure is the open processing of information among the personnel. However, employee representatives must emphasise to the workers concerned that the information is confidential and that the confidentiality obligation also applies to the individual worker.

If, for instance, an employer has announced in negotiations that it will cease the production of a particular brand and declares it to be a trade secret at that point, the employee representative has the right to discuss this matter with the employees concerned. Thereafter, employees who have received the information are also bound by the confidentiality obligation.

In terms of the Act on Co-Operation within Undertakings, the business secrets of listed companies are, as a rule, in the same position as other trade secrets. Inside information is secret until a stock exchange release is issued.

3.9 Recording of negotiations

It is advisable for the representatives of personnel groups to always request that the employer keep minutes of the change negotiations as soon as negotiations commence. Additionally, employee representatives should take their own notes so as not to have to rely solely on their memory.

The following should be requested to be recorded in the minutes:

- negotiation dates and participants
- comments made by the parties
- requests for information from personnel groups and specific responses thereto
- issues on which there remains disagreement
- agreed matters

The minutes must not be a piece of paper that fails to make it clear what has been discussed in the negotiations. The representatives of personnel groups must ensure that no generic entries such as "discussed matter xx" or "the employer explained the grounds for the need for redundancies" are left in the minutes. The minutes must indicate what

was discussed and what the reasons for the need for reductions are.

Those participating in the negotiations shall sign the minutes and thereby attest to that the negotiations have been conducted in the manner indicated in the minutes. If the minutes do not correspond to the negotiations, they should not be signed by the representatives of the personnel groups, and, rather, the representatives should require for the minutes to be supplemented/corrected. In case even after this, the minutes fail to correspond to the course of the negotiations, they must devise their own parallel minutes of meeting.

3.10 Adjournment of negotiations

The employer may adjourn the change negotiations once the following have been addressed therein:

- the grounds for and effects of the contemplated measures;
- an action plan or principles for action;
- alternatives to reducing the workforce, and
- ways to mitigate the implications of the reduction.

An additional prerequisite for the adjournment of the negotiations is for the negotiation period stipulated under the Act on Co-operation within Undertakings to have been fulfilled or for the adjournment of the negotiations to have been previously agreed upon with the representatives of the personnel.

3.11 Communication of the decision

The employer may only begin to implement matters that remain in disagreement after presenting the representatives of the personnel groups with a general report on the decisions to be considered on the basis of the negotiations. At this stage, the decision is typically still under consideration. The report must indicate the number of employees to be made redundant or persons subjected to other measures by personnel group, the duration of the layoffs and the period within which the employer intends to implement its decision to reduce the workforce. At the request of a representative of a personnel group, the report must be provided to the employees belonging to the personnel group jointly.

Communication plays a vital role throughout the co-operation process. The lack of information fuels uncertainty and rumours take over where communication does not exist or fails. It is particularly important to agree on how information is to be provided once the procedure has been completed. Information must be communicated simultaneously to all employees.

Persons, typically supervisors, should be trained in what and how they should tell employees who are being dismissed or laid off. Supervisors should explain to employees being dismissed/laid off how the terms of employment behave during the layoff/termination notice period (e.g., what happens to the "existing" leave days, what happens to the phone/computer benefit, company housing and various production-related bonuses, etc.). Since the absorption capacity of persons in the event of dismissal is limited, this information should be provided in writing.

As concerns matters encompassed by the change negotiations other than the reduction of workforce, layoffs, part-time layoffs or unilateral

changes to an essential condition of an employment contract, the decision regarding same and the estimated timing of the change shall be provided within a reasonable time period.

3.12 Validity of the outcome of the change negotiations

The main principle is that there is no need to re-negotiate something that has already been negotiated. When invoking change negotiations that have already taken place, the employer is bound by the financial and/or production-related reasons that were discussed in the negotiations. An employer cannot dismiss employees on production-related and/or financial grounds the reasons for, effects of and alternatives to which have not been discussed in the change negotiations. The longer the duration of the negotiations, the weaker the material link between the measure taken by the employer (dismissal, layoff, part-time layoff, unilateral change of an essential condition of the employment contract) and the grounds set out in the negotiations becomes.

When implementing redundancies, the employer is bound by the grounds discussed in the change negotiations, and the employer cannot make reference to the conducted change negotiations when dismissing employees for such financial or production-related reasons, the grounds for, effects of or alternatives to which have not been negotiated upon. If the change negotiations were conducted owing to the cost-saving needs related to the company's operations being unprofitable, the employer cannot make reference to the negotiations when laying off employees, for instance because of a subsequent decline in demand and the ensuing reduction in production.

On the other hand, the employer also has a certain anticipatory obligation regarding future redundancies and must ensure that the negotiations concerning changes are conducted well ahead of time so that the personnel or their representatives are afforded sufficient opportunities to influence the decision to be made and its scope. However, change negotiations must be concluded within a fair and reasonable period of time and cannot be kept pending "just in case".

4. SUPPORT PACKAGES TO BE AGREED IN THE EVENT OF DISMISSALS

4.1 What is a support package?

A support package, a severance package and a social package mean the one and the same (in this guide, we shall only be using the word "support package" from now on). In the event of dismissal, this is a benefit the employer distributes to its employees that exceeds the level of statutory benefits. Essentially, the concept of a support package encompasses everything that is paid for by way of a separate agreement on top of the salary for the notice period and the final account stipulated under the relevant collective agreement or the legislation.

4.2 When am I eligible for a support package?

Support packages are most often paid in situations where a company dismisses one or more employees on production-related and financial grounds. It is also not uncommon that when an employer and an employee agree that the dismissal will not be contested, they also agree on the severance compensation to be paid to the employee. Sometimes a joint agreement on termination of employment, i.e., a so-called termination agreement, can also be made as an alternative to termination. Termination agreements shall not be discussed in detail in this guide, albeit they contain elements similar to the support packages offered in the event of dismissals.

4.3 Can I claim a support package based on the law or invoke valid industry practice?

Support packages are not based on the law, and so the payment of same is voluntary for employers. However, support packages should be brought up in change negotiations as a way to support those to be made redundant.

4.4 At what point should the discussion concerning a severance package be commenced?

Support packages are discussed in change negotiations when it is already becoming apparent that redundancies are not entirely avoidable. The primary purpose of change negotiations is to avoid having to reduce the workforce altogether or at least to minimise the number of redundancies or layoffs. If redundancies cannot be completely avoided, the discussion will shift to what the employer can do for the employees to mitigate the implications of the action taken by the employer. Support packages are one way of mitigating such implications. Achieving a support package requires the exertion of efforts and time. The best possible outcome is, indeed, usually achieved when the negotiation concerning the support package is not left to the final stage of the negotiations.

4.5 Where can I find information on already agreed support packages?

There are plenty of models of support packages that have already been agreed in the trade unions, and these can be used as a tool for devising the contract best suited for each situation. Companies are different, and so each company should devise its own individual contract. The drafting process also has an engaging effect.

4.6 Which matters are agreed in support packages?

The content of support packages varies considerably. Some merely stipulate on a few things, while others are very extensive. Listed below are the things that have been agreed in support packages.

Severance pay

Severance pay typically refers to a lump sum determined by the duration of the employment relationship.

In one support package, severance pay was effected as follows:

When the employment relationship had lasted less than a year, the person received 1 month's extra salary, 1–3 years of employment brought three months extra, 3–5 years 4 months, 5–8 years 4.5 months, 8–12 years of employment 5.5 months, 12–20 years 6.5 months and over 20 years 7.5 months extra salary.

In another support package, it was agreed that 95 % of the salary paid during the notice period would be paid as severance pay.

Those to be dismissed may be paid a certain amount of compensation in euros per each full year of service. One company had agreed that the amount in question would be EUR 400. It has also been agreed that each employee will be paid a severance payment equal to a week's salary for each year of service. With a few exceptions, there have been no agreements in Finland where the money has been tied to age, i.e., the older the person in question, the higher the compensation payable.

The contract must clearly state how the salary on which the severance pay is based is determined. The basis for compensation may, for instance, be the person's regular monthly salary or the income on which earnings-related daily allowance is based. The latter has served as a fair method of calculation, especially for shift workers.

When agreeing on severance pay, it must also be agreed whether the severance pay will be paid monthly in the nature of salary or in full as a lump-sum compensation. When deciding on the matter, the impact of the severance pay on the so-called accrual period preceding the commencement of the payment of earnings-related daily allowance must also be considered and, where necessary, the experts of the unemployment fund must be consulted in order to find the optimal solution. The method of payment of severance pay may also have an impact on pension accrual. You should contact your pension insurance company concerning this.

The contracts should also include a mention of how severance pay will be affected, if the employee finds new employment during the termination notice period and wishes to change jobs immediately. Similarly, matters to also be agreed include how the severance pay will be paid, for instance, in the case of family leave, job alternation leave, posting abroad or on long sick leave.

Work obligation/motivation bonus

The employer may relieve an employee from the obligation to work either for the entire period of notice or for part of the notice period. It is always advisable to agree on the matter in writing (Supreme Court ruling KKO 2010:95). The employer remains under the employer's obligation to pay wages throughout the notice period, regardless of the obligation to work.

In the event of dismissal, work motivation inevitably decreases. It is in the employer's interest to motivate employees to perform well despite the difficult circumstances. For this reason, in some situations the employer, indeed, pays a special bonus or incentive money for the termination notice period (again, this can also be referred to by several different names).

In one contract, it had been agreed that the employer would pay a bonus of EUR 30 per day until the end of the notice period. However, what is almost invariably agreed upon is a percentage compensation, such as an increase of 20 % or 40 % in salary for the entire period of notice. It is known that during the period of notice, some employees manage to find new work and leave before the period of notice has elapsed. The employer sometimes attempts to protect itself against such a course of action by agreeing to pay a progressive bonus for the notice period (e.g., 20% for the first month, then 30% and 40% or 50% for the remaining months).

As concerns the motivation bonus, it is important to agree unequivocally on the ground rules, such as how sickness absences, employment-seeking leave and other absences affect the bonus. Employees need to know how they can themselves influence the payment of the bonus. The contract must unambiguously state the determination of the basis for payment, such as the income from which the above-mentioned percentages are calculated. The basis for the payment may be the monthly salary or, for instance, the wage income based on which earnings-related daily allowance is calculated, as was also mentioned above as the basis for the payment of severance pay.

Employees nearing retirement age

The negotiations should aim to ensure that the employment relationships of employees nearing retirement age could continue until the statutory retirement age. This is because it is difficult for older individuals to find new employment.

If it is not possible to continue the employment relationship until retirement age, the dismissal should be timed so that the person has the opportunity to benefit from additional days of unemployment security or, once these are no longer available, to transition to old-age pension after the maximum period of unemployment security has passed. The

termination of employment relationships of employees nearing retirement age may, therefore, be to the extent possible and necessary be agreed to be postponed until the above-mentioned opportunity actualises. Such agreements should be made personally for each individual entering the pension pipeline. The actual dismissal is then carried out in accordance with customary practice and notice period, at the end of a "transition period" agreed by the employer.

Supporting training

In addition to the statutory training or education that promotes employment, employers may also organise or pay for courses that maintain and improve professional skills on a wider scale, which those under the threat of redundancy or those who have already been made redundant can attend during working hours or, at the latest, during the termination notice period. Such courses include hot work card courses, various IT and language courses, forklift courses, etc. The aim is to commit the employer to providing financial support for obtaining and diversifying training that supports re-employment, alongside the statutory change security.

In some support package agreements, it has been agreed that an individual training plan will be devised for each person and that the company will pay the portion of the training costs that cannot be obtained through the labour authorities.

Supporting entrepreneurship

There is a variety of ways in which companies can support their former employees who are starting a business. Employers can, for instance, extend the new entrepreneur a start-up grant. There was a case in which the employer paid a new entrepreneur a start-up grant of EUR 10,000.

Employers have also committed to e.g., selling end-of-life machinery and equipment to redundant persons at prices of 10 % below the market price. There are also support package agreements where it has been agreed that former employees who become entrepreneurs will be prioritised as subcontractors of the company that made them redundant. It is important that e.g., training periods supporting the starting of a business do not restrict the right to receive such business support. In other words, it may be advisable to tie the obtaining of support to the

date of dismissal for each person individually, rather than to the conclusion of the change negotiations. This is particularly the case where redundancies are to be made gradually. For instance, the contract may contain the phrase: "Business support shall be available for a period of two years from the date of dismissal."

Rehiring obligation

According to the Employment Contracts Act, the employer has a re-hiring obligation for four months from the end of the employment relationship, if the employment relationship was terminated for production-related and/or financial reasons. However, if the employment relationship has lasted without interruption for a minimum of 12 years, the rehiring period is six months. In some contracts, the rehiring period has been extended beyond the statutory periods. Sometimes the rehiring obligation has also been extended to encompass the entire corporate group.

Relocation allowances

Sometimes a company closes down its operations in a particular locality but offers employees a job in another unit. At times employers have enhanced their job offer with various relocation allowances. For instance, companies may undertake to cover the cost of moving or to assist employees in finding rental housing. Also the rent security deposit is often paid for by the employer. In one particular case, the company paid the workers a flat-rate relocation allowance of EUR 5000 and undertook to reimburse the costs of the move. Companies can also organise various excursions to the new place of work and promise employees paid leave for the day of the move.

Company housing

If the person to be made redundant is living in a company apartment, it is often agreed in the support packages that the employer arranges for the leases to be assigned to the employees and pays any new rent security deposits. In some situations, it has been agreed that a person has the right to continue living in their company apartment from six months to a year even after the termination of the employment relationship. In some cases, the company has rented out apartments and subleased them to its employees.

Practices for implementing statutory change security at the workplace

The support packages also include provisions on the use of employment-seeking leave. The matters to be agreed include the timetable for agreeing with the employer on the use of the intended leave and whether the dismissed persons must tell their employer where they will be going for any job interview. Furthermore, it is possible to agree on the grounds for refusing employment-seeking leave and the records to be kept of the use of leave days.

Occupational healthcare

The statutory premise is that occupational healthcare is available to the employee throughout the employment relationship, i.e., until the end of the termination notice period. However, an employee made redundant on financial and production-related grounds continues to be entitled to occupational healthcare for six months after the cessation of the obligation to work. Thus, if the obligation to work continues throughout the employment relationship, the obligation to arrange occupational healthcare continues for 6 months after the end of the employment relationship. Such more extensive obligation to provide occupational healthcare applies to employees, whose employment relationship has lasted for a minimum of five years and whose employer regularly employs at least 30 employees. However, in certain contracts this right has been extended beyond the notice period, albeit there is no legal obligation to do so. In this case, the contracts have included the date until which occupational healthcare services are available to the dismissed persons.
The agreements may also provide for special health examinations for risk groups. In such cases, the manner in which the examinations are to be carried out and the working arrangements of the participants during the examinations shall be agreed.

Other considerations

In addition to the above, support packages have sometimes also included the following:

Personal work equipment

Salaried employees have access to various tools, such as mobile phones and computers. Agreements to redeem these at book value are common.

Effect of reduced work on wage accrual

When a production plant is shut down, this inevitably entails a situation where possible work shifts are dismantled and employees are transferred, for example, to work day shifts, only. This entails a decline in the level of earnings and, consequently, a decrease in future unemployment allowances. In such situations, it is sensible to agree that even if shift work ends, the level of earnings will not decrease.

Flexible working hours / balances

If the company applies flexible working hours, it is often agreed that the hours accrued at the end of the employment relationship will be paid out in cash and the minus hours will be reset.

4.7 Format of the support package agreement

The agreement must be made in writing and it must contain stipulations concerning at the very least the following:

- contracting parties
- persons covered by the agreement
- temporal limitations of the agreement
- agreed matters identified with sufficient clarity
- the wording of the agreement must correspond to the joint intention of the parties
- signatures
- attachments, if any

In addition, it is advisable to agree on who will interpret any disagreements arising from the agreement locally. It is essential for employee representatives to be able to have the opportunity to influence the interpretation of the agreement in the case of any disagreement.

4.8 Important to note when devising support packages

The benefits included in the support package, such as severance pay,

bonus, etc. are periodised in unemployment security as of the cessation of the employment relationship. During the periodisation, jobseekers are not entitled to unemployment benefits. The timing of payment of the benefit is irrelevant. The benefit may have been paid during the employment relationship, at the end of the employment relationship or after the end of the employment relationship. For instance, if the employer has paid the benefit for several months prior to the end of the employment relationship, the paid instalments are added together and the entire amount is accrued from the end of the employment relationship. If the benefit is paid significantly after the cessation of the employment relationship, the benefit may also be periodised from the date of payment. However, the outcome must be the same as if the periodisation were made from the end of the employment relationship.

The title of the benefit is irrelevant, but, rather, it is the true nature thereof that determines whether it is a benefit subject to periodisation. For instance, motivational allowances constitute benefits that are periodised, if the purpose of paying the benefit is to motivate employees to remain in the work during the termination notice period. A pay increase can also be regarded as a periodised financial benefit if it is not based on a collective agreement, work performed, modifications to the job description, work results or other similar reason. When assessing whether a benefit is income to be periodised or not, the unemployment fund pays attention to, for instance, the grounds for the payment of the benefit, whether or not the benefit would have been paid, had the employment relationship continued, whether the benefit is compensation for work performed or whether the member has previously been covered by a performance/bonus scheme.

Even if the periodisation of the support package were to preclude the payment of unemployment security, it is still important to immediately register with the Employment and Economic Development Office as an unemployed jobseeker and maintain the job search in force throughout the periodisation period. A support package is not a valid reason for absence from the labour market.

Determination of the unemployment allowance

Unemployment allowance is determined on the basis of the established salary. The benefits included in the support package do not constitute established salary, and so they are not taken into account in determining the unemployment allowance, even if they have been paid for several months before the end of the employment relationship.

Additional days of unemployment benefits

Unemployment allowance is usually paid for 300–500 days. Additional days refer to the right to earnings-related unemployment allowance after this maximum period. Entitlement to additional days is subject to reaching the required age before the end of the maximum period.

In order to be eligible for additional days of unemployment security, salaried employees must register with the Employment and Economic Development Office as an unemployed jobseeker immediately once the employment relationship ends.

An employee born between 1957 and 1960 is entitled to additional days of unemployment security if they have reached the age of 61 before the end of the maximum period of earnings-related daily allowance. Jobseekers born between 1961 and 1962 may, notwithstanding the maximum period, be paid daily allowance if they have reached the age of 62 before the maximum period expires. Persons born in 1963 must turn 63 and those born in 1964 must turn 64 before the end of the maximum earnings-related unemployment allowance period to be entitled to additional days. In addition to the age requirements mentioned above, the jobseeker must possess a work history of no less than five years during the past 20 years. The possibility for extra days is not at all available to those born in 1965 or later.

Additional days of unemployment security can be paid up to the end of the calendar month in which the employee turns 65. Persons entitled to additional days can retire on an old-age pension already at the age of 64 without deduction for early retirement.

At the beginning of 2023, the abolition of additional days of unemployment security was replaced by a new change security package for those aged 55 or over. Subject to certain conditions, those encompassed by change security are entitled to a change security allowance, training and extended employment-seeking leave. The change security allowance is a one-off compensation corresponding to approximately one month's salary. Change security training can last up to 6 months and its value corresponds to approximately two months' salary. Employment-seeking leave, on the other hand, lasts 5 days longer than usual.

To be covered by change security, the person must have been dismissed for production-related or financial reasons on or after 1 January 2023, the person must have turned 55 by the time of dismissal, they must have been employed by the same employer for a minimum of 5

years and they must have registered as a jobseeker at the Employment and Economic Development Office within 60 days of the dismissal.

5. SANCTIONS

5.1 Compensation

An employer may be ordered to effect compensation referred to under Section 44 Act on Co-Operation within Undertakings to an employee who has been dismissed, laid off, laid off on a part-time basis or subjected to a unilateral change in an essential condition of the employment contract, provided the employer has, intentionally or negligently, failed to comply with any of the following provisions of the Co-Operation Act :

- timing of the change negotiations (Section 17)
- parties to the change negotiations (Section 18)
- negotiation proposal and provision of information (Section 19)
- content of the change negotiations (Section 20)
- action plan and principles for action (Section 21)
- fulfilment of the obligation to negotiate (Section 23)

The employer's conduct may be deemed to have been negligent even if the employer has failed to comply with the provisions of the Act on Co-Operation within Undertakings unknowingly. Inadequate knowledge of the law does not release from the liability to effect compensation.

The prerequisite for compensation liability is for the employee to have been dismissed, laid off, laid off on a part-time basis or for an essential condition of their employment contract to have been changed for financial, production-related reasons or reasons related to the reorganisation of the employer's operations.

Compensation liability may arise regardless of whether or not the employer had the grounds provided for under the Employment Contracts Act for carrying out the said measure. Also an employee who has been dismissed, laid off, laid off on a part-time basis or subjected to a unilateral change in an essential condition of the employment contract may claim compensation.

Each of the employees affected by such measures has an independent right to claim compensation. Currently, the maximum compensation that may be awarded amounts to EUR 35,000. The maximum amount of compensation is adjusted every three years by a government decree in line with changes in the value of money. The compensation constitutes tax-exempt income for the employee.

The amount of compensation is contingent upon the nature and extent of the breach of obligation and its reprehensibility, the employer's efforts to remedy its course of action, the nature of the measure directed at the employee, the employer's circumstances in general and other comparable factors. There may also be factors other than those mentioned above to consider. The graver the procedural offence, the greater the compensation must be. "Employer's circumstances" refers above to the size of the employer. A large employer may be expected to exhibit a higher level of expertise than a small employer. The compensation to be imposed payable by a small enterprise may be lower than that imposed on a large enterprise in similar circumstances. An additional consideration to be borne in mind in determining the amount of compensation, is whether the amount of compensation would jeopardise the continuation of the company's operations. In the event of dismissal, the compensation should be higher than in the case of layoffs or part-time layoffs. Similarly, a long-term employment relationship supports higher compensation than a short-term employment relationship.

If the employer's omission can be regarded as minor, considering all the relevant circumstances, compensation may not be awarded at all. For instance, failure to submit a negotiation proposal is not, however, considered a minor omission (Supreme Court ruling KKO 1994:118).

Compensation must be claimed by means of an action brought before a court of law within the designated time period for same. In cases where the employment relationship continues (situations concerning part-time layoffs, layoffs and unilateral changes to an essential condition of the employment contract), the action must be brought within two years of the end of the calendar year during which the right to compensation arose (commencement of the layoff or part-time layoff or entry into force of the change to an essential condition of the employment contract). After the cessation of the employment relationship, the action must be filed within two years of the cessation of the employment relationship. In case compensation is not claimed within the designated time period for bringing the action, the right to compensation lapses.

5.2 Penalty fine

Intentional or negligent breaching of certain obligations stipulated in the Act on Co-Operation within Undertakings, despite an exhortation

from the Co-Operation Ombudsman, entails criminal liability in accordance with Section 46 of the Act on Co-Operation within Undertakings. The provision contains an exhaustive 6-point list of the obligations the breach of which may give rise to a penalty fee:

1. failure to organise the minimum number of dialogue meetings provided for in Section 7(1),
2. failure to engage in dialogue on matters referred to in Section 8,
3. failure to devise or maintain the development plan for the work community referred to in Section 9,
4. failure to provide the necessary information referred to in Section 10 for the purpose of the dialogue,
5. failure to comply with its disclosure obligations referred to in Section 11(1)–(3), or
6. failure to address an initiative referred to under Section 13(2).

The actions of the employer's representative are negligent if they have failed to comply with the provisions of the Act on Co-Operation within Undertakings, even though they would have been able to comply with same.

An employer or its representative who intentionally or negligently breaches the disclosure obligation stipulated under Section 26 (Provision of information to employee representatives) or Section 28 (Merger and de-merger) or the obligations stipulated under Section 35 (Exemption from work and compensation) or in Section 36 (Right to retain experts) or in a manner other than that referred to under Section 44 defaults on its obligations stipulated under Sections 17 through 20, 22 or 23 (i.e., the situations referred to in Section 16(2) → matters being contemplated by the employer falling within the scope of its supervisory authority which, under the old Act, were to be negotiated upon but any failure to do so could not result in compensation). Consequently, a penalty fee may be imposed, for instance, for failure to comply with the disclosure obligations concerning transfers of businesses and mergers and de-mergers of undertakings (Sections 26 and 28 of the Co-Operation Act) or in the event of a breach by the employer or its representative of the provisions concerning the right of representatives of personnel groups to have access to experts and the right of representatives of personnel groups and experts of the undertaking to be granted leave from work for carrying out the duties stipulated under the Act on Co-Operation within Undertakings, and co-operation training (Sections 35 through 36 of the Co-Operation Act).

Where necessary, trade unions provide additional information concerning reporting an offence in a matter concerning a breach of the Act on Co-Operation within Undertakings. In practice, reports of breaches of the Act on Co-Operation within Undertakings have seldom been made.

5.3 Coercive measures

If the employer fails to comply with its disclosure obligations under sections 10–11 of the Act on Co-Operation within Undertakings, the court may, at the request of a representative of the personnel group and having given the employer the opportunity to be heard, obligate the employer to fulfil the obligation in question within a designated time period and impose a conditional penalty fine to enforce compliance with the obligation. The representative of a personnel group may request the imposition of a so-called interim measure such as this in order to fulfil the employer's information obligations:

- Information on the company's financial standing (Section 11(1) of the Co-Operation Act)
- Information on the company's employment relationships (Section 11(1) of the Co-Operation Act)
- Salary information (Section 11(2) of the Co-Operation Act)
- A description of the company principles governing the use of external workforce (Section 11(2) of the Co-Operation Act)

Failure to address the work community development plan provided for in section 9 of the Co-Operation Act also involves a similar procedure. If it is evident that the work community development plan cannot be processed in the co-operation procedure referred to in Chapter 2 of the Co-Operation Act, the Co-Operation Ombudsman may, at the request of the notifier, issue an exhortation to the employer to fulfil the obligation, and if the employer fails to comply with the exhortation, the Co-Operation Ombudsman may submit a request for investigation to the police, in practice as concerns situations and omissions other than one-off situations and omissions (e.g. the employer may have neglected to provide information on the use of external workforce in a specific case). In these situations, the representative of a personnel group does not have the right to apply for an interim measure. However, the representative of a personnel group and any individual employee may report the employer's conduct to the Co-Operation Ombudsman.

In practice, there have been hardly any criminal reports of violations of the procedural rules of the old Act on Co-Operation within Undertakings. The very few criminal offences that have been reported have mainly pertained to the introduction of technical monitoring systems without a co-operation procedure. No requests have been made to file criminal reports in relation to any omissions concerning the disclosure obligation under Chapter 2 of the Act on Co-Operation within Undertakings that entered into force at the beginning of 2022. It is noteworthy that technical supervision is now subject to dialogue, and only after an exhortation has been issued to the employer can a request for an investigation be considered at all. Since the entry into force of the new Act on Co-Operation within Undertakings, no such notifications have been processed by the Office of the Co-Operation Ombudsman.

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