

LABOR EFFECTS OF CORPORATE GROUPS CONCLUSIONS

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Abstract

The Comparative Labor Law Dossier (CLLD) in this issue 3/2017 of IUSLabor is dedicated to the labor effects of corporate groups and group of companies. We have had the collaboration of internationally renowned academics and professionals from Belgium, France, Germany, Italy, Portugal, Spain, Brazil, Chile, Colombia, Uruguay and Canada. Without detriment to recommend our readers to read the complete articles of the comparative dossier, we have drawn the top 10 conclusions and elaborated a summary table with the most relevant issues regarding labor effects of corporate groups and group of companies in the different legal systems analyzed in this issue of IUSLabor.

El Comparative Labor Law Dossier (CLLD) de este número 3/2017 de IUSLabor está dedicado a los efectos laborales de los grupos de sociedades y los grupos de empresas. Hemos obtenido la participación de académicos y profesionales de prestigio de Alemania, Bélgica, España, Francia, Italia, Portugal, Brasil, Chile, Colombia, Uruguay y Canadá. Sin perjuicio de recomendar a nuestros lectores la lectura del capítulo correspondiente a cada uno de los países citados, en las páginas que se suceden hemos incluido las 10 conclusiones principales que hemos alcanzado, así como un cuadro-resumen con aquellas cuestiones más relevantes en materia de los efectos laborales en los grupos de sociedades y los grupos de empresas en los ordenamientos jurídicos analizados en este número de IUSLabor.

Título: Los efectos laborales de los grupos de empresas. Conclusiones.

Keywords: corporate groups, groups of companies, joint liability, contractual or commercial relationships, equal treatment principle, applicable collective bargaining agreement, redundancy, strike.

Palabras clave: grupos de sociedades, grupos de empresas, responsabilidad solidaria, relaciones contractuales o comerciales, principio de igualdad de trato, convenio colectivo aplicable, despido, huelga.

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Summary

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1. «Top ten» conclusions

The Comparative Labor Law Dossier (CLLD) in this issue 3/2017 of IUSLabor is dedicated to the labor effects of corporate groups and group of companies and it includes articles elaborated by internationally renowned academics and professionals, regarding this important matter.

In the context of globalization where corporate groups and group of companies are extended in all countries and economic sectors, we considered necessary to analyze from a **comparative perspective** the labor regulation of corporate groups and group of companies. Thus, in this dossier we analyzed the most relevant 10 issues in the legal systems of **Belgium, France, Germany, Italy, Portugal, Spain, Brazil, Chile, Colombia, Uruguay and Canada.**

The CLLD emanates from the following questions answered by the international advisors of the journal:

1. Is there a definition of corporate group or group of companies in your labor legal system?
2. In your legal system, are there joint labor and Social Security liabilities between the companies of a valid corporate group?
3. Are there cases in which there is joint liability of the companies of a group with respect to labor and Social Security obligations of other companies of the group? That is to say, what labor consequences derive from the incorrect constitution of a corporate group or group of companies?
4. What are the labor effects of the fact that a worker provides services for more than one company of the group? What are the labor effects of contractual or commercial relationships between companies of the group, such as loans, financing agreements or cash pooling? And transfer pricing policies? And the development of management functions by a company of the group with respect to another company?
5. How are working conditions of the workers hired by companies of a group of companies determined? In particular, is there a principle of equal treatment between workers of the different companies of the group?
6. Is it possible to adopt a collective bargaining agreement applicable to all companies of the group? Can collective bargaining agreements at company level also exist? In this case, what agreement will be applicable, the industry-level, the group-level or the company-level collective agreement?
7. What are the consequences of the integration of a company into a corporate group or group of companies in the context of redundancies? In particular, to prove the

grounds for the redundancy, does the regulation take into account the situation of the group or only the situation of the company in question?

8. Who are the negotiating partners within the framework of a redundancy? Are they employers' and workers' representatives from the particular company or from the parent company?
9. In the event of a redundancy, is there an obligation to relocate to another company of the group the employees affected by such redundancy?
10. What is the effect of calling a strike in a group company? Could the other companies of the group contract with a third company to replace the services provided by the company on strike?

*Following, and in the same order of the above questions, are the **10 most important conclusions** regarding labor effects of corporate groups and group of companies, drawn from the articles written by our international consultants.*

1. In none of labor legal system analyzed, with the exception of **Brazil**, there is a normative definition group of companies. In some countries, such as **Colombia**, this phenomenon is regulated by commercial law, although with a clear difference from the labor sphere.

However, **in most countries**, there are specific institutions related to this sort of links between companies. In **Europe**, there are the following institutions: “*unité économique et sociale* (UES)” in France (a set of legally independent entities operating under the same direction and carrying out similar or complementary activities), the “*Konzern*” in **Germany** (two or more entities legally independent linked by the existence of control and a common management) and the “network contract” in **Italy** (several employers commit to cooperation under a common business program). It is also significant the broad definition of affiliated companies and their types in **Portugal**: *companies in a simple investment relationship, companies in mutual investment relationship, companies in a parent-subsidiary relationship and companies in group relationship*.

The present study has made it possible to identify a conceptual difference in the **Spanish case**, where there are “*corporate groups*” and “*group of companies*”, being the latter broader than the former since their members may not be corporations and their common business policy may be based not only on domain/control but also on coordination.

In **South America**, there is the notion of “*economic unity*” in **Colombia** and **Chile**. It is a legal fiction related to the enterprise grouping under the same conglomerate, and by virtue of which labor responsibility is attributed to its members.

2. In the vast majority of European countries analyzed **there is not**, as a general rule, **joint labor and Social Security liability** between the member companies of a group and whose operation for labor purposes is correct.

The exception to this trend is **Portugal**, where: i) there is joint liability for overdue labor obligations for more than three months in certain types of business relationships (companies in mutual investment relationship, companies in a parent-subsidiary relationship and companies in group relationship); ii) the company that owns 100% of the share capital of its subsidiary company is responsible for its obligations; and iii) where there is a subordination contract, the management company is responsible for the obligations of its subordinate company.

Although in the majority of the cases reported in **South America** solidarity is established between companies acting as groups for labor purposes, there is no relationship between the legal constitution and that kind of liability. In **Colombia**, for example, the effect is derived from other assumptions, such as the nature of the activities or the corporate purpose of the companies involved.

Finally, in **Canada** joint liability regarding labor and Social Security obligations among members of a properly constituted group of companies may arise in very specific cases.

3. In all the European countries analyzed there exist cases of joint liability between companies of a group with respect labor and Social Security obligations **when its constitution or operation is incorrect**. There have been detected **two different legal approaches** regarding this matter.

First, in **Belgium, Germany and Portugal** tort law and the “*theory of piercing the corporate veil*” are applied.

Second, in **Italy and Spain** joint liability is imposed for labor and Social Security obligations between the member companies of the group by the application of a highly similar developed case law, similar to the **French case**, where some specific circumstances are set (e.g. confusion in the employee workforce, mixing of assets, abuse of common management in detriment of employees' rights). This responsibility emerges in **Italy** as far as intention of evasion of labor provisions exist, but in **Spain** this is not always necessary.

Again, although in most of the cases reported in **South America** joint liability is established between companies that, for labor purposes, act as groups, there is no relationship between the non-valid constitution and that joint liability. The **Chilean**

regulation stands out, where the establishment of a group to the detriment of the worker entails specific sanctions.

Finally, the **Canadian** Employment Standards Act establishes that multiple entities that carry out related or associated activities to directly or indirectly defeat the intent and purpose of the law are deemed to be one single employer. In **Ontario** the situation is different, and the related employer case law doctrine is applied.

4. In relation to the emerging labor effects when a **worker provides services for more than one company of a group, in the European countries studied** there coexist different legal approaches.

First, in **Belgium, Italy and Spain** such effects may arise when the employee is only hired by one company but, *de facto*, two or more group companies assume the employer position in certain circumstances. This is considered illegal and implies joint liability between the involved members of the group with respect to labor and Social Security obligations. Second, in **France** the provision of services may be considered a merely fraudulent operation created to hide illegal hiring-out and it may create a situation of “*co-employment*” (provision of services for more than one company under a same employment contract) among the group companies involved. Third, in **Germany** there are different schemes: i) co-employment by more than one employer is legally possible but rather unusual; ii) using an employee to work with another company is legally possible; iii) occasional work for another company is legal, but group-intern agencies that serve as a single permanent employer for the whole workforce of all or several member companies are illegal; and iv) successive work for different companies of a group usually involves a change of employer, but if it hides an illegal chain of fixed-term contracts legal issues may arise.

The consequences arising from the provision of services of a worker for several companies in the case of **South American countries** can be grouped into three trends: i) **co-employment**, if a worker provides services for several companies all of them acquire the status of employer in the context of the same contract (**Brazil, Colombia and Chile**); ii) the **coexistence** of employment contracts between the worker and each company implies the existence of an employment contract (**Colombia**); and iii) **joint liability**, there is a contract between a worker and an employer, and the emerging obligations have to be fulfilled (jointly) by the several companies taking part of it (**all countries in the region**).

In **Canada**, this circumstance is relevant to determine whether a group of companies are to be treated as related employers (jointly liable for labor and employment obligations of

each other). In the context of non-related employers, there are not labor effects regarding the provision of services for more than one employer.

In relation to the **labor effects of contractual or commercial relationships between companies of the group, specifically cash pooling and transfer pricing policies**, there are two different main trends in the **European countries studied**.

In **Belgium and Germany** these factors do not trigger labor and Social Security effects, as a general rule. In the other European countries analyzed (**France, Italy, Portugal and Spain**) labor effects may emerge, along with liability between the group companies involved when there is not a proper compensation or in the case of mixing assets.

In **Canada**, this circumstance is relevant to determine whether businesses in a group are treated as related employers (jointly liable for labor and employment obligations of each other).

Finally, the development of management functions by a company of the group in relation to another company, there are two principal trends in **the European countries studied**: i) the company that exercises this power of management could be considered the true employer (**Belgium, Italy and Spain**) and ii) the application of other legal remedies (**France, Germany and Portugal**).

Specifically, in **France** it is possible to assign liability to the parent company when it delivers instructions to the subsidiary and the latter does not have any autonomy (decisive influence of the parent over the behavior of the subsidiary). Consequently, these companies are understood as an economic unit, where the parent company is responsible for the subsidiary's duties. In **Germany** the performance of management tasks by a group company over another of the same group is possible under a contract of domination, which does not generate labor liabilities for the former. The limits of the exercise of this control, and the existence of financial compensation between companies allows the indirect protection of creditors and minority shareholders. Neither does the informal assumption of managerial functions, nor the fact of acting as "shadow administrator" implies responsibility of the company that carries it out, therefore liability is exclusively imposed to the controlled company. In the case of **Portugal**, the development of management tasks by a company of the group with respect to another member may entail responsibility for the first one. Likewise, Portuguese regulations establish that: i) the company that owns 100% of the share capital of its subsidiary company is responsible for its obligations; and ii) when a subordination contract exists, the management company is responsible for the subordinate company's obligations.

In **Canada**, this circumstance is relevant to determine whether businesses in a group are treated as related employers (jointly liable for labor and employment obligations of each other).

Finally, with regard to these last cases (cash pooling, transfer prices, and management of a company by another group company), no relevant consequences are reported in the **South American systems** analyzed in the context of this comparative study.

5. There are no meaningful differences between most of the European countries analyzed regarding how working conditions of workers hired by companies of a group are determined, neither regarding the existence of a principle of equal treatment between workers of the different companies of the group. Thus: i) working conditions are defined in the employment contract, its amendments, complying with minimum provisions established in collective bargaining agreements and in the legal regulation, and ii) the principle of equal treatment is not applied, except if it is a common practice within the group or because of a collective agreement. The exception is **France**, where such principle applies to group companies, but not when the differences among working conditions have a conventional origin.

In the **South American** countries analyzed, as in the European, labor conditions of workers linked to companies of a group are set by law, or by individual or collective agreement. Now, in **all the countries of the region** that participate in the study, there are constitutional and/or legal norms that protect equal treatment between workers of companies that act as a group. However, the **Chilean** case is highlighted, since the non-observance of the mandate does not produce consequences on the factual level.

In **Canada** working conditions are determined in the context of each specific company, including cases where a group of employers is considered to be one employer, so the principle of equal treatment is not applied between workers of the different companies of the group.

6. In all the European countries studied it is possible to adopt a collective bargaining agreement for the group, as well as collective bargaining agreements at company-level.

However, in case of coexistence of collective bargaining agreements in different levels, there are differences in regard to the criteria to define the applicable one. Thus, in **Germany** and **Portugal** the company-level collective agreement prevails, as in **Spain** but just in some specific matters (similar in **Italy**); in **France**, except in some matters, the collective bargaining agreement at group-level must be applied over the industry-level and company-level collective agreement (as long as it expressly provides for it); and in

Belgium the group-level and the company-level collective agreement must be in accordance with superior norms.

In the **South American cases** analyzed, it is equally feasible to conclude agreements at the company-level and/or at the group-level. In this latter case, the possibility is subject to the declaration of existence of the group (**Colombia** and **Chile**), and in case of conflict between the provisions of one level and the other, favorability is used as a solution criteria (**Brazil**).

In **Canada**, it is possible to adopt a collective bargaining agreement for the group and a collective bargaining agreement at company-level can also exist. It is also possible to change the level of collective bargaining agreements (including industry-level and group-level or the company-level collective agreement): i) if agreement between parties (the last collective bargaining agreement in time is applicable) or ii) in cases of related employer (a group-level collective bargaining agreement) when it deals with a group of companies that operates in full competition and it is not used to impose a bargaining agreement that undermines collective bargaining and employees' rights.

7. Regarding consequences of the integration of a company into a corporate group or group of companies in the context of redundancy and the proving the grounds, in the European countries there are different trends.

First, in **Italy** and **Spain**, when there are not specific circumstances that evidence the assumption of the employer position by two or more members of the group, there are not specific changes in the procedure regarding the termination of the employment contract. However, if the above-mentioned circumstances exist, the whole corporate group will be taken as a reference to apply redundancy legislation, for instance, taking into account the economic situation of the group. In the context of consultation process in a collective redundancy, there could also be informative obligations about the economic situation of the group. All of these rules are similar to those existing in the **Portuguese** legal system. Second, in **Belgium**, all legal protections may be met both at the company-level and group-level and in the context of consultation process in a collective redundancy some informative obligations about the economic situation of the group could exist. Finally, in **Germany** the specific law against unfair dismissal has no group-wide application and the economic situation of the particular company is taken into account. This situation is similar in **France**.

In **Canada**, if there is not a related-employer context, there are no specific legal consequences; but if there is, some matters (like severance payment) take the group as a

unit of reference and it may be necessary to consider the economic situation of all the related employers companies.

In **South America**, no relevant information is reported, either due to the lack of regulation regarding collective redundancies (**Brazil**) or because of the lack of a negotiation requirement between workers and employers within that context (**Colombia**).

8. Despite the differences in the legal systems about the employers' and workers' representatives, there is a **consensus in the European countries studied** that negotiating partners within the framework of redundancy may be the **employers' and workers' representatives of the company where the dismissal occurs**.

In **Canada**, the negotiating partners within that context are also the employers' and workers' representatives of the company.

9. Regarding the obligation to relocate dismissed employees to another company of the group, **there are no meaningful differences between the compared European countries: there is not such obligation**, but it may arise from the employment contract, the applicable collective agreement, the practice within the group or as a possible social measure in the context of a redundancy. Exceptionally, in **France**, it may arise a duty of searching for a vacant within a group of companies with operations abroad in the case of the employee's request.

In **Canada**, there is neither such obligation, unless the employment contract or the collective agreement specifies it. And in the analyzed **South American systems**, no relevant information is reported.

10. Regarding the effects of a strike in the framework of a group of companies, **the majority of the European countries analyzed consider that companies of the group shall not intervene to minimize or to eliminate the normal effects of a strike taking place in another group company. The exception is Germany**, where replacing workers on strike with employees from other companies of the group is legal.

On this point, the **analyzed South American legal systems** do not report the existence of specific provisions regarding groups of companies. Thus, the conflict is usually resolved through the general rule that prohibits the replacement of workers on strike by hiring others, except under specific circumstances.

In **Canada**, the situation is very variable, depending on the place where the conflict arises (British Columbia and Quebec, or the rest of the Canadian provinces) and whether federal law is applicable.

2. Las diez conclusiones principales

El Comparative Labor Law Dossier (CLLD) de este número 3/2017 de IUSLabor está dedicado a los efectos laborales de los grupos de sociedades y los grupos de empresas, e incorpora artículos, elaborados por académicos de prestigio a nivel internacional, sobre la regulación de esta importante materia.

En el actual contexto de la globalización en que los grupos de sociedades y los grupos de empresas están implantados en todos los países y sectores económicos, hemos considerado necesario analizar desde una **perspectiva comparada** la regulación laboral de los grupos de sociedades y los grupos de empresas. Así, en el presente dossier abordamos las 10 cuestiones que consideramos más relevantes en esta materia en los ordenamientos jurídicos de **Alemania, Bélgica, España, Francia, Italia, Portugal, Brasil, Chile, Colombia, Uruguay y Canadá.**

El CLLD ha partido del siguiente **test de preguntas** a las que han dado respuesta los colaboradores internacionales de la revista:

1. ¿Existe en su ordenamiento jurídico laboral una definición de grupo de empresas?
2. En su ordenamiento jurídico, ¿existe responsabilidad solidaria directa respecto de responsabilidades laborales y de Seguridad Social entre las empresas de un grupo válidamente constituido
3. ¿Hay supuestos en que exista responsabilidad solidaria de las empresas de un grupo respecto las deudas laborales y de Seguridad Social de otra/s empresa/s del grupo? Es decir, ¿qué consecuencias laborales tiene la incorrecta constitución de un grupo de empresas?
4. ¿Qué consecuencias laborales tiene el hecho que un trabajador preste servicios indistintamente para más de una empresa del grupo? ¿Qué consecuencias laborales tiene la existencia de relaciones contractuales o de colaboración entre empresas del grupo, tales como el préstamo, acuerdos de financiación o cash pooling? ¿Y la política de precios de transferencia? ¿Y el desarrollo de tareas de dirección por parte de una empresa del grupo respecto otra empresa?
5. ¿Cómo se determinan las condiciones laborales aplicables a los trabajadores de las distintas empresas del grupo? En concreto, ¿existe un principio de igualdad de trato entre los trabajadores de las distintas empresas del grupo?
6. ¿Es posible la adopción de un convenio colectivo aplicable a todas las empresas integrantes del grupo? ¿Pueden existir, además, convenios colectivos de empresa? En este caso, ¿qué convenio resultará de aplicación prioritaria, el convenio colectivo sectorial, el del grupo de empresas o el empresarial?

7. ¿Qué consecuencias tiene la integración de una empresa en un grupo en sede de despidos colectivos? En concreto, para acreditar la concurrencia de la causa para proceder a un despido colectivo, ¿se tiene en cuenta la situación del grupo o únicamente la de la empresa en cuestión?
8. ¿Quiénes son los interlocutores en la negociación en el marco de un despido colectivo? ¿Los representantes de la empresa y de los trabajadores de la empresa concreta que procede al despido colectivo o de la empresa matriz?
9. Ante un despido colectivo, ¿existe la obligación de recolocar a los trabajadores afectados por el despido en alguna otra empresa del grupo?
10. ¿Qué efectos tiene la convocatoria de una huelga en una empresa integrante de un grupo? ¿Pueden las demás empresas del grupo contratar con una tercera empresa para sustituir los servicios prestados por la empresa en huelga?

A continuación se exponen, siguiendo el mismo orden de las preguntas, **las 10 conclusiones principales en materia de los efectos laborales de los grupos de empresas** alcanzadas con base a los artículos elaborados por nuestros académicos internacionales.

1. En ninguno de los regímenes laborales de los **países estudiados**, con excepción de **Brasil**, existe una definición normativa laboral de grupo de empresa. En otros como **Colombia** el fenómeno está regulado en la normativa mercantil, aunque con una clara diferencia respecto del ámbito laboral.

Sin embargo, **en la mayoría de los países**, existen instituciones específicas relacionadas con los vínculos entre empresas.

Así, en **Europa** destacan: la "*unité économique et sociale (UES)*" en **Francia** (conjunto de entidades jurídicamente independientes que funcionan bajo una misma dirección y que realizan actividades similares o complementarias); el "*konzern*" en **Alemania** (dos o más entidades jurídicamente independientes que se vinculan por la existencia de control y de una dirección común) y el "contrato de *red*" en **Italia** (varios empresarios se obligan a colaborar bajo un programa empresarial común). También destaca la amplia definición de empresas afiliadas y sus tipos en **Portugal**: *sociedades de participación simple; sociedades de participaciones recíprocas; sociedades en relación de dominio y sociedades de grupo*.

El presente análisis ha permitido identificar una diferencia conceptual en el **caso español**, en donde existen *grupo de sociedades* y *grupo de empresas*. El *grupo de empresas* es un concepto más amplio que el de los grupos de sociedades puesto que sus miembros pueden

no ser sociedades y su política empresarial común se puede basar no sólo en el dominio/control sino también en la coordinación.

En **Suramérica**, por su parte, existe la noción de *unidad económica* en **Colombia** y **Chile**. Se trata de una ficción relativa a la agrupación de empresas bajo un mismo conglomerado, y en virtud de la cual se atribuye responsabilidad laboral a sus integrantes.

2. En la gran mayoría de los países europeos analizados **no existe**, como regla general, una **obligación solidaria laboral ni de Seguridad Social** entre las compañías de un grupo de empresas cuando éste está válidamente constituido y su funcionamiento, a efectos laborales, es correcto.

La excepción a esta tendencia se ubica en **Portugal**, en donde: i) existe responsabilidad solidaria por las obligaciones laborales vencidas por más de tres meses en determinados tipos de vinculaciones empresariales (en sociedades de participaciones recíprocas, sociedades con relación de dominio y sociedades de grupo) válidamente constituidas; ii) la sociedad que tiene el 100% del capital social de una empresa filial es responsable de las obligaciones de esta última; y iii) cuando existe un contrato de subordinación, la sociedad gestora es responsable de las obligaciones de su empresa subordinada.

Aunque en la mayoría de los casos reportados en **Suramérica** se establece la solidaridad entre las compañías que, para efectos laborales, actúan como grupos, no existe relación alguna entre la constitución válida y dicha solidaridad. En **Colombia**, por ejemplo, el efecto se deriva de otros supuestos como la naturaleza de las actividades o el objeto social de las compañías intervinientes.

Finalmente, en **Canadá**, en algunos casos muy específicos puede surgir responsabilidad solidaria respecto las obligaciones laborales y de Seguridad Social entre los miembros de un grupo de empresas correctamente constituido.

3. Todos los países europeos analizados reportan la existencia de supuestos de responsabilidad solidaria con respecto a las obligaciones laborales y de seguridad social entre las empresas de un grupo cuando su constitución o funcionamiento es incorrecto. Allí se han detectado **dos enfoques legales diferentes** con respecto a la materia.

Primero, en **Bélgica, Alemania y Portugal** la tendencia es la aplicación de las reglas de responsabilidad de derecho de daños o la aplicación de la teoría del levantamiento del velo.

En segundo lugar, en **Italia y España** se impone la responsabilidad solidaria de las obligaciones laborales y de Seguridad Social entre las empresas de grupo mediante la

aplicación de un sistema jurisprudencial altamente desarrollado, muy similar en el caso de **Francia**, basado en tomar en cuenta algunas circunstancias específicas listadas (por ejemplo, confusión de plantillas, confusión patrimonial y el uso abusivo de la dirección unitaria en detrimento de los derechos de los trabajadores). Para que surja esta responsabilidad, en **Italia** es necesaria una intención de evadir la normativa laboral, pero en **España** no siempre es necesario.

De nuevo, aunque en la mayoría de los casos reportados en **Suramérica** se establece la solidaridad entre las compañías que, para efectos laborales, actúan como grupos, no existe relación alguna entre la constitución no válida y dicha solidaridad. Se destaca la regulación **chilena**, en donde la constitución de un grupo en perjuicio del trabajador acarrea sanciones específicas.

Finalmente, en **Canadá** la Ley de Empleo establece que múltiples entidades que llevan a cabo actividades relacionadas o asociadas y cuya intención o efecto de hacerlo es evadir directa o indirectamente la intención y propósito de la mencionada ley, se consideran que son un solo empleador. En **Ontario** la situación es diferente, y se aplica la doctrina de los empleadores vinculados.

4. En relación con los efectos laborales del hecho de que un trabajador preste servicios a más de una empresa del grupo, **en los países europeos estudiados coexisten diferentes enfoques legales.**

En primer lugar, en **Bélgica, Italia y España** pueden surgir cuando el empleado solo es contratado por una empresa pero, de facto, dos o más empresas del grupo en determinadas circunstancias asumen el puesto del empleador. Esta situación es considerada ilegal y conlleva responsabilidad solidaria entre los miembros implicados de grupos con respecto a las obligaciones laborales y de Seguridad Social. En segundo lugar, en **Francia** la prestación de servicios puede considerarse una operación meramente fraudulenta creada para ocultar la contratación ilegal y puede surgir una situación de coempleo (prestación de servicios para más de una empresa bajo un mismo contrato de trabajo) entre las empresas involucradas del grupo. En tercer lugar, en **Alemania** existen diferentes escenarios: i) el coempleo es legalmente posible aunque poco frecuente en la práctica; ii) el desplazamiento de un empleado para trabajar con otra empresa es legalmente posible; iii) el trabajo ocasional para otra empresa es legal, pero las unidades internas que sirven como un único empleador permanente para toda la fuerza laboral de todas o varias de las compañías miembro son ilegales; iv) el trabajo sucesivo para diferentes compañías de un grupo generalmente implica un cambio de empleador, pero pueden surgir problemáticas jurídicas si se oculta una cadena ilegal de contratos temporales. Por su parte, en **Portugal** es posible el coempleo, en cuyo caso las empresas serán responsables solidarias de las

obligaciones derivadas del contrato de trabajo. Además, en el contexto de la cesión ocasional de un empleado en el contexto de relaciones específicas entre compañías, cuando hay un incumplimiento de sus requisitos legales el empleado es libre de elegir al cesionario como su empleador, bajo contrato permanente.

Por su parte, las consecuencias derivadas de la prestación de servicios de un trabajador a varias empresas en el caso de los países suramericanos se pueden agrupar en tres tendencias: i) el **coempleo**, por la prestación de servicios de un trabajador a varias compañías, se puede derivar la condición de empleador de cada una de ellas en el contexto del mismo contrato (**Brasil, Colombia y Chile**); ii) la **coexistencia** de contratos de trabajo, se entiende que entre el trabajador y cada empresa existe un contrato de trabajo autónomo (**Colombia**); y iii) la responsabilidad solidaria, un contrato entre un trabajador y un empleador, de cuyas obligaciones son responsables, bajo esta modalidad, diversos sujetos (**todos los países de la región**).

En **Canadá**, esta circunstancia es relevante para determinar si las empresas de un grupo son tratadas como empleadores vinculados (son mutuamente responsables de las obligaciones laborales). Si finalmente se trata de un contexto de empleadores no vinculados, no habrá efectos laborales debido al hecho de que un trabajador preste servicios a más de un empleador.

En relación con **los efectos laborales de las relaciones contractuales o comerciales entre empresas del grupo, también teniendo en cuenta el cash pooling y las políticas de precios de transferencia**, existen dos tendencias principales diferenciadas en los **países europeos estudiados**.

En **Bélgica y Alemania**, generalmente estos factores no tienen efectos laborales y de Seguridad Social. En el resto de los países europeos analizados (**Francia, Italia, España y Portugal**) pueden tenerlos, surgiendo la responsabilidad entre las empresas del grupo involucrado cuando no existe compensación adecuada o cuando se constata una mezcla de activos.

En **Canadá**, esta circunstancia es relevante para determinar si las empresas de un grupo son tratadas como empleadores relacionados (son mutuamente responsables de las obligaciones laborales y laborales).

Finalmente, con respecto al desarrollo de tareas de dirección por parte de una empresa del grupo respecto a otra empresa del mismo, hay **dos tendencias principales distintas en los países europeos estudiados**: i) la empresa que ejerce este poder de dirección

podría considerarse el verdadero empleador (**Bélgica, Italia y España**) y ii) la aplicación de otros remedios legales (**Francia, Alemania y Portugal**).

En concreto, en **Francia** es posible la atribución de responsabilidad a la empresa matriz cuando ésta imparte instrucciones a su filial y es dejada sin autonomía (influencia decisiva de la matriz en el comportamiento de la filial). Consecuentemente, estas compañías son entendidas como una unidad económica, donde la matriz debe responder por las obligaciones de la filial. En **Alemania** el ejercicio de tareas directivas por una sociedad del grupo respecto otra del mismo grupo es posible bajo un contrato de dominación, no generándose responsabilidades laborales para la empresa que ejerce esta influencia. Los límites del ejercicio de este dominio y la existencia de compensaciones financieras entre las sociedades permiten la protección indirecta de los acreedores y los socios minoritarios. Tampoco la asunción informal de funciones directivas, ni el hecho de actuar como “*administrador en la sombra*” conllevan responsabilidad de la empresa que lo realiza, de ello se deriva la atribución de responsabilidad únicamente a la empresa controlada. En el caso de **Portugal**, el desarrollo de tareas de dirección por parte de una empresa del grupo respecto a otra integrante del mismo puede conllevar responsabilidad de la primera. Asimismo, debe tenerse en cuenta que la normativa portuguesa establece que: i) la sociedad que tiene el 100% del capital social de una empresa filial es responsable de las obligaciones de esta última y ii) en el caso de existencia de un contrato de subordinación, la sociedad gestora es responsable de las obligaciones de su empresa subordinada.

En **Canadá**, esta circunstancia es relevante para la determinación de si las empresas de un grupo son tratadas como empleadores vinculados (solidariamente responsables de las obligaciones laborales).

Finalmente, con respecto a estos últimos supuestos (cash pooling, precios de transferencia, y dirección de una empresa por otra del grupo), **no se reportan consecuencias destacables en los ordenamientos suramericanos.**

5. No existen diferencias significativas entre la mayoría de países europeos comparados en cuanto a la forma en que se determinan las condiciones de trabajo del trabajador contratado en las empresas de un grupo de empresas, ni respecto a la existencia de un principio de igualdad de trato entre los trabajadores de las distintas empresas del grupo. Así: i) las condiciones de trabajo se definen en el contrato laboral, sus enmiendas, cumpliendo con las disposiciones mínimas establecidas en los convenios colectivos y en la regulación legal y ii) el principio de igualdad de trato no se aplica, a menos que sea una práctica común dentro del grupo o debido a la influencia del convenio colectivo. La excepción es en **Francia**, donde el principio de igualdad de trato se aplica en las empresas del grupo, excepto si las diferencias tienen origen convencional.

En los países **suramericanos** analizados, como en los **europeos**, las condiciones de los trabajadores vinculados a las distintas empresas de un mismo conglomerado se fijan por la Ley, o mediante acuerdo individual o colectivo. Ahora, en **todos los países de la región** que participan del estudio existen normas constitucionales y/o legales que protegen la **igualdad de trato** entre los trabajadores de las diferentes empresas que actúan como grupo. Sin embargo, se resalta el caso **chileno**, en donde la inobservancia del mandato no produce consecuencias en el plano fáctico.

En **Canadá**, las condiciones de trabajo del trabajador contratado por empresas de un grupo de empresas se determinan en el contexto de cada empresa específica, incluidos los casos en que un grupo de empleadores se considera un solo empleador, por lo que **no se aplica el principio de igualdad de trato entre los trabajadores de las distintas compañías del grupo**.

6. En todos los países europeos estudiados, es posible adoptar un convenio colectivo para todas las empresas que forman parte del grupo de empresas, y también puede existir un convenio colectivo de empresa.

Sin embargo, en caso de coexistencia convenios colectivos en diferentes niveles, existen diferencias destacables con respecto a los criterios para determinar aquél que resulta aplicable. Así, en **Alemania y Portugal** prevalece el convenio colectivo de empresa; en **España**, el convenio colectivo de empresa prevalece en algunas materias específicos (similar en **Italia**); en **Francia**, salvo en algunas materias, el convenio colectivo de grupo debe prevalecer sobre el convenio colectivo sectorial y el convenio colectivo de empresa (siempre que éste lo prevea expresamente); y en **Bélgica**, el convenio colectivo de grupo y de empresa debe estar en conformidad con las normas de rango más elevado.

En los casos **suramericanos** analizados es igualmente factible celebrar convenios a nivel de empresa o a nivel de grupo. En este último caso, la posibilidad se encuentra condicionada a la declaración de existencia del grupo (**Colombia y Chile**), y en caso de conflicto entre las disposiciones de uno y otro nivel, la favorabilidad se utiliza como un criterio de solución (**Brasil**).

En **Canadá**, es posible adoptar un convenio colectivo para todas las empresas y también pueden existir convenios colectivos colectiva de empresa. También es posible modificar el nivel de los acuerdos colectivos (incluido el nivel sectorial y de grupo o el convenio colectivo de empresa): i) si existe un acuerdo conjunto entre las partes (el último convenio colectivo acordado será el aplicable) o ii) en casos de empleadores vinculados (un convenio colectivo de grupo) cuando se trata de un grupo de empresas que opera en

condiciones de plena competencia y no se utiliza para imponer convenio colectivo negociación que socave la negociación colectiva y los derechos de los trabajadores.

7. En relación con las consecuencias de la integración de una empresa en un grupo de sociedades o un grupo de empresas en el contexto de un despido colectivo y dónde debe concurrir la causa, **en los países europeos hay distintas tendencias.**

Primero, en **Italia y España**, si no existen circunstancias específicas que prueben la asunción de la posición del empleador por dos o más miembros del grupo, no hay cambios específicos en el procedimiento con respecto a la finalización del contrato. En caso de existencia de dichas circunstancias, se tomará en cuenta todo el grupo como punto de referencia para la aplicación de la legislación normativa del despido colectivo, por ejemplo, teniendo en cuenta la situación económica del grupo. En el contexto del período de consulta en un despido colectivo, también pueden existir obligaciones informativas sobre la situación económica del grupo. Todas estas reglas son similares a aquellas existentes en el sistema legal **portugués.**

En segundo lugar, en **Bélgica** todas las protecciones legales pueden tener que llegarse a cumplir tanto a nivel de empresa como a nivel de grupo y en el contexto del período de consulta en un despido colectivo pueden existir algunas obligaciones informativas sobre la situación económica del grupo. Finalmente, en **Alemania**, la ley específica contra el despido improcedente no tiene una aplicación para todo el grupo y se tiene en cuenta la situación económica de la empresa que procede al despido. Esta situación es similar en **Francia.**

En **Canadá**, si no hay un contexto de empleadores vinculados, no hay consecuencias legales específicas; pero si lo hay, algunas materias (como el pago de indemnización) tomarán en cuenta al grupo como unidad de referencia y puede ser necesario considerar la situación económica de las compañías que son empleadores vinculados.

En **Suramérica** no se reporta información relevante, bien por la inexistencia de regulación relativa al despido colectivo (**Brasil**), o, por la inexistencia de un requisito de negociación entre trabajadores y empleadores dentro de dicho contexto (**Colombia**).

8. A pesar de las diferencias en los sistemas legales sobre los representantes de los empresarios y de los trabajadores, existe **consenso en los países europeos estudiados** de que las partes negociadoras en el marco de un despido colectivo pueden ser los **representantes de la concreta empresa que despide así como sus respectivos representantes de los trabajadores.**

En **Canadá**, los representantes negociadores en el marco de un despido son los representantes del empresario y de los trabajadores de la empresa que procede a despedir.

En los ordenamientos **suramericanos** analizados no se reporta información relevante.

9. Con respecto a la posible existencia de una obligación de recolocar en otra empresa del grupo los empleados despedidos, **no hay diferencias significativas entre los países europeos comparados**: no existe tal obligación, pero puede surgir del contrato de trabajo, el convenio colectivo aplicable, las prácticas dentro del grupo o como una posible medida social en el contexto de un despido colectivo. Excepcionalmente, en **Francia**, aunque no exista dicha obligación, puede surgir la obligación de la búsqueda de oportunidades de empleo dentro de un grupo de empresas que realice operaciones en el extranjero en el caso de ser solicitado por el empleado.

En **Canadá**, tampoco existe tal obligación, a menos que el contrato de trabajo o el convenio colectivo especifique lo contrario. Y en los **ordenamientos suramericanos** analizados no se reporta información relevante.

10. En cuanto a los efectos de una huelga en el marco de un grupo de empresas, la mayoría de los **países europeos analizados** tienen una **posición jurídica basada en el hecho de que las empresas del grupo no deben intervenir para minimizar o eliminar los efectos normales de una huelga que tiene lugar en otra compañía del grupo. La excepción es Alemania**, donde es legal reemplazar a los trabajadores en huelga con empleados de otras compañías del grupo.

En este punto, en los **sistemas jurídicos suramericanos analizados** no se reporta la existencia de disposiciones específicas en materia de grupos de empresa. Así, el conflicto se resuelve generalmente a través la regla general que proscribe el reemplazo de trabajadores en huelga mediante la contratación de otros, excepto bajo circunstancias específicas.

En **Canadá**, la situación es variable, dependiendo del sitio donde se suscita el conflicto (Columbia Británica y Quebec, o el resto de las provincias canadienses) y si la ley federal es aplicable.

3. Summary table

3.1. Europe

	Belgium	France	Germany	Italy	Spain	Portugal
1. Is there a definition of corporate group or group of companies in your labor legal system?	<p>No.</p> <p>Specific concept related to links between companies: ‘groupe d’employeurs’</p> <p>Using definition of company law in employment participation of company’s capital and profits regulation.</p>	<p>No.</p> <p>Multiple definitions using variable criteria exists in legal provisions and case law.</p> <p>Specific concept related to links between companies: ‘unité économique et sociale’ (UES).</p>	<p>No.</p> <p>Several labor law statutes incorporate the company law definitions by reference.</p> <p>Specific concept related to links between companies: “Konzern”.</p>	<p>No.</p> <p>Links between companies are considered in some specific labor rules.</p> <p>Existence of rules in Civil Code and the notion of network in Act. n. 33/2009.</p>	<p>No.</p> <p>Some specific labor rules use the definition of corporate groups as a group of companies.</p> <p>Case law.</p>	<p>No.</p> <p>Several labor law statutes incorporate the company law definitions by reference.</p> <p>Broad definition of affiliated companies and its types.</p>
2. In your legal system, are there joint labor and Social Security liabilities between the companies of a	<p>As a general rule, no.</p> <p>Each company is considered a legally</p>	<p>As a general rule, no.</p> <p>Each company is considered a legally</p>	<p>As a general rule, no.</p> <p>Exceptions: i) when integration of one stock</p>	<p>As a general rule, no.</p> <p>Each company is considered a legally</p>	<p>As a general rule, no.</p> <p>Each company is considered a legally</p>	<p>In some cases:</p> <p>i) three-month overdue labor obligations in</p>

<p>valid corporate group?</p>	<p>independent entity.</p>	<p>independent entity.</p>	<p>corporation into another and ii) contractual arrangements.</p> <p>Specific laws and case law establish justifications and remedies for disadvantageous of controlled companies.</p>	<p>independent entity.</p> <p>Exception: in some cases under the context of a network contract.</p>	<p>independent entity.</p>	<p>some type of companies;</p> <p>ii) management company liable for obligations of the subordinated company in cases of contract of subordination and company holding 100% share capital of other company.</p>
<p>3. Are there cases in which there is joint liability of the companies of a group with respect to labor and Social Security obligations of other companies of the group? That is to say, what labor consequences derive from the incorrect constitution of a corporate group or group of companies?</p>	<p>Application of liability law.</p> <p>Liability may arise when:</p> <p>i) abuse of legal entity;</p> <p>ii) excessive risks taken by one single entity;</p> <p>iii) directors of the subsidy are also identified as</p>	<p>Liability may arise when:</p> <p>i) confusion in employee workforce;</p> <p>ii) mixing of assets;</p> <p>iii) abuse of legal personality;</p> <p>iv) subsidiary does not determinate its behavior in the</p>	<p>Application of general rules of contract and tort, including piercing the corporate veil.</p> <p>Incorrect formation of or behavior in a group of companies: possible claims of the dependent company for breach of fiduciary duty or</p>	<p>Case law: evasion of labor provisions.</p> <p>Liability may arise when:</p> <p>i) single productive and organizational structure;</p> <p>ii) integration of group members' activities and presence of a</p>	<p>Case law.</p> <p>Liability may arise when:</p> <p>i) confusion employee workforce;</p> <p>ii) mixing of assets;</p> <p>iii) abuse of the unitary direction of the group of companies with</p>	<p>Yes, exceptionally.</p> <p>Application of the doctrine of piercing the corporate veil, (confusion in employee workforce, mixing of assets or abuse of legal entity).</p>

	<p>employees of the parent company;</p> <p>iv) the parent company as a third party contributed to the breach of employment contract.</p>	<p>market, but it essentially applies instructions given by the parent company.</p>	<p>tort against the majority shareholder.</p>	<p>correlative common interest;</p> <p>iii) technical, administrative and financial coordination which denotes unitary direction and common purpose;</p> <p>iv) confusion in the employee workforce.</p>	<p>detriment of employees' rights.</p> <p>No necessity of a context of abuse, fraud or concealing from third parties in the group of companies.</p>	
<p>4.</p> <p>1. What are the labor effects of the fact that a worker provides services for more than one company of the group?</p> <p>2. What are the labor effects of contractual or commercial relationships between companies</p>	<p>1. Joint employment by more than one employer is legally possible.</p> <p>Close connection between companies and exercise employer's prerogatives: jointly liability for compliance with</p>	<p>1. The labor effects vary:</p> <p>a) Provision of services may be considered a merely fraudulent operation created to conceal illegal hiring-out: joint employment between the group companies involved.</p>	<p>1. The labor effects vary:</p> <p>a) Joint employment by more than one employer is legally possible but practically rather rare.</p> <p>b) Posting an employee for work with another</p>	<p>1. The labor effects vary:</p> <p>a) Working simultaneously by several group members: evidence of assumption of the employer position.</p> <p>b) International mobility cases of working for several group</p>	<p>1. The labor effects vary:</p> <p>a) Employee hired by one company but works for several is unlawful (joint liability between companies involved).</p> <p>b) As a general rule, temporary transfer of employees within</p>	<p>1. Generally, no joint liability.</p> <p>Exception: employment contract between a worker and two or more employers (joint employment).</p> <p>Non-compliance of the requirements for entering into an occasional</p>

<p>of the group, such as loans, financing agreements or cash pooling? And transfer pricing policies?</p> <p>3. And the development of management functions by a company of the group with respect to another company?</p>	<p>employer's obligations.</p> <p>Case law evidences: sharing directors and mixed management.</p> <p>2. Generally, no labor effects.</p>	<p>b) The transfer to another group company implies a change of employer and it must have the employee's consent.</p> <p>Differences between secondment and transfer.</p> <p>2. It may arise liability in the hypothesis of mixing assets.</p> <p>3. Where a subsidiary does not determinate its behavior in the market, but essentially it applies the instructions given by the parent company: joint liability.</p>	<p>company is legally possible.</p> <p>c) Occasional work for another company is legal, but group-intern agencies are illegal.</p> <p>d) Successive work for different companies of a group is legal, but possible illegal chain of fixed-term contracts.</p> <p>2. No direct labor effects.</p> <p>Compensatory measures between group companies if negative impact of influences between them</p> <p>Generally, transfer pricing policies have no direct effects on</p>	<p>members in succession: regulation of posted workers.</p> <p>2. Generally, no labor effects, unless not adequate compensation or mixing assets (assumption of the employer position by the group companies involved).</p> <p>Cash-pooling contract is not relevant from a labor perspective.</p> <p>Transfer pricing policies are not relevant from a labor perspective.</p> <p>3. De facto managerial power by the controlling</p>	<p>group of companies is not considered unlawful.</p> <p>2. Generally, no labor effects, unless not adequate compensation or mixing assets (assumption of the employer position by the group companies involved).</p> <p>3. De facto managerial power by the controlling (parent) company: real employer.</p>	<p>assignment: employee is free to choose the transferee as his/her employer, under permanent contract. Administrative penalties.</p> <p>2 Generally, no labor effects, unless not adequate compensation or mixing assets (application of the doctrine of piercing the corporate veil).</p> <p>3. De facto managerial power by the controlling (parent) company: liability (abuse of right).</p>
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			<p>labor law, but wrongful transactions may be an indicator for a piercing-case.</p> <p>3. Domination agreements are allowed.</p> <p>Informal assumption of management functions: no labor impact.</p> <p>“Shadow director” liability: claims only of the controlled company itself.</p>	(parent) company: real employer.		
<p>5. How are working conditions of the workers hired by companies of a group of companies determined?</p> <p>In particular, is there a principle of equal treatment</p>	<p>No specific regulation.</p> <p>Working conditions: employment contract, collective bargaining</p>	<p>No specific regulation.</p> <p>Working conditions: employment contract, collective bargaining</p>	<p>No specific regulation.</p> <p>Working conditions: employment contract, collective bargaining</p>	<p>No specific regulation.</p> <p>Working conditions: employment contract, collective bargaining</p>	<p>No specific regulation.</p> <p>Working conditions: employment contract, collective bargaining</p>	<p>No specific regulation.</p> <p>Working conditions: employment contract, collective bargaining</p>

<p>between workers of the different companies of the group?</p>	<p>agreements and legal regulation. No, unless existence of collective agreement.</p>	<p>agreements and legal regulation. Yes, unless existence of collective agreement.</p>	<p>agreements and legal regulation. No, unless common practice or collective agreement.</p>	<p>agreements and legal regulation. No, unless common practice or group-level collective agreement.</p>	<p>agreements and legal regulation. No, unless common practice or group-level collective agreement.</p>	<p>agreements and legal regulation. No, unless common practice or group-level collective agreement.</p>
<p>6. Is it possible to adopt a collective bargaining agreement applicable to all companies of the group? Can collective bargaining agreements at company level also exist? In this case, what agreement will be applicable, the industry-level, the group-level or the company-level collective agreement?</p>	<p>Yes. Both group-level and company-level collective agreement must have to be in accordance with the higher norms.</p>	<p>Yes. Group-level collective agreement: applicable (express provision) (majority labor conditions).</p>	<p>Yes. Company-level collective agreement: applicable</p>	<p>Yes. Company-level and group-level collective agreement: applicable over industry-level collective agreement (some labor conditions).</p>	<p>Yes. Company-level and group-level collective agreement: applicable over industry-level collective agreement (some labor conditions). If conflict: company-level collective agreement.</p>	<p>Yes. Company-level collective agreement: applicable.</p>

<p>7.What are the consequences of the integration of a company into a corporate group or group of companies in the context of redundancies? In particular, to prove the grounds for the redundancy, does the regulation take into account the situation of the group or only the situation of the company in question?</p>	<p>All legal protections (in some cases): the company level and group level.</p> <p>Informative obligations about the economic situation of the group (in some cases).</p>	<p>The "Macron ordinance" n°2017-1387.</p> <p>Economic situation of the particular company.</p>	<p>Law against unfair dismissal: no group-wide application.</p> <p>Economic situation of the particular company.</p>	<p>No specific evidences of assumption of the employer position by two or more group members: general rules.</p> <p>Existence of evidences: corporate group as unit reference for application of redundancy legislation: economic situation of the group.</p>	<p>No specific evidences of assumption of the employer position by two or more group members: general rules.</p> <p>Existence of those evidences: corporate group as unit reference for application of redundancy legislation: economic situation of the group.</p> <p>Informative obligations about the economic situation of the group (in some cases).</p>	<p>No specific changes in the procedure of termination of employment, unless:</p> <ul style="list-style-type: none"> i) confusion in employee workforce; ii) illegal employment contract with plurality of employers; iii) illegal occasional assignment of workers; iv) mixing assets; v) fraud of law or vi) abuse of legal entity.
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<p>8. Who are the negotiating partners within the framework of a redundancy?</p> <p>Are they employers' and workers' representatives from the particular company or from the parent company?</p>	<p>Employer's and workers' representatives of the particular company.</p>	<p>Matters about order of dismissals.</p>	<p>Application of the general shop floor co-determination regime.</p> <p>The workers' representatives may be the ones from the particular company.</p> <p>On the employer's side: the employing company is in charge.</p>	<p>No specific provision when a company is part of a corporate group.</p> <p>General rule applied:</p> <p>i) consultation process between workplace trade union representative and with their productive sector association.</p> <p>ii) in absence, sector level trade unions belonging to the most representative confederation at national level.</p>	<p>No specific provision when a company is part of a group of companies.</p> <p>General rule: employers' and workers' representatives from the particular company.</p> <p>Evidences of assumption of the employer position by two or more group members: negotiating partners from the group companies involved.</p>	<p>The employer's and workers' representatives of the particular company.</p>
<p>9. In the event of a redundancy, is there an obligation to relocate to another company of the group the employees</p>	<p>No, unless existence in collective bargaining agreement.</p>	<p>No.</p> <p>Groups of companies with operations abroad: obligation of a</p>	<p>No, unless employment contract or reliable practice within the group.</p>	<p>No.</p> <p>Two or more members of the group assumed the employer</p>	<p>No, but possible possible social measure.</p>	<p>No, but the employer may offer it.</p>

<p>affected by such redundancy?</p>	<p>Discussed in the framework of collective redundancies.</p>	<p>search for redeployment opportunities if requested.</p>		<p>position: unfair dismissal if it was possible the relocation measure (case law).</p>		
<p>10. What is the effect of calling a strike in a group company? Could the other companies of the group contract with a third company to replace the services provided by the company on strike?</p>	<p>Replacing services of the company on strike by a third party is legal.</p>	<p>A supporting strike may be legal:</p> <ul style="list-style-type: none"> i) targeted company belongs to the group and ii) putting pressure about claims that directly or indirectly affect workers. <p>Replacing strikers is legal (case law):</p> <ul style="list-style-type: none"> i) with company's own employees or 	<p>A supporting strike may be legal:</p> <ul style="list-style-type: none"> i) proportionality; ii) targeted company belongs to the same group and iii) putting pressure on parent company to further resolution. <p>Replacing striking workers with employees from other group companies is legal.</p>	<p>Specific circumstances of the case.</p> <p>General principle: unlawful to minimize strike's effect's hiring new workers.</p>	<p>Group companies: prohibition to minimize or to eliminate normal effects of a strike.</p>	<p>Group companies: prohibition to minimize or to eliminate normal effects of a strike.</p>

		ii) by subcontracting.				
11. Other relevant aspects and personal assessment of the regulation regarding corporate groups or group of companies <i>[optional]</i>	-	‘Macron ordinance’ n. 2017-1387 of September 22nd, 2017.	Group works council. Employee representation on the supervisory board. Cross-subsidization between group companies.	-	-	-

3.2. Latin America

	Brazil	Colombia	Chile	Uruguay
1. Is there a definition of corporate group or group of companies in your labor legal system?	<p>Yes.</p> <p>One or more companies with legal personality under control of another</p> <p>Based on: i) formalities, ii) members, iii) relation between companies</p> <p>Pursuant to recent amendment: i) Companies can act autonomously and be part of a group, ii) “<i>interés integrado</i>”, common interests, and joint action are necessary to be considered a corporate group</p>	<p>No.</p> <p>“<i>Unity of Enterprise</i>”: group of enterprises responsible for labor matters</p> <p>Definition in commercial law</p>	<p>No.</p> <p>“<i>Economic unity</i>”: group of enterprises responsible for labor matters (judicial criteria).</p> <p>“<i>Complex employer</i>”: two enterprises responsible of labor rights and responsibilities based on common labor management.</p> <p>Problematic matter.</p>	<p>Yes.</p> <p>Legal studies and case law in labor law.</p> <p>Legal definition in other fields (tax, commercial).</p>
2. In your legal system, are there joint labor and Social Security liabilities between the companies of a valid corporate group?	<p>Yes.</p> <p>All companies in the group are jointly responsible of labor and</p>	<p>No.</p> <p>Different rules are set in the case of joint liability.</p>	<p>Yes.</p> <p>Criteria by case-law.</p> <p>All companies in the group are jointly responsible of labor and</p>	<p>Yes.</p> <p>All companies in the group are jointly responsible of labor and</p>

	Social Security obligations.		Social Security obligations. Fines could be imposed when the group is made up to put workers at disadvantage.	Social Security obligations..
3. Are there cases in which there is joint liability of the companies of a group with respect to labor and Social Security obligations of other companies of the group? That is to say, what labor consequences derive from the incorrect constitution of a corporate group or group of companies?	Yes. “Passive” joint liability is derived from acting as a group	Eventually, as long as requirements of joint liability are fulfilled	N/A	Yes. Joint liability is derived from acting as a group
4. What are the labor effects of the fact that a worker provides services for more than one company of the group? What are the labor effects of contractual or commercial relationships between companies of the group, such as loans,	Provision of services for different members of the group: “active” joint liability or “ <i>unique employer</i> ” (companies are considered the only employer). Cash pooling: no regulation.	The labor effects vary a) Joint employment by more than one employer is legally possible, b) Simultaneous labor contacts (each company acts as an employer)	Commercial relations among companies are considered to be signs of “ <i>economic unities</i> ” or “ <i>complex employers</i> ” (several companies acting as one employer).	Joint liability in relation to labor and Social Security obligations.

<p>financing agreements or cash pooling? And transfer pricing policies? And the development of management functions by a company of the group with respect to another company?</p>		<p>c) Joint liability</p>		
<p>5. How are working conditions of the workers hired by companies of a group of companies determined? In particular, is there a principle of equal treatment between workers of the different companies of the group?</p>	<p>Working conditions: law, contract, collective agreement or internal regulations.</p> <p>Equal treatment afforded by case law.</p>	<p>Working conditions: law, contract, collective agreement or internal regulations.</p> <p>Equal treatment afforded when a “<i>unity of enterprise</i>” is declared.</p>	<p>Equal payment and non-discrimination (legal and constitutional basis).</p> <p>No sanction is imposed in case of discrimination in economic unities or complex employers as a matter of fact.</p> <p>Agreements are made at company level. If collective agreements are applied in a different way within the group, sanctions are imposed</p>	<p>Working conditions: determined at company-level.</p> <p>Equal treatment is neither regulated nor prohibited.</p>
<p>6. Is it possible to adopt a collective bargaining agreement applicable to all companies of the group? Can collective bargaining agreements</p>	<p>Yes.</p> <p>No prohibition to subscribe collective agreement among all the companies of a group.</p>	<p>Yes.</p> <p>Benefits collectively agreed on a comprehensive basis are to</p>	<p>Yes.</p> <p>When it is judicially declared that the companies act as one group</p>	<p>Yes.</p> <p>No legal provision.</p> <p>Not frequent; no case law.</p>

<p>at company level also exist? In this case, what agreement will be applicable, the industry-level, the group-level or the company-level collective agreement?</p>	<p>Most favorable norms (collectively agreed) are to be applied to workers.</p>	<p>be applied to workers of the group of enterprises.</p>	<p>Unions can decide whether agreeing with the group or with a single company at its will.</p>	<p>Sector-level collective agreements can cover company groups.</p>
<p>7. What are the consequences of the integration of a company into a corporate group or group of companies in the context of redundancies? In particular, to prove the grounds for the redundancy, does the regulation take into account the situation of the group or only the situation of the company in question?</p>	<p>N/A</p>	<p>The percentage of workers to be taken into account is determined according to the number of workers of the “group”</p>	<p>N/A</p>	<p>N/A</p>
<p>8. Who are the negotiating partners within the framework of a redundancy? Are they employers’ and workers’ representatives from the particular company or</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

from the parent company?				
9. In the event of a redundancy, is there an obligation to relocate to another company of the group the employees affected by such redundancy?	N/A	No. The only consequence of redundancy is an economic compensation.	N/A	N/A
10. What is the effect of calling a strike in a group company? Could the other companies of the group contract with a third company to replace the services provided by the company on strike?	Employers are entitled to replace workers on strike under specific conditions (general rule).	Employers are not entitled to replace workers on strike.	Employers are not entitled to replace workers on strike.	Employers are not entitled to replace workers in case of industrial action (general rule).

3.3. North America

	Canada
1. Is there a definition of corporate group or group of companies in your labor legal system?	<p>No.</p> <p>“Related employer”, “associated employer,” or “common employer”: inter-related corporations are jointly liability under some circumstances. Section 4 (1) of the Employment Standards Act and common law (Ontario).</p>
2. In your legal system, are there joint labor and Social Security liabilities between the companies of a valid corporate group?	<p>In some specific cases:</p> <ul style="list-style-type: none"> i) collective bargaining (section 1 (4) of the Labour Relations Act); i) Workplace Safety and Insurance Act, for the payment of higher premiums and iii) under the oppression remedy in corporate law.
3. Are there cases in which there is joint liability of the companies of a group with respect to labor and Social Security obligations of other companies of the group? That is to say, what labor consequences derive from the incorrect	<p>Yes.</p> <p>Multiple entities carrying on related or associated activities intending directly or indirectly defeat the intent and purpose of Employment Standards Act: one employer.</p> <p>Evidences:</p>

<p>constitution of a corporate group or group of companies?</p>	<ul style="list-style-type: none"> i) common management or directing mind; ii) common financial control; iii) common ownership; iv) existence of a common trade name or logo; v) movement of employees between two or more business entities; vi) using same premises or other assets by the entities; vii) the transfer of assets between them and viii) common market or customers served by the two or more entities. <p>In Ontario: related employer doctrine and section 2 of the Fraudulent Conveyances.</p>
<p>4. What are the labor effects of the fact that a worker provides services for more than one company of the group?</p> <p>What are the labor effects of contractual or commercial relationships between companies of</p>	<p>These factors are relevant to determination of related employers: joint liability for labor and employment obligations.</p> <p>No related employers: no labor effects.</p>

<p>the group, such as loans, financing agreements or cash pooling?</p> <p>And transfer pricing policies?</p> <p>And the development of management functions by a company of the group with respect to another company?</p>	
<p>5.How are working conditions of the workers hired by companies of a group of companies determined?</p> <p>In particular, is there a principle of equal treatment between workers of the different companies of the group?</p>	<p>Determined in the context of each specific company.</p> <p>No.</p>
<p>6.Is it possible to adopt a collective bargaining agreement applicable to all companies of the group?</p> <p>Can collective bargaining agreements at company level also exist? In this case, what agreement will be applicable, the industry-level, the group-level or the company-level collective agreement?</p>	<p>Yes.</p> <p>Possibility of changing the level of collective bargaining agreements (including industry-level, group-level or the company-level agreement):</p> <ul style="list-style-type: none"> i) jointly agreement between parties (the last agreed, the applicable) or ii) related employer (a group-level collective bargaining agreement) when: i) operating at arm's length and b) no undermining collective bargaining and employees' rights.

<p>7. What are the consequences of the integration of a company into a corporate group or group of companies in the context of redundancies? In particular, to prove the grounds for the redundancy, does the regulation take into account the situation of the group or only the situation of the company in question?</p>	<p>Not related-employer context: no specific legal consequences.</p> <p>Related-employer: i) effects on calculating severance (seniority and payrolls) and ii) account situation of all the companies.</p>
<p>8. Who are the negotiating partners within the framework of a redundancy?</p> <p>Are they employers' and workers' representatives from the particular company or from the parent company?</p>	<p>The employers' and workers' representatives from the particular company.</p>
<p>9. In the event of a redundancy, is there an obligation to relocate to another company of the group the employees affected by such redundancy?</p>	<p>No, unless employment contract or collective agreement.</p> <p>Minimum standards legislation do not impose such a requirement.</p>
<p>10. What is the effect of calling a strike in a group company? Could the other companies of the group contract with a third company to</p>	<p>No prohibition of replacing strikers (except British Columbia and Quebec).</p> <p>British Columbia and Quebec: strict prohibition of replacing strikers (directly or indirectly).</p>

<p>replace the services provided by the company on strike?</p>	<p>Federal level: hiring replacement employees is lawful (but no undermining legitimate bargaining objectives).</p> <p>A union is limited to picketing at the site of employment (Canadian law).</p> <p>Exception: related employers.</p>
<p>11. Other relevant aspects and personal assessment of the regulation regarding corporate groups or group of companies <i>[optional]</i></p>	<p>Principle of corporate personality.</p> <p>Related employers doctrine is most likely to be successful:</p> <ul style="list-style-type: none"> i) group of corporations operate as a single business; ii) one corporation exercises effective control over another or iii) transactions between group companies having intent or effect of depriving workers of their legal entitlements.