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**Global Employment Webinar Series**

# **Managing Collective Redundancies: Latin America & the Caribbean**

Thursday 26 November 2022

9am PST | 12am EST | 5pm GMT | 6pm CET

Grow | Protect | **Operate** | Finance



# Welcome

## Your speakers today



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# Agenda

- Introduction
- Key features – Colombia, Argentina & Chile
  - Timing
  - Impact of trade unions and CBAs
  - Severance / redundancy payment
  - Risks / penalties
  - Special protection against dismissal
- Other LAC Jurisdiction Highlights
- Q&A



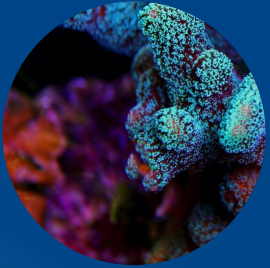


# Key features

<b>Colombia</b>	<b>Type of proceeding to be followed</b>									<b>Control Authority</b>
<b>Timing</b>	<ul style="list-style-type: none"> <li>• Authorization from the Ministry of Labor before proceeding with the dismissals.</li> <li>• The law provides a 2 months term to resolve the petition of authorization but in practice such term could be higher.</li> </ul>									Ministry of Labor
<b>Impact of trade unions and CBAs</b>	<ul style="list-style-type: none"> <li>• Employees need to be notified in writing by the employer simultaneously with the filing for the authorization request.</li> </ul>									
<b>Severance / redundancy payment</b>	<p>Authorization obtained: Payment of severance (legal/CBA)</p> <ul style="list-style-type: none"> <li>• INDEFINITE: <ul style="list-style-type: none"> <li>- Monthly salary below 10 mlmw: 30 + 20 (proportion)</li> <li>- Monthly salary equal or higher than 10 mlmw: 20 + 15 (proportion)</li> <li>- 10 years of services -Dec, 2022: 45 + 40 (proportion)</li> </ul> </li> <li>• FIXED OR FOR THE DURATION OF THE JOB: Salaries for the pending period (not less than 15 days).</li> </ul>									
<b>Risks / penalties</b>	<ul style="list-style-type: none"> <li>• Collective dismissals without the prior authorization from the Ministry of Labor: will have no effect.</li> <li>• Reinstated to their jobs with payment of all the labor obligations caused between the dismissal and the reinstatement.</li> </ul>									
<b>Special protection against dismissal</b>	<b>Pregnancy</b>	<b>Maternity leave</b>	<b>Paternity leave</b>	<b>Adoption leave</b>	<b>Disabled employees</b>	<b>Works council members</b>	<b>Trade union reps</b>	<b>Age (pre-pension)</b>	<b>Health</b>	<b>Other- Parent head of family</b>
	✓	✓	✓	✓	✓	✗	✓	✓	✓	Single responsible parent with minor or disabled or sick child or dependant



# Venezuela



- Bar against dismissal (Dec.,2024). Just cause and previous authorization required.
- Employees may claim reinstatement and pending payments of severance (imprisonment and fines if not adopted).
- Mass-layoff (3 months- dismissal of a % of the employees in relation to total number of employees).
- Ministry of Labor may order to stop or suspend the action (imprisonment and fines if not adopted).
- Authorization for downsizing- economic circumstances or technological advances or modifications. Difficult to be obtained.

# Costa Rica

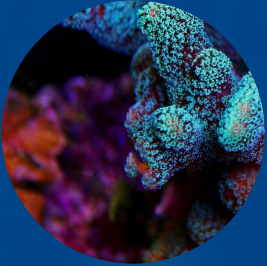


- No authorization or consultation is required to perform a reduction in force. No special rules for collective redundancies nor authorization from trade unions apply.
- Employees unilaterally terminated are entitled to severance and other accrued labor benefits.
- Dismissed special protected employees can file a labor lawsuit and claim payment of damages and reinstatement.
- The Ministry of Labor can initiate investigations against the employer in case of dismissal of special protected employees.

Argentina	Type of proceeding to be followed										Control Authority
<b>Causes of collective redundancies</b>	<p><b>1.- Economic; force majeure and/or decrease of work not attributable to the employer</b></p> <ul style="list-style-type: none"> <li>Mandatory filing of a Crisis Preventive Procedure when these causes are invoked affecting (i) 15% of payroll in companies with less than 400 employees; (ii) 10% of payroll in companies with more than 400 but less than 1000 employees; (iii) 5% in companies with more than 1000 employees.</li> <li>Dismissals must start with employees with less seniority and less family dependents if hired in the same semester.</li> </ul> <p><b>2.- Other causes</b></p> <ul style="list-style-type: none"> <li>This mandatory proceeding is not applicable, and no legal restrictions apply. However, the social and political context must be considered for conducting redundancies and avoid risks.</li> <li>In case of collective suspensions, a maximum term of 75 days in a year must be respected</li> </ul>										<p>1. Ministry of Labor or local/provincial delegations – the filing must be prior to take any measure – employer to prove these exceptional causes</p> <p>2. Ministry of Labor’s intervention is highly recommendable for obtaining formal approval of termination</p>
<b>Impact of trade unions and CBAs</b>	<ul style="list-style-type: none"> <li>The intervention of the Representative Union is mandatory when filing the Crisis Preventive Procedure for invoking the above-mentioned causes (economic/force majeure).</li> <li>If these causes are not invoked , it is recommended to keep the union informed and participating in case of collective dismissals for avoiding potential negative effects (i.e., strikes; reputational exposures; etc.)</li> <li>Unemployment high rates plus the current social and political scenario are factors that make unions react for defending employment sources.</li> </ul>										Ministry of Labor
<b>Severance / redundancy payment</b>	<ul style="list-style-type: none"> <li>Employment law (section 247) provides a 50% reduction of regular severance when economic causes are alleged for termination – courts are extremely severe in conceding this reduction.</li> <li>Regular severance is basically 1 monthly salary per year of services or fraction over 3 months plus prior notice and wages due</li> <li>Regardless of the mandatory payments, conceding additional benefits (i.e., health care; bonus; etc.) are usual “sweeteners” for ensuring the employee’s/union’s consent and a successful completion of collective dismissals</li> </ul>										Formal approval from the Ministry of Labor is essential for obtaining the “ <i>res judicata</i> ” effect – Spontaneous appearance before a court of law is also used depending the cases
<b>Risks / penalties</b>	The omission in complying with the above-mentioned requisites exposes the employer to fines imposed by the Ministry of Labor (due to labor infractions); labor litigation (lengthy and costly) and reputational risks (i.e., possible direct measures taken by the unions in case of violation of employees' rights).										
<b>Special protection against dismissal</b>	Pregnancy	Maternity leave	Paternity leave	Adoption leave	Disabled employees	Works council members	Trade union reps	Age	Work related sick leave	Other	
	✓	✓	✗	✗	✓	✗	✓	✗	✓		



# Ecuador



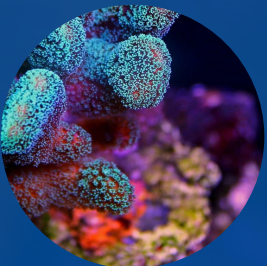
- No specific rules governing collective dismissals.
- General rules for individual terminations apply (basically 1.25 month per year of services, minimum 3 monthly salaries).
- Protection against discrimination, pregnancy, etc., could make the employer liable for reinstatement or pay additional charges.
- Dismissals of union representatives are forbidden. They can claim for reinstatement or choose receiving an additional severance of 12 monthly salaries.

# Brazil



- No statutory rules – dismissal is valid on condition pre notice is given and severance is paid (release of unemployment fund deposits plus a 40% fine; vacation payments; wages due) .
- Although negotiation with the union is not mandatory, labor courts may request prior knowledge for considering collective dismissals valid and the company should allow a possible union's intervention.
- Risks are mainly related to litigation (union claims requesting nullity of dismissals and reinstatement an employees claims for unfair dismissal).
- Special protection for pregnancy; maternity, paternity & adoption; union representatives; some CBAs may also give protection to age and work related sick leaves.

# Uruguay



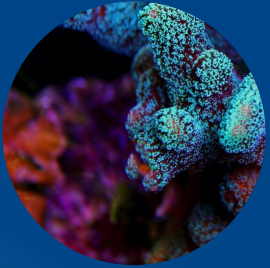
- No specific regime for collective dismissals. However, approach with the union is advisable for avoiding adverse consequences. Severance due is 1 month per year of services with a maximum cap of 6 months.
- Dismissals due to union related reasons are null and the only situation in which reinstatement is allowed, unless the employer can demonstrate a reasonable reason for the dismissal that is related to the employee's capacity or behavior or that is based on needs of the business, establishment, service, or other entity.
- Special protection is given to pregnancy, maternity, gender violence, disability.



Chile	Type of proceeding to be followed									Control Authority
<b>Causes of Collective Redundancies</b>	<ul style="list-style-type: none"> <li>• There are no statutory provisions that regulate Collective Redundancies or its procedure, nor is there an obligation to notify a specific authority</li> <li>• All redundancies dismissals in the Chilean legislation are based on the same legal ground: “<i>business needs</i>”. To demonstrate the <i>business needs</i> ground, the employer must prove that there are external factors that make the dismissal necessary (i.e. economic crisis, loss of clients, internal debts or lack of any profitability, etc.).</li> </ul>									Chilean Labor Bureau / Chilean Labor Courts  * <u>Only in highly critical dismissal process</u> : The Chilean Labor Ministry
<b>Impact of trade unions and CBAs</b>	<ul style="list-style-type: none"> <li>• Unions cannot legally oppose collective redundancies processes, nor do they need to be consulted about them. Having that said, because they are a relevant actor in any labor relationship, engaging unions in the decision process is highly recommendable.</li> </ul>									Chilean Labor Bureau / Chilean Labor Courts
<b>Severance / redundancy payment</b>	<ul style="list-style-type: none"> <li>• <b>Severance</b>: monthly salary for each year or fraction thereof in excess of six months worked for the employer, up to a limit of 11 years, and provided a cap of UF 90 per salary (as of this date USD \$3,940)</li> <li>• <b>Payment in lieu of notice</b>: monthly salary, provided a cap of UF 90 (as of this date USD \$3,940)</li> <li>• <b>Unused vacation time</b>: the employee will also be entitled to receive the cash equivalent of a pro rata portion of any unused vacation time due him for the year in which he is terminated</li> </ul>									Chilean Labor Courts
<b>Risks / penalties</b>	<ul style="list-style-type: none"> <li>• <b>Unfair dismissal</b>: 30% premium in the amount to be paid due to severance</li> <li>• <b>Violation of fundamental rights</b>: 6-11 salaries, depending on the severity of the infraction + plus a two-year prohibition to participate in a public bidding with the Chilean Government.</li> </ul>									Chilean Labor Courts
<b>Special protection against dismissal</b>	Pregnancy	Maternity leave	Paternity leave	Adoption leave	Disabled employees	Works council members	Trade union reps	Age	Work related sick leave	Chilean Labor Courts
	✓	✓	✗	✓	✗	✓	✓	✗	✓	



# Peru



- There are statutory provisions that regulate Collective Redundancies and its procedure. The control authority is the Labor Ministry, who must approve of the redundancy process whenever the dismissal exceeds 10% of the company.
- If a Union exist, employer must notify them whenever the dismissal exceeds 10% of the Company. Even though the law only requires notification, in practical terms, consent from the union is necessary.
- Severance payment is 1,5 monthly salaries per years of service, capped at 12 years (18 salaries).
- For the approval of the Ministry of Labor, there is no minimum payment, which makes it very difficult to actually obtain this authorization.

# Bolivia



- There are no statutory provisions that regulate Collective Redundancies or its procedure, nor is there an obligation to notify a specific authority. Having that said, notifying the Ministry of Labor is highly recommendable.
- Unions cannot legally oppose collective redundancies processes, nor do they need to be consulted about them. Having that said, because they are a relevant actor in any labor relationship, engaging unions in the decision process is highly recommendable.
- Severance payment is 1 month salary for each year worked, without any cap.
- If the employee challenges his/her dismissal, and wins in Court, he/she must be automatically reinstated





**Q&A**



# How can Dentons help?

Experience in conducting global projects across multiple jurisdictions



**Strategic advice on how to operate for the best outcomes**



**Global footprint with immediate access to intimate knowledge of local law requirements, rules and practices**



**Strong project management delivery skills and track record**



# Value added services at your disposal

## Collective redundancy hub

This new web site section contains updates on recent developments from our global teams.

In particular, the **interactive tracker** provides quick and easy access to summaries of collective dismissal and redundancy rules; it now covers over 60 jurisdictions around the world.

Link to the Hub: [Dentons - Collective redundancy hub](#)

Link to Tracker: [Dentons - Global collective redundancy tracker](#)

**Collective Redundancy**  
Laws, rules and procedures relating to reductions in work force.

Managing a global workforce reduction programme while navigating local law requirements can be a complex process. This Dentons Collective Redundancy tracker provides quick and easy access to summaries of the collective dismissal and redundancy rules in more than 60 countries.

If you need any further assistance, please contact us. Please save this link to your website favorites for quick and easy access.

**Disclaimer:** The contents of this tool have been prepared in good faith as introductory guidance. This tool is not designed to provide legal or other advice. You should not take, or refrain from taking, action based on this content. Please use your own professional judgment and seek independent legal advice in case of questions.

Supported browsers: Google Chrome, Mozilla Firefox, Microsoft Edge, Apple Safari.

Select a location (country, state, etc.) or compare up to 3 different locations:

France Germany United Kingdom

If you want to get information about more locations, this is currently available through [generating a printable PDF](#).

Select key points (optional)

Go Reset

	France	Germany	United Kingdom
<b>Overview</b>			
1. Are there specific rules that govern collective dismissals or reductions in force?	Yes.	Yes.	Yes.
2. When would these rules apply?	Collective redundancy rules apply when an employer is proposing to make redundant 2 or more employees in the company. These rules are reinforced in case of contemplated dismissals of at least 10 employees over a 30-day period in companies having at least 50 employees.	In general, the collective redundancy rules apply if an employer: 1. has between 20 and 60 employees and dismisses more than 5 employees within a period of 30 days; 2. has between 60 and 500 employees and dismisses more than 10 employees within a period of 30 days.	Collective redundancy rules apply when an employer is proposing to make redundant 20 or more employees in one "establishment" over a 90-day period.  There are specific rules about the meaning of an "establishment". However, it usually refers to an individual branch, store or office location.

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Grow Protect Operate

**Collective redundancy hub**

Managing a global workforce reduction programme while navigating local law requirements can be a complex process. Leveraging our global legal knowledge from over 80 countries, and the experience of around 450 professionals operating throughout the world, we are perfectly placed to provide you with tools and insight which are truly global in scope.

**Global employment webinar series: managing collective redundancies**

In this series, our Dentons Global Employment and Labor team offers practical advice and guidance to help employers manage collective redundancy exercises across numerous regions.

**Global collective redundancy tracker**

This interactive tool provides quick and easy access to summaries of collective dismissal and redundancy rules in over 60 countries around the world.

Spotlight on:

September 28, 2022  
**Stricter measures to prevent company closures and collective dismissals (in**

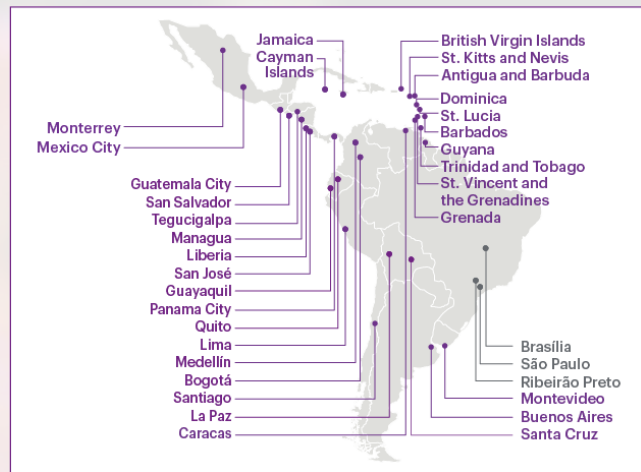
April 14, 2022  
**Collective redundancies and the P&O Ferries debacle**

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+12,400 Lawyers

Locations in purple represent Dentons offices.  
 Locations in blue represent associate firms, offices or special alliances as required by law or regulation.  
 Locations in green represent approved combinations that have not yet been formalized.  
 Locations in gray represent Brazil Strategic Alliance.

January 2023



# Thank you!



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