

Interview prior to redundancy (Article L.124-2 of the Labour Code)

The interview prior to redundancy is in principle not required in case of dismissal. It is only required if the company employs **150 or more workers** (or when so provided by the applicable collective labour agreement). In such an eventuality, the employee must be convened to an interview without fail before the employer takes a decision.

In order to determine the number of employees, it is necessary to take account of all the people employed in the different companies of a group considered as a **single economic and social entity**.

Case law has defined this notion as a set of entities which, though they have autonomous and/or distinct legal personality, show a concentration of managerial powers and identical or complementary activities, or a community of workers linked by identical, similar or complementary interests, with a comparable social status in particular.

The burden of proof as to the number of persons employed is incumbent upon the employee. He has to provide proof that the employer had to comply with the prior interview procedure. Nevertheless, the employer shall always be able to determine the number of workers employed in the company, so that the judge may enjoin him to communicate documents attesting to that number.

As soon as the number of 150 employees is attained, the employer will have to comply with the following procedure for all dismissals:

- **Dismissal with notice**
- **Dismissal effective immediate**
- **Collective dismissal**
- **Change of an essential element in the employment contract**

This procedure need not however be followed in case of dismissal during the trial period.

The employee must be convened for a prior interview by a **letter of convocation**. The Labour Code stipulates a certain number of items to be mentioned in that letter:

- The object of the convocation (the possible dismissal of the employee)
- The date, time and place where the interview will be held
- The indication that the employee may be accompanied by another employee from the company or a representative from a trade union at national level who is present in the staff delegation. A copy of the letter of convocation must for that matter be addressed to the main delegation of the establishment if there is one, or otherwise to the ITM [Inspectorate of Labour and Mines].
- The indication that the employer is or is not accompanied by a member of the staff or a representative of an employers' organisation.

Conversely, the employer is not required to indicate the grounds of dismissal. More specifically, the prior interview is held in order to discuss the matter. The reasons cited during this interview will be vital, so that the employer may not invoke reasons subsequent to the letter of motivation, except invite the employee for a new interview. Similarly, the employer may not indicate a reason in the letter of motivation which was not discussed during the prior interview.

The prior interview may take place at the earliest on the **second working and worked day** after the dispatch of the letter of convocation.

The dismissal may then be notified to the employee at the **earliest on the day after** the prior interview and at the **latest eight days after** the interview.

If the employer decides to proceed with a prior interview although he is not required to do so by law, these time limits need not be complied with.

Conversely, if the employer does not comply with the prior interview procedure although he is required to do so by law, the dismissal shall be deemed to be irregular. The penalty shall be compensation of less than or equal to one month's salary but only if the dismissal is not deemed to be abusive. In the latter case, the employee may obtain higher damages.

If the employee is sick, the employer is not authorised to convene him for a prior interview. If he proceeds to the dismissal nonetheless, it will be considered abusive. Conversely, if the employee informed the employer that he is sick and/or submits a medical certificate after receiving the letter of convocation, that will not hinder the dismissal procedure from following its normal course, except in the case of urgent hospitalisation.

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