International Employment Lawyer

# Guide to Restructuring a Cross-Border Workforce

## Laos

**Contributor:**

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# Laos

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## A.Reduction in Workforce

**1. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?**

Yes. Under Lao law, it is possible to dismiss employees for economic reasons. The concept of redundancy is regulated by the Law on Labour No. 43/NA, dated 24 December 2013 (the Labour Law), which defines the term as a reduction of the number of workers for business reasons.

Article 82 of the Labour Law provides for a reduction in the workforce when "the employer/company considers it necessary to reduce the number of workers in order to improve the work within the labor unit after consulting the trade union or employee representative or the majority of employees and has reported to the Labor Administration Agency (LAA)". A dismissal for this reason constitutes a termination of the employment contract by the employer or company for economic reasons.

**2. In brief, what is the required process for making someone redundant?**

Under Article 82 of the Labour Law, if the employer or company wishes to terminate an employment contract for business reasons, including making an employee redundant, the employer or company must provide an appropriate reason, ie, that it is necessary for the employer or company to reduce employee numbers to improve work within the labour unit. There is no guidance as to what constitutes "an improvement" within the labour unit, so there is leeway for an employer to invoke Article 82 to terminate employees for economic reasons.

The employer must consult with the labour unit, trade union, and/or employee representatives, and provide explanation related to business or economic issues affecting the company. The termination of the employment contract must also be notified to the LAA before termination of the contract. The employer is also obliged to give employees who undertake physical labour 30 days' advance notice, and employees who undertake mental labour 45 days' notice, along with reasons for the termination.

**3. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?**

There are no specific provisions for collective redundancies. Accordingly, whether one or multiple employees are made redundant, the process set out in question 2 above must be followed.

**4. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?**

As stated above, employers must consult with the trade union and/or employee representatives during the redundancy process, and notify the LAA in writing. According to Article 82 of the Labour Law, there is no requirement to reach an agreement with the union or employee representatives by the end of the consultation.

**5. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?**

Under Lao law, even if the parties have not yet reached or cannot reach agreement, the company may proceed with the restructuring. Employers are not required to wait for the finalisation of any dispute between the employer and employee.

**6. What does any required consultation process involve (ie, when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?**

As stated in question 2, before terminating an employment contract, the employer must:

- give the employee 30 or 45 days' notice, depending on the nature of the work, along with reasons for the termination;
- consult with the labour unit, trade union, and/or employee representatives;
- provide evidence of business or economic issues affecting the company; and
- report the business reasons for termination to the LAA.

The Labour Law is silent about sanctions for failing to comply with the consultation obligation. Under the Decree on Labour Conflict Resolution No. 76, dated 28 February 2018, employees, individually or collectively, are entitled to seek administrative remedy by filing a complaint with the relevant agency under the Ministry of Industry and Commerce for disputes in relation to their employer's breach of the law or internal regulations. We understand that failing to complete the consultations may also be subject to an administrative remedy.

**7. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?**

According to Article 82 of the Labour Law, employers are required to present an economic business rationale as part of the consultation with unions or employee representatives. If an employer wishes to terminate an employment contract for business reasons, the employer must have an appropriate reason, ie, that it is necessary for employers to reduce employee numbers to improve work within the labour unit. During consultations with the labour unit, trade union, and/or employee representatives, the employer must produce evidence related to business or economic issues affecting the company. The business reasons for termination of the employment contract must also be reported to the LAA before termination of the contract.

Lao law is silent on the possibility of challenging an economic

business rationale. In the same vein, the Labour Law does not suggest that the union or employees have the right to oppose redundancy. In theory, if employees, employees' representatives, or trade unions are not satisfied with the business rationale provided by the employer, they may file an administrative action as mentioned in question 6.

**8. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?**

Under Lao law, there is no requirement to consult with employees individually, nor is it general practice or prohibited. Accordingly, if an employer chooses to consult with an employee individually, in addition to its other consultation obligations, the requirements set out in question 2 must still be met.

**9. Are there rules on the selection of individual employees for redundancy?**

In Laos, employers are entitled to exercise their discretion in selecting individual employees for redundancy, as there are no specific regulations governing this aspect of employment law. However, employers' discretion must still be exercised reasonably and in accordance with the principles of good faith and fair dealing. Employers must ensure that the selection criteria used to determine which employees are made redundant are objective, transparent, and free from any form of discrimination or bias.

**10. Are there any specific categories of employees who an employer is prohibited from making redundant?**

Article 87 of the Labour Law prohibits employers from terminating the employment contracts of employees who fall within the following categories:

- pregnant or have a child below one year of age;
- undergoing medical treatment or rehabilitation, substantiated by a medical certificate;
- an employee representative or the head of a trade union;
- involved in legal proceedings or detained and awaiting a judicial decision;
- injured and undergoing medical treatment, substantiated by a medical certificate;
- recently experienced a natural disaster;
- on annual leave or on other leave with the permission of the employer;
- working in another location after being assigned by the employer; or
- in the process of making a claim or taking legal action against the employer, or cooperating with government officials in a claim or legal action against the employer.

If employers wish to terminate contracts of employees that fall in any of the categories above, the employer must obtain approval from the LAA.

**11. Are there categories of employees with enhanced protection (eg, union officials, employees on sick leave or maternity/parental leave, etc)?**

Under Costa Rican law, there are employees who are protected by an enhanced protection regime, such as:
·pregnant employees;

- employees covered by a maternity leave or breastfeeding licence;
- union leaders;
- workers over 15 but under 18 years of age; and
- those who report sexual harassment.

These employees can only be dismissed with good cause with prior authorisation for dismissal from the Ministry of Labour.

**12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.**

An employee who has been made redundant is entitled to:

- their normal salary up to the date of the redundancy;
- payment in lieu of any unused annual leave or any benefits due in accordance with Article 57 of the Labour Law;
- a certificate of employment;
- severance pay in accordance with Article 90 of the Labour Law; and
- payment in lieu of notice if the employer elects to terminate the employment with immediate effect.

As mentioned above, employers are required to provide employees who perform physical labour with at least 30 days' advance notice of termination, and employees who perform mental labour with at least 45 days' notice, along with an explanation for the termination.

**13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated? If this is formula based, please set out the formula.**

Under the Labour Law, an employee whose employment has been terminated due to redundancy is entitled to a severance payment, as in the case of no-fault based termination, equal to 10% of the employee's last monthly salary prior to termination multiplied by the number of months worked for the employer.

**14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?**

Employers are required to notify the LAA in the Labour and Social WelfareDepartment in theMinistry of Labour and Social Welfare by submitting a proposal, a report on redundancies, and minutes of meetings related to the redundancies. The process would typically be as follows:

- Before implementing any redundancies, the employer holds a meetingwith the employeerepresentatives, the majority of the employees, or the trade union. The draft of the minutes of the meeting must be signed by the head of the company and other attendees.
- The company must notify the LAA in the Labour and Social Welfare Department and submit the proposal, report, and minutes of the above meeting.
- The LAA in the Labour and Social Welfare Department receives and reviews the notification from the employer regarding the reduction in employee numbers.
- At the same time, the employer must provide the employee with written notice of termination of 30 or 45 days, depending on the nature of the work, together with an explanation of its decision (ie, termination for operational requirements).

In the written notice of termination, the employer may request that employees refrain from continuing their respective work during the notification period unless instructed otherwise. The employer may also elect to terminate the employment with immediate effect, in which case it is obliged to make payment in lieu of notice, in addition to other statutory payments (ie, salary, severance payments) and benefits to the employees. The notice of termination must include details of the severance payment and other benefits, as well as information on the date payment

will be made, taking into account that it must occur on or before the effective date of termination of the employment contract.

- The employer must pay severance and other benefits as specified in the employees' respective employment contracts or the company's internal regulations.
- The employer must issue work certificates to the employees indicating the employees' start date, date of cessation of work, and position, within seven days of the date of termination of employment. Employees may also request certification of their respective salaries and work performance.

**15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?**

There is no obligation for employers to consider alternatives to redundancy. Offers of alternative employment are not obligatory but may be made at the employer's discretion.

**16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, eg, immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?**

Employers are not required to notify local, regional, or national government or regulators after making redundancies. As mentioned above, Article 82 of the Labour Law requires notification to the LAA prior to a redundancy.

**17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, eg, tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?**

As noted in question 5, if an employee is not satisfied with the decision to make them redundant, the employee can lodge a claim for damages with the court. The union and employee representatives can bring a claim on behalf of employees in accordance with the Decree on Labour Conflict Resolution.

**18. Is it common to use settlement agreements when making employees redundant?**

It has been our experience that the majority of redundancies are not settled between the parties.

**19. In your experience, how long does it normally take to complete an individual or collective redundancy process?**

The redundancy process, as set out in question 14, can take one to two months to complete after the employer has given notice of their intention to terminate the employment contract due to redundancy.

**20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?**

There are no limitations on operating a business for a period following a redundancy under Lao law. Accordingly, employers can hire new employees or rehire previous employees at their discretion.

## Restructuring/Re-organisation of the business

**21. Is employee consultation or consent required for major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?**

Under Lao law there is no requirement to consult on or obtain consent for major transactions such as business transfers, mergers, acquisitions, disposals, or joint ventures. However, if an employer wishes to terminate an employment contract due to a major transaction, advance notice is required. The advance notice must be provided to the employee at least 30 days in advance for contracts involving employees who perform physical labour, and at least 45 days in advance for contracts involving employees who use intellectual or special skills.

If there is no change in the number of employees due to the major transaction, advance notice to employees is still needed to give them the opportunity to decide whether they would like to continue their employment or terminate their employment agreement due to the major transaction.

**22. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?**

As noted in question 21, there is no requirement to consult. However, the employees may choose to terminate their employment due to the reorganisation of the business. There are no legal provisions enabling employees to prevent business operations from proceeding.

**23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?**

Under Lao law, there is no statutory protection of employees on a business transfer.

Lao law does not define whether employees are automatically transferred with the business. Article 84 of the Labour Law states that when transferring a business, the original employer and the new employer must clearly determine their responsibilities to employees – for instance, who will be responsible for paying compensation to employees if the employer terminates employment due to the transfer of the business.

There is no protection of employees against dismissal. If the employer wishes to terminate the employment contract, compensation must be paid to the employees.

**24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?**

There is no legally prescribed procedure for a transfer of employment upon a business transfer or within group companies. If the name of the employer changes, amendments of certain documents may be required. For instance, for foreign employees' work permits or stay permits, or if the business mentions the name of the employer.

**25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?**

No. Unless the employees perform the same tasks or job

position, in which case the company must give the same work conditions or benefits to existing employees and transferred employees.

## Changing Terms and Conditions

**26. Can an employer reduce the hours, pay and/or benefits of an employee?**

An employer cannot reduce the hours or pay of an employee unilaterally – these changes can only be done with the employee's consent. Also, the changes must be compliant with the local minimum employment rights.

Employment benefits can be reduced or eliminated by the company, but an indemnity amount must be paid. This amount must be calculated or paid on a case-by-case basis.

**27. Can an employer rely on an express contractual provision to vary an employment term?**

All minimum rights are unwaivable.

In Costa Rica, various employment conditions cannot be modified unilaterally, such as a reduction of wages or the work shift. Other conditions cannot be modified, even with the employee's consent, for example, agree on the non-enjoyment of the annual vacations. Lastly, conditions such as the entry and exit time within the same work shift can be varied unilaterally. These conditions can be modified by a contractual provision if it is compliant with local regulations.

**28. Can an employment term be varied by implied conduct?**

Yes, due to the substance over form principle, if an implied conduct creates a more beneficial condition for the employee, it can be understood as the new employment condition that must be honoured by both parties, despite what was agreed in the employment contract.

**29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?**

If the employee's consent is not required, the company can vary the employment term unilaterally. It is good practice to put the modified term in writing and send it to the employee as a notice.

If the employment condition can only be varied with the employee's consent, we recommend including an addendum to the employment contract, duly signed by both parties. If the employee does not agree on the new terms and conditions, the company must dismiss the employee without good cause. Once dismissed, the company can provide an offer to the employee with the new employment terms.

**30. What are the potential legal consequences if an employer varies an employment term unilaterally?**

The employee can terminate the employment relationship without good cause and request the payment of all the labour rights. The employee can also request the payment of any damages caused by the unilateral variation of the employment term.

Also, while the employment relationship is active, in case of an audit by the Ministry of Labour, the company will be obliged to set in place the previous employment term and compensate the employees for any damages caused by the company's actions.

## Areas to Watch

**Please provide an outline of any upcoming legislative developments or other issues of particular concern or importance that are not already covered in your answers to the questionnaire. Please limit responses to the jurisdictional level rather than descriptions of wider global trends. Please limit your response to around 200 words.**

The Prime Minister's Office of Laos recently issued a Notice on the Increase of the Minimum Wage for Workers in Laos, which takes effect on 1 October 2023. This is the third increase in the minimum wage since 2022. There may be additional notices to increase the minimum wage in the near future, as the depreciation of the Lao kip against foreign currencies and inflation in the price of goods for daily consumption has resulted in a proactive approach by the government to address the cost-of-living crisis in Laos and its effect on low-wage workers.

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Naiyane helps offshore companies establish their presence in Laos, obtain the necessary licenses for operations in the country, and achieve their investment objectives. In addition, she helps with amending corporate documents, registrations, and regulatory filings. Naiyane is well regarded for her advice on data privacy and protection and her provision of corporate secretarial services. She is a versatile practitioner with considerable expertise in corporate issues, material agreements, due diligence reports, and legal memos.

Naiyane graduated with a bachelor's degree in international relations from the National University of Laos' Faculty of Law and Political Science. She is a qualified lawyer licensed by the Lao Ministry of Justice and a member of the Lao Bar Association.

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Sayphin obtained an LLM in International Law jointly from Jean Moulin Lyon III University and the National University of Laos, and an LLB in Business Law from the National University of Laos. As a qualified lawyer licensed by the Lao Ministry of Justice, Sayphin is a member of the Lao Bar Association and is fluent in Lao, English, and Thai.

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