DISMISSALS DUE TO BUSINESS REASONS CONCLUSIONS

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Abstract

El Comparative Labor Law Dossier (CLLD) de este número 2/2014 de IUSLabor está dedicado a los despidos por causas empresariales. Además de España, hemos obtenido la participación de académicos y profesionales de prestigio de los siguientes países: Bélgica, Francia, Italia, Reino Unido, Chile, México, Uruguay, Canadá y Estados Unidos.

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. Asimismo, hemos elaborado un cuadro-resumen con aquellas cuestiones más relevantes en materia de despidos por causas empresariales en los distintos ordenamientos jurídicos analizados en este número de IUSLabor.

The Comparative Labor Law Dossier (CLLD) in this issue 2/2014 of IUSLabor is dedicated to dismissals due to business reasons. Aside from Spain, we have had the collaboration of internationally renowned academics and professionals of the following countries: Belgium, France, Italy, the United Kingdom, Chile, Mexico, Uruguay, Canada and the United States.

Without detriment to recommend our readers the reading of these articles, we have drawn the top 10 conclusions regarding dismissals due to business reasons in the analyzed countries. Furthermore, we have elaborated a summary table with the most relevant issues regarding redundancies in the different legal systems analyzed in this issue of IUSLabor.

Summary

1. «Top ten» conclusiones
2. «Top ten» conclusions
3. Summary table
  3.1. Europe
  3.2. America

1. «Top ten» conclusiones

El Comparative Labor Law Dossier (CLLD) de este número 2/2014 de IUSLabor ha estado dedicado a los despidos por causas empresariales e incorpora artículos, elaborados por académicos de prestigio, de la regulación en materia de despidos colectivos y por causas empresariales en, además de España, Bélgica, Francia, Italia, Reino Unido, Chile, México, Uruguay, Canadá y Estados Unidos. El CLLD ha partido del siguiente test de preguntas a las que han dado respuesta los colaboradores internacionales de la revista:

1. ¿Cómo se definen (legislación/órganos judiciales) las causas que justifican un despido por causas empresariales?
2. ¿Las causas empresariales que justifican el despido han de concurrir a nivel de toda la empresa o pueden hacerlo a sólo en el centro de trabajo donde se produce el despido?
3. ¿Cuál es el procedimiento que la empresa debe seguir para proceder a un despido por causas empresariales? ¿Existen especialidades en dicho procedimiento en relación con el número de trabajadores afectados?
4. ¿En el ordenamiento jurídico de *[país]* existen colectivos de trabajadores que gozan de prioridad de permanencia o criterios de selección de los trabajadores afectados por un despido por causas empresariales?
5. ¿El despido por causas empresariales que sea declarado correcto/procedente da lugar al derecho del trabajador de obtener una indemnización?
6. Además de, en su caso, el reconocimiento de una indemnización al trabajador, ¿qué obligaciones empresariales se derivan del despido por causas empresariales?
7. ¿Qué consecuencias se derivan del incumplimiento empresarial de la normativa legal sobre despido por causas empresariales?
8. ¿Existen especialidades en el despido por causas empresariales para las microempresas y/o pequeñas y medianas empresas?
9. ¿Qué consecuencias existen en relación con el régimen jurídico del despido por causas empresariales el hecho que el despido se produzca en el marco de una empresa que forma parte de un grupo de empresas?
10. ¿Es posible el despido por causas empresariales en la Administración Pública? En su caso, ¿qué especialidades existen en relación con la definición de las causas?

A continuación se exponen, siguiendo el orden de las preguntas anteriores, las 10 conclusiones principales en materia de despidos por causas empresariales alcanzadas en base a los artículos elaborados por nuestros asesores internacionales.

1. La mayoría de ordenamientos jurídicos analizados prevén el **despido por causas empresariales** como una de las modalidades extintivas de la relación laboral, equiparando, como norma general, las causas empresariales con las **causas económicas, técnicas, organizativas o de producción**.

Desde el punto de vista regulatorio, seguramente la previsión que más se aproxima a la española es la del **ordenamiento jurídico francés**, que califica como causa económica la existencia de pérdidas, la disminución no compensable de mercado, la caída de larga duración de la actividad y el cierre de la empresa. No obstante lo anterior, contrariamente a la regulación española, como norma general, la pérdida de mercado, reducción de ventas o ingresos de un año respecto del anterior no es calificado como dificultad económica.

En el extremo contrario encontramos a **Italia** y **Chile**, por cuanto ambos legalmente configuran el despido por causas empresariales como *ultima ratio*. En el sentido que la empresa debe probar la imposibilidad de adoptar otras medidas ante la concurrencia de las causas económicas, técnicas, organizativas o de producción. Similar a estos dos países, entendemos, es el caso de **México**, cuya definición de causas extintivas es la siguiente: incosteabilidad notoria y manifiesta de la explotación, agotamiento de la materia objeto de una industria extractiva, explotación de minas que carezcan de minerales costeables y concurso o la quiebra con cierre definitivo de la empresa o reducción definitiva de sus trabajos.

Finalmente, apuntar que los ordenamientos jurídicos de **Uruguay**, **Canadá** y **Estados Unidos** no reconocen la categoría de despido por causas empresariales, en cuanto existe el despido sin causa.

2. Existe una **remarcable diversidad** en relación con el **ámbito de concurrencia de las causas empresariales**. En este sentido, los ordenamientos jurídicos de **Bélgica**, **Chile** y **México** admiten la concurrencia de las causas tanto en la empresa en su conjunto como en el centro de trabajo. **Francia** e **Italia**, por el contrario, exigen que la causa empresarial que justifica el despido concurra en la empresa en su conjunto. Finalmente, **España** y **Reino Unido** distinguen en atención a las causas alegadas o al carácter individual o colectivo del despido, respectivamente. Así, en el ordenamiento jurídico español, el ámbito de la concurrencia de la causa económica es la empresa, mientras que es el centro de trabajo en relación con las causas TOP. Y, en el ordenamiento jurídico inglés, el ámbito de concurrencia de las causas en el despido individual es la empresa, mientras que es el centro de trabajo en el despido colectivo.

3. En la gran mayoría de ordenamientos jurídicos analizados existen **diferencias procedimentales** en el despido por causas empresariales **en atención al número de trabajadores afectados**. Son excepción a esta norma general los ordenamientos jurídicos de **Chile** y **México** –en este último, únicamente se admite el despido colectivo por causas empresariales.

Los **umbrales numéricos** utilizados para la calificación del **carácter colectivo del despido son**, ciertamente, **dispares**. A modo de ejemplo, el **ordenamiento jurídico italiano** califica como despido colectivo el que afecta a más de 5 trabajadores en una empresa de 15 en un período de 12 días; el **francés,** a más de 10 trabajadores en un período de 30 días; el **inglés**, a más de 20 trabajadores en un período de 90 días; el **canadiense** a más de 50 trabajadores en un período de cuatro semanas; y el ordenamiento jurídico **español** establece un umbral numérico en atención al tamaño de la empresa y teniendo en cuenta un ámbito temporal de 90 días.

En este punto, no debemos olvidar que existe a **nivel comunitario** existe un claro **intento homogeneizador**, que por lo analizado cabe entender que **no está siendo exitoso**. Así, la Directiva 98/59/CE del Consejo, de 20 de julio de 1998, relativa a la aproximación de las legislaciones de los estados miembros que se refieren a los despidos colectivos establece que: "*se entenderá por «despidos colectivos» los despidos efectuados por un empresario, por uno o varios motivos no inherentes a la persona de los trabajadores, cuando el número de despidos producidos sea, según la elección efectuada por los Estados miembros:*

i) para un período de 30 días:

- *al menos igual a 10 en los centros de trabajo que empleen habitualmente más de 20 y menos de 100 trabajadores.*
- *al menos el 10% del número de los trabajadores en los centros de trabajo que empleen habitualmente como mínimo 100 y menos de 300 trabajadores.*
- *al menos igual a 30 en los centros de trabajo que empleen habitualmente 300 trabajadores, como mínimo.*

ii) o bien, para un período de 90 días, al menos igual a 20, sea cual fuere el número de los trabajadores habitualmente empleados en los centros de trabajo afectados."

En cuanto al **procedimiento,** todos los **ordenamientos jurídicos europeos** analizados contienen, además de otros requisitos, un **período de consultas con los representantes de los trabajadores** en supuestos de despidos colectivos. Y ello, ahora sí, en total consonancia con lo dispuesto en el artículo 2 de la Directiva 98/59/CE citada.

Existen, no obstante, algunas diferencias procedimentales que resulta de interés apuntar. Así, **Bélgica** incluye, con carácter posterior al período de consultas, la obligación de

hacer pública la decisión extintiva y abrir un período de alegaciones de 30 días por parte de los representantes de los trabajadores, durante el cual los despidos no son efectivos. Permitiendo, en su caso, modificar los posibles errores procedimentales detectados. También resulta interesante, a nuestro juicio, el derecho de los representantes de los trabajadores en **Francia** de contratar, a cargo de la empresa, a expertos para entender la documentación empresarial aportada.

Finalmente, apuntar que en la **práctica totalidad de los ordenamientos jurídicos** analizados, sin perjuicio de los requisitos procedimentales concretos, se reconoce la **facultad unilateral de la empresa de realizar el despido**. La **única excepción** se encuentra en el ordenamiento jurídico **México** que, similar a la regulación española previa a la reforma laboral 2012, exige la autorización de la Junta de Conciliación y Arbitraje.

4. Aunque con **diferencias sustanciales**, la **mayoría de los ordenamientos jurídicos** analizados incluyen, además de una prohibición de discriminación, **alguna modalidad de criterio selección o prioridad de preferencia** en relación con los trabajadores afectados por un despido por causas empresariales. Criterios que, generalmente, hacen referencia a la **antigüedad**, existencia de **responsabilidades familiares**, ejercicio cargo de **representación de los trabajadores** y, en menor medida, **enfermedad**.

Es especialmente interesante destacar el **ordenamiento jurídico francés**, que específicamente incluye los siguientes criterios de selección: número de dependientes a cargo –especialmente familias monoparentales–, antigüedad, situación del trabajador para encontrar nuevo empleo y su categoría profesional. El **incumplimiento** de dichos criterios puede dar lugar a una **indemnización por daños y perjuicios**. Asimismo, en el ordenamiento jurídico de **Uruguay**, aunque no se estipula como un criterio de selección ni prioridad de permanencia, se reconoce una indemnización superior en supuestos de despidos de trabajadores de baja por cuestiones médicas o parentales.

5. Existe una **amplia aceptación** en el reconocimiento de una **compensación económica** al trabajador afectado por el despido; **indemnización variable**, en mayor o menor medida, al **salario y antigüedad** del trabajador. Las únicas excepciones a esta norma las encontramos en el **ordenamiento jurídico estadounidense** y, parcialmente, en el **canadiense**, que únicamente reconocen compensación económica a los trabajadores a partir de una determinada antigüedad.

6. Sin perjuicio del consenso en el reconocimiento de una compensación económica a los trabajadores afectados por el despido, existen **importantes diferencias** en los

ordenamientos jurídicos analizados en relación con la **existencia o no de obligaciones empresariales adicionales** ante un despido por causas empresariales.

Así, mientras que los ordenamientos jurídicos de **Chile**, **México**, **Uruguay**, **Canadá** y **Estados Unidos** no reconocen ninguna obligación empresarial adicional, **Bélgica**, **Francia** y **España** incluyen la obligación de, bajo ciertos condicionantes, elaborar un plan de recolocación.

Del **ordenamiento jurídico francés**, es interesante destacar, asimismo, que incluye una prioridad de recontratación de los trabajadores afectados por el despido durante un año en el caso que la empresa quiera contratar a trabajadores con sus mismas calificaciones. Destacar también el ordenamiento jurídico del **Reino Unido**, que obliga a la empresa a adoptar medidas "razonables" para encontrar una ocupación alternativa para los trabajadores afectados por el despido.

7. Como norma general, **el incumplimiento empresarial del régimen jurídico** del despido por causas empresariales da lugar a la **calificación del despido** como **injustificado** que, en la mayoría de los ordenamientos jurídicos analizados, da lugar al reconocimiento de una **compensación económica a los trabajadores afectados**.

No obstante lo anterior, los ordenamientos jurídicos de **Italia**, **España** y **México** reconocen la nulidad ante determinados incumplimientos, dando lugar a la reincorporación del trabajador o, en el caso del ordenamiento jurídico mexicano, de la opción del trabajador de optar entre indemnización o reincorporación.

8. Más allá de las diferencias procedimentales en relación con el despido colectivo, **la mayoría de los ordenamientos jurídicos analizados no reconocen especialidades** en relación con el despido por causas empresariales en **micro o pequeñas y medianas empresas**.

En este contexto, no obstante, es interesante destacar la regulación contenida en la *Employment Standards Act* de Ontario (**Canadá**), que únicamente establece la obligación de abonar una indemnización (*severance pay*) a los trabajadores afectados por el despido a aquellas empresas con una masa salarial superior a $2.5 millones o cuando el despido afecte a más de 50 trabajadores.

9. La regulación de los **despidos colectivos en el marco de un grupo de empresas** encuentra **diferencias importantes** entre los ordenamientos jurídicos analizados.

Mientras que en los supuestos de **Bélgica**, **Reino Unido**, **México**, **Uruguay** y **Estados Unidos** la participación en un grupo de empresas **no tienen afectación alguna** en el despido por causas empresariales, en los restantes ordenamientos jurídicos analizados sí que genera alguna especialidad. Especialidad que puede tener carácter **procedimental**, como en el caso del **ordenamiento jurídico español**, en el que existe la obligación de proporcionar información contable de la empresa principal o demás empresas del grupo; en el **ámbito de concurrencia de la causa**, como en el **ordenamiento jurídico francés**, que establece que debe concurrir a nivel del grupo o de la línea comercial del mismo; o en la **responsabilidad** conjunta de las empresas del grupo, como en los **ordenamientos chileno y canadiense**.

10. Finalmente, no existe una homogeneidad destacable en la posibilidad de realizar un **despido por causas empresariales en la Administración Pública**, admitiéndose en los ordenamientos jurídicos de **España**, **Reino Unido**, **Canadá** y **Estados Unidos**.

2. «Top ten» conclusions

The Comparative Labor Law Dossier (CLLD) in this issue 2/2014 of IUSLabor is dedicated to dismissals due to business reasons. Elaborated by internationally renowned academics and professionals, this issue's CLLD includes the regulation of redundancies in, aside from Spain, Belgium, France, Italy, the United Kingdom, Chile, Mexico, Uruguay, Canada and the United States. The international advisors of the law review have responded to the following questions:

1. How does the legislation or the judicial bodies define the causes that allow for a dismissal due to business reasons?
2. Do the business reasons that justifying the dismissal must concur in the whole company or can they only concur in the workplace where dismissal occurs?
3. What is the procedure that the company must follow to conduct a dismissal for business reasons? Are there specialties in such procedure in relation to the number of workers affected?
4. In the legal system of *[country]*, are there groups of workers who have retention priority in a dismissal for business reasons and/or exist criteria for determining the workers affected by such a redundancy?
5. Does the dismissal for business reasons that is declared correct/legal generate the worker's right to obtain an economic compensation?
6. In addition to, when applicable, the worker's right to an economic compensation, what other company obligations derive from a dismissal due to business reasons?
7. What are the consequences that arise from breach or non-compliance with the legal procedure regarding redundancies due to business reasons?
8. Are there specialties in the dismissal due to business reasons for microcompanies and/or small and medium enterprises?
9. What consequences exist regarding the legal regime of dismissal due to business reasons when the dismissal takes place within the framework of a company that is part of a holding or a business group?
10. Is it possible to conduct a dismissal due to business reasons in a public administration? In this case, what specialties exist in regard to the definition of the business causes?

Following, in the same order of the questions above, are the 10 most important conclusions regarding dismissals due to business reasons; conclusions drawn from the articles written by our international consultants.

1. The majority of legal systems analyzed accept **dismissals due to business reasons**, defining, as a general rule, business causes as **economic, technical, organization and productive reasons**.

From a regulatory point of view, the regulation closest to the Spanish one is the **French legal system**, which defines as economic cause the existence financial losses, non-offsettable loss of markets, long-lasting drop in activity and the company's shutdown. Nevertheless, contrary to the Spanish regulation, as a general rule, the loss of market, a slowdown in sales or lower turnover or profits during the year prior to the redundancy does not qualify as economic difficulties.

At the other extreme are **Italy** and **Chile**, because both constitute the dismissal due to business reasons as last resort. In the sense that the company must prove the impossibility of adopting other suitable measures due the occurrence of economic, technical, organizational or production causes. Similar to these two countries, from our point of view, is the case of **Mexico**, where business causes are defined as: notorious and manifest unprofitability of the exploitation, exhaustion of the material of an extractive industry, mining lacking affordable minerals and bankruptcy and insolvency with definitive closure of the company or permanent reduction of its work.

Finally, note that the labor regulation of **Uruguay**, **Canada** and **the United States** does not recognize the category of dismissals due to business reasons, as in these legal systems the general rule is the dismissal without cause.

2. There is a **remarkable diversity** in relation to the **scope of concurrence of the business causes**. In this sense, the legal systems of **Belgium**, **Chile** and **Mexico** establish the concurrence of the business causes both in the company and workplace level. **France** and **Italy**, on the other hand, require that the business causes that justify the dismissal concur in the company as a whole. Finally, **Spain** and **the United Kingdom** differ in regard to the alleged cause or the individual or collective nature of the dismissal, respectively. Thus, in the Spanish legal system, the scope of the economic cause is the company, while it is the work center is the case of TOP causes. In the English legal system, the scope of occurrence of the cause is the whole company in individual dismissals and the work center in collective dismissals.

3. In the majority of analyzed legal systems there exist **differences in the procedure** of dismissals due to business reasons in regard to the **number of affected workers**. Exceptions to this general rule are the legal systems of **Chile** and **Mexico** –in the latter, only collective dismissals are allowed.

The **numerical thresholds** used for the determination of the **collective nature of the dismissal** are certainly **diverse**. For example, the **Italian legal system** qualifies as collective dismissal, the dismissal that affects more than 5 employees in a company of 15 over a period of 12 days; **France**, more than 10 workers in a period of 30 days; the **UK**, more than 20 workers in a period of 90 days; **Canada** more than 50 workers in a period of four weeks; while the **Spanish legal system** sets a numeric threshold in response to the size of the company and given a period of 90 days.

At this point, it is important to recall that there is in the **European Union** a clear **attempt to homogenize** the different national regulations; attempt that, in view of the previous analysis, is **not being successful**. Thus, the Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies states that: "*'collective redundancies` means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:*
(i) either, over a period of 30 days:

- *at least 10 in establishments normally employing more than 20 and less than 100 workers,*
- *at least 10 % of the number of workers in establishments normally employing at least 100 but less than 300 workers,*
- *at least 30 in establishments normally employing 300 workers or more,*

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question".

In terms of **procedure**, **all European legal systems analyzed**, as well as other requirements, contain a **consultation period with workers' representatives** in cases of collective redundancies. And this procedure, now fully in line with the provisions of article 2 of Directive 98/59/EC.

Nonetheless, there exist some procedural differences that are of interest analyzing. In this sense, **Belgium** includes, after the consultation period, the obligation to publicize the extinctive decision and open an allegation period of 30 days for workers' representatives, during which the dismissals are not effective. Allowing, if necessary, to modify the possible procedural errors detected. It is also interesting, in our opinion, the right of workers' representatives in **France** to hire, paid for by the company, experts to understand the business documentation.

Finally, note that in **almost all the analyzed legal systems**, without detriment of the specific procedural requirements, **the company has the unilateral faculty of performing a collective dismissal**. The only exception is found in the **Mexican legal**

system where, similar to the Spanish regulation prior to the 2012 labor reform, the authorization of the Board of Conciliation and Arbitration is required.

4. Although with **substantial differences**, **most legal systems analyzed include**, in addition to a prohibition of discrimination, some type of **selection criteria or retention priority** in regard to workers affected by a dismissal due to business reasons. Criteria generally referred to **seniority**, **family responsibilities**, **position of workers' representative** and, to a lesser extent, **illness** of the employee.

It is particularly interesting to highlight the **French regulation** that specifically includes the following criteria: number of family members in a dependent situation –especially single parents–, age, worker's ability to find a new employment and his or her professional category. **Failure to meet these criteria** can lead to **compensation for damages**. Also, the legal system of **Uruguay**, although not strictly a selection criteria nor a retention priority, recognizes a higher amount of the economic compensation in cases of dismissals of workers absent for medical issues or family responsibilities.

5. There is a **wide acceptance** in the recognition of an **economic compensation** to workers affected by a redundancy; **compensation variable**, to a greater or lesser extent, in view of the worker's **salary and seniority**. The only exceptions to this rule are found in the **American** and, partially, **Canadian legal system**, which only recognizes compensation to workers from a certain number of years of seniority.

6. Notwithstanding the consensus that exist in the recognition of an economic compensation to workers affected by a dismissal, there exist **important differences** within the analyzed legal systems in regard to the **existence or not of additional employer obligations**.

In this sense, while the legal systems of **Chile**, **Mexico**, **Uruguay**, **Canada** and **the United States** do not recognize any additional obligation, the legal systems of **Belgium**, **France** and **Spain** include the employer's obligation of, in certain cases, elaborate a relocation or outplacement plan.

Of the **French legal system** it is also interesting to note that it includes a rehiring priority of workers affected by a redundancy for one year if the company wants to hire a worker with his or her same qualifications. Also highlight the **English legal system** that requires the company to take "reasonable" steps to find alternative employment for workers made redundant.

7. As a general rule, the **employer's breach of the legal regulation** of the dismissal due to business reasons leads to the **qualification of the dismissal** as **wrongful**, which, in the majority of legal systems, results in the recognition of an **economic compensation** for the worker affected by such dismissal.

Notwithstanding the above, the legal systems of **Italy**, **Spain** and **Mexico** recognize the nullity of the dismissal in certain breaches, resulting in the worker's reinstatement or, in the case of the Mexican legal system, the worker's option to choose between compensation or reinstatement.

8. Aside from the procedural differences regarding collective redundancies, **most of the analyzed legal systems do not recognize specialties** in regard to dismissal due to business reasons for **micro or small businesses**.

In this context, nonetheless, it is interesting to point out the regulation contained in the *Employment Standards Act* of Ontario (**Canada**), that only establishes the obligation to pay compensation (*severance pay*) to workers made redundant to those companies with a payroll above $2.5 million or when the dismissal affects more than 50 workers.

9. The regulation of **collective redundancies within a holding or group of companies** finds **significant differences** between the legal systems analyzed.

While in the cases of **Belgium**, the **United Kingdom**, **Mexico**, **Uruguay** and the **United States** participation in a holding or group of companies has no affectation in the regulation of the dismissal, in the other legal systems analyzed this circumstance has some consequences. Consequence that can have a **procedural nature**, as in the case of the **Spanish legal system**, in which there is the obligation to provide accounting information of the main company or other companies of the group; can affect the **scope of the concurrence of the cause**, as in the **French legal system**, which states that in these cases the cause must refer to the group or the group's line of business; or can lead to **joint liability** of the companies of the business group, as in the **legal systems of Chile and Canada**.

10. Finally, there is no homogeneity in the possibility of a **dismissal for business reasons in the Public Sector**, admitted only the legal systems of **Spain**, **the United Kingdom**, **Canada** and the **United States**.

3. Summary table

3.1. Europe

	Belgium	France	Italy	Spain	UK
1. How does the legislation or the judicial bodies define the causes that allow for a dismissal due to business reasons?	Economical and technical reasons.	Economic, technical and organization.	Economic, technical, organization and productive reasons.	Economic, technical, organization and productive reasons.	Cessation business, movement place of business and reduction workforce.
2. Do the business reasons that justifying the dismissal must concur in the whole company or can they only concur in the workplace where the dismissal occurs?	Company and/or work center, unless "manifestly" unreasonable.	Company.	Company.	Economic reasons: company. TOP reasons: work center.	Individual dismissal: company. Collective dismissal: workplace.
3. Are there specialties in the dismissal procedure in relation to the number of workers affected? **What is the procedure that the company must follow to conduct a dismissal for business reasons?**	Yes. Individual dismissal: notice period and termination fee. Specialties protected workers (workers' representatives, pregnant women, maternity leave, sick workers or prevention advisors).	Yes. Individual dismissal: pre-dismissal meeting, written notice and notification labor administration. Collective dismissal (2-9 workers): communication and meeting workers' representatives and	Yes. Individual dismissal: written notice and conciliation. Collective dismissal (> 5 workers in a company of 15 in a period of 120 days): communication and consultation labor unions. In absence of agreement,	Yes. Individual dismissal: written communication, notice and economic compensation. Collective dismissal (numerical threshold): consultation period workers' representatives and notification labor authority and workers.	Yes. Individual dismissal: reasonable efforts to find new employment and individual consultation. Collective dismissal (> 20 workers): communication and consultation with labor unions, individual

	Collective dismissal: consultation workers' representatives, public announcement, 30 days objection period and procedural corrections. Employer's unilateral decision (except workers' representatives).	procedure individual dismissal. Collective dismissal (> 10 workers): communication and consultation workers' representatives. Employer's unilateral decision.	administrative conciliation. Employer's unilateral decision.	Employer's unilateral decision.	consultation and Information Secretary of State. Employer's unilateral decision.
4. Are there groups of workers who have retention priority in a dismissal for business reasons and/or exist criteria for determining the workers affected by such a redundancy?	No. Only prohibition of discrimination.	Yes. Selection criteria: number dependents, seniority, employee's employability situation and employees' skills.	Individual dismissal: respect fundamental rights and non discrimination. Collective dismissal: business reasons and criteria set in collective agreements. In absence: family responsibilities, seniority and business reasons.	Explicit retention priority: workers' representatives and criteria set in collective agreements. Implicit retention priority: pregnant workers and protected workers for conciliation reasons.	No. Only objective criteria and prohibition of discrimination.
5. Does the dismissal for business reasons that is declared correct/legal generate the worker's right to obtain an economic compensation?	Yes. Termination fee. Collective dismissal: additional economic compensation = wage – unemployment benefits. Closure enterprise:	Yes. Economic compensation = salary 3-12 previous months and seniority.	Yes. Economic compensation = total annual salary / 13,5	Yes. Economic compensation = 20 days of salary per year of service, maximum 12 monthly payments.	Yes. Economic compensation = 0,5-1,5 (age criteria) week's pay per year of service.

	additional economic compensation = 150,79€ year/seniority.				
6. In addition to, when applicable, the worker's right to an economic compensation, what other company obligations derive from a dismissal due to business reasons?	Facultative social plan. Outplacement counseling for workers > 45 years old. Employment Cell.	Retraining program. Dismissal > 10 workers: collective redundancy plan (agreement labor administration).	Levy for dismissal of permanent workers.	Outplacement plan (dismissal > 50 workers). Financial contribution Treasury (workers ≥ 50 years)	Time off search new employment.
7. What are the consequences that arise from breach or non-compliance with the legal procedure regarding redundancies due to business reasons?	Workers' representatives: reinstatement or compensation (2-4 year's salary depending on seniority). Collective dismissal: reinstatement or compensation (60 days), administrative fines and criminal sanctions. Specific administrative fines and criminal sanctions in case of closure enterprise.	Absence of real and serious grounds: unfair dismissal (damages ≈ 6 month's salary). Breach procedure: unfair. Judge's decision: damages or reinstatement (absence or invalid job preservation plan). No consultation workers' representatives: civil (nullity procedure) and criminal penalties.	Individual dismissal: (i) absence written notification: nullity (reinstatement and unpaid wages (min. 5 monthly payments)); (ii) absence justification or breach of procedure: reduced indemnity (compensation 6-12m). Collective dismissal: (i) absence written notification: nullity; (ii) breach procedure: indemnity (12-24m); (iii) breach selection criteria: indemnity (max. 12m); (iv) obvious lack of justification:	Individual dismissal: (i) incompliance legal requirements: unfair (reinstatement or compensation 33 days salary, max. 24 monthly payments); (ii) discriminatory or fraudulent: nullity (reinstatement and unpaid wages). Collective dismissal: (i) absence of cause: unfair dismissal; (ii) discriminatory, breach procedure or fraudulent: nullity.	Individual dismissal: reinstatement, reengagement or compensation. Collective dismissal: absence consultation period: protective award (max. 45 days pay).

			reinstatement and unpaid wages (max. 12m).		
8. Are there specialties in the dismissal due to business reasons for microcompanies and/or small and medium enterprises?	No. Collective dismissal > 20 workers.	Yes. Collective dismissal 2-9 workers: specialties procedure. Companies < 1.000 workers: personalized redeployment convention.	Yes. Companies < 15 workers: reinstatement or compensation (2.5-6 monthly payments).	No. Collective dismissal = numerical threshold article 51 ET. Only duration consultation period.	No. Collective dismissal > 20 workers.
9. What consequences exist regarding the legal regime of dismissal due to business reasons when the dismissal takes place within the framework of a company that is part of a holding or a business group?	None. Only business groups European dimension: notification and consultation European works council.	Economic cause: group or group's line of business level. Redeployment abroad offers.	Business group considered one center for labor liabilities: obligation of reinstatement and number of affected workers.	Financial documentation of the holding and other companies of the group to workers' representatives.	None.
10. Is it possible to conduct a dismissal due to business reasons in a public administration? **In this case, what specialties exist in regard to the definition of the business causes?**	No. Only dismissal due to disciplinary and objective reasons.	No. Only dismissal due to disciplinary and objective reasons.	No. Only dismissal due to disciplinary and objective reasons.	Yes. Persistent and supervened situation of budget shortfall for funding the public service.	Yes. Public administration employees: same criteria and procedure.

11. Other relevant aspects regarding dismissals due to business reasons	Collective agreement nr. 109 (2014): reasons for dismissal.	The “Florange law” (24.2.2014) requires companies > 1.000 workers must search a purchaser before closing a profitable site.	Redundancies are a last resort: employer must prove the non-existence of alternative measures.	-	-

3.2. America

	Chile	Mexico	Uruguay	Canada	USA
1. How does the legislation or the judicial bodies define the causes that allow for a dismissal due to business reasons?	Economical, financial and technical reasons. Objective, severe, alien and permanent reasons.	Economic, technical, organization, productive reasons and force majeure.	Dismissal without cause. Except workers' representatives.	Employer's freedom to dismiss.	At-will ruel, except discrimination.
2. Do the business reasons that justifying the dismissal must concur in the whole company or can they only concur in the workplace where dismissal occurs?	Company and/or work center.	Company and/or work center.	-	-	-
3. Are there specialties in the dismissal procedure in relation to the number of workers affected? **What is the procedure that the company must follow to conduct a dismissal for business reasons?**	No. Written notice, publicity and economic compensation. Employer's unilateral decision.	Yes. Only collective dismissal. Procedure depending on the alleged causes. Authorization of the Conciliation and Arbitration Board.	No legal regulation.	Yes. Reasonable notice or pay in lieu of notice. Collective dismissal (≥ 50 workers in 4 weeks): extended notice and information to workers and government. Federally regulated employees: joint planning committee. Employer's unilateral decision.	Yes. Collective dismissal: 60 days notice. National Labor Relations Act: bargaining union representatives. Employer's unilateral decision.

4. Are there groups of workers who have retention priority in a dismissal for business reasons and/or exist criteria for determining the workers affected by such a redundancy?	Yes. Workers on leave for medical reasons, maternity, paternity and workers' representatives.	Yes. Seniority.	No. Only prohibition of discrimination. Increase compensation dismissal workers on leave for medical and maternity reasons.	No. Only prohibition of discrimination. Collective bargaining agreements often include seniority.	No. Only prohibition of discrimination (specifically, age).
5. Does the dismissal for business reasons that is declared correct/legal generate the worker's right to obtain an economic compensation?	Yes. Economic compensation = 30 days of salary per year of service, maximum 330 days.	Yes. Economic compensation = 3 months wages + seniority premium. Technical and organization reasons: compensation = 4 months wages + 20 days salary per year of service + seniority premium.	Yes. Economic compensation, subject to seniority and wage.	Yes/No. "Reasonable" notice or pay in lieu of notice: subject to character employment, length service, age and availability similar employment. Long-term employees: severance pay. Employment Insurance Act: protection against discharge without fault.	No. Only unemployment compensation.
6. In addition to, when applicable, the worker's right to an economic compensation, what other company obligations derive from a dismissal due to business reasons?	Discriminatory dismissal: pain and suffering.	None.	None.	None.	None. Possibility of workers to contribute to health benefits.

7. What are the consequences that arise from breach or non-compliance with the legal procedure regarding redundancies due to business reasons?	Unjustified dismissal: surcharge 30% on the economic compensation. Absence of cause: surcharge 50%. Employer's refusal to pay: surcharge 150%.	Nullity dismissal: reinstatement or economic compensation (workers' choice).	Unjustified dismissal workers' representatives: nullity (reinstatement and unpaid wages).	Wrongful dismissal: amount of notice and pain and suffering in case of additional damages.	Absence of notice: backpay and benefits, maximum 60 days.
8. Are there specialties in the dismissal due to business reasons for microcompanies and/or small and medium enterprises?	No.	No.	No.	Yes (ESA) Severance pay: payroll > $2.5 million or termination ≥ 50 workers.	No.
9. What consequences exist regarding the legal regime of dismissal due to business reasons when the dismissal takes place within the framework of a company that is part of a holding or a business group?	Economic unity: joint liability.	None.	None.	Company with greatest control over the performance of work = joint liability.	None.
10. Is it possible to conduct a dismissal due to business reasons in a public administration? **In this case, what specialties exist in regard to the**	No.	Federal Law on State Service Workers: no. Executive Branch: depending on the nature of the public company.	No. Only dismissal due to disciplinary and objective reasons.	Yes. Government and crown corporations freedom to dismiss.	Yes. Financial exigencies.

definition of the business causes?		Example: *Luz y Fuerza del Centro*			
11. Other relevant aspects regarding dismissals due to business reasons	Insignificance of collective bargaining on dismissals due to business reasons.	Quantitative importance of dismissals.	-	Different legal regimes for unionized (collective agreement) and nonunionized workers (common law and minimum standards). Labour and employment law: provincial jurisdiction.	Labor and employment law: federal and state law.