



New employment protection legislation on justified dismissals places new burdens on Greek Labour market.

SEV and 8 Regional Business Organizations submitted on Friday 10 of May 2019 a Joint Memorandum to the Greek parliament on the draft bill of Ministries of Labour, Internal affairs and Finance.

The labour provisions of the bill do not aim at the enforcement of the labour protection and safety of workers, as declared by the leadership of the Ministry of Labour, but at the import of additional and unjustifiable burdens and obstacles in business operation, in the creation of additional taxes in labour cost for concrete categories of workers that have, as consequence, the creation of distortions against other categories of workers.

Specifically, the draft bill imposes to employers the double obligation to first justify the termination of employment contract by providing a valid reason and, second, provide, at the same time, severance pay and additional compensation, even if the termination is due to a valid reason. This

provision creates immoderate and unjustifiable deterioration in the EPL index for Greece, and may function as a further rigidity and disincentive to the efficient operation of the Greek labour market.

The new provision has already caused great frustration among the employers community with letters of concern pouring in from many of our members, both business and sectoral/regional associations.

SEV would like to reinstate that we fully welcome the ratification and the full implementation of the Revised European Social Charter. However this means that in Greece, if a worker is to be dismissed based on a valid reason, then this should restrict or even offset the right to severance pay / compensation or to other appropriate relief. Following the meaning of article 24 of the Charter, only the worker that is dismissed under no valid reason, should acquire such right. This is the case in countries where an objective system of charge exists, which consist the majority of Council of Europe's states¹.

If the government aims to import the valid reason into the dismissal system, it must proceed with adapting the legislation to the key provisions of the Revised European Social Charter, of the dismissal law system, according to the common practices of other EU countries and in the direction of rationalization of the severance pay, in terms of the amount paid depending on tenure, and also in terms of the cases subject to valid reason or severance pay.

Furthermore, the draft bill introduces more legal uncertainty in settling disputes over contract termination. According to the existing legislation, there has been a maximum time period of three months after dismissal up to which an unfair dismissal claim can be made.

According to the draft law, this three month period will start only after the Labour Inspectorate has issued its view/decision about the unfair dismissal claim.

Given that in the Greek labour market every month there are on average some 100-120.000 terminations of contracts and already many of them create a huge backlog as court cases, the new provision, of relaxing and turning indefinite the maximum time period after dismissal up to which an unfair dismissal claim can be made, will create an open ended and indefinite process multiplying the legal uncertainty and the administrative costs for employers and the labour market efficiency.

¹ See the Anex with case studies and relevant practices from other European countries.

ANNEX – COUNTRY CASES²

Germany

In Germany, there is no right to severance pay for personal reasons.

If a dismissal is based on business needs or compelling operational reasons, the employee has a right to a severance payment if he does not bring his case to the court within 3 weeks. The right is only given if the employer points out in the notice that the dismissal is caused by business needs or urgent operational reasons and that the employee has a right to severance payment if he accepts the dismissal. The amount of the severance payment is a half month pay for each year of tenure.

Calculation: 0 months since the employer is free to offer or not severance pay.

No severance pay in establishments employing 10 or fewer employees.

A reinstatement order is possible, although rarely taken up by the employee concerned. However, courts can dissolve the employment relationship upon request of either party when continuation of employment is no longer possible even when the dismissal is found to be unfair. In such cases, the Court awards compensation. The evidence on court rulings suggests that, in practice, this often occurs.

Compensation of up to 12 months, depending on length of service (15 months if aged over 50 and tenure >15 years, 18 months if aged over 55 and tenure > 20). Compensation must be requested for by employee or employer during court action; continuation of employment must be unreasonable for one of the parties. In some cases, additional liability for wages from the expiry date of the notice to the conclusion of the court hearing.

Finland

In Finland no worker has right to severance pay and there is no legal provision for reinstatement.

The amount of compensation following an unfair dismissal ranges between 3 and 24 months. The following factors must be taken into account when determining the amount of compensation: estimated time without employment, estimated loss of earnings, duration of the employment relationship, and degree of guilt found on the side of employer. The highest compensations are used only in cases of gross injustice.

Island

In Island, there is no legal right to severance pay and even if the termination is found to be unfair, the court does not typically order reinstatement.

² DETAILED DESCRIPTION OF EMPLOYMENT PROTECTION LEGISLATION, 2012-2013
OECD COUNTRIES, OECD EPL Database, update 2013, <https://www.oecd.org/els/emp/All.pdf>

Compensation is normally provided only for financial loss (e.g. taking up a new occupation at a lower salary). Employment can generally be terminated by either the employer or the employee without giving reasons for termination. A worker who is dismissed due to the fact that he/she has given notice of intended maternity/paternity/parental leave, during maternity/paternity/parental leave or when pregnant or soon after childbirth cannot be dismissed without reasonable cause and must be given written explanation of dismissal. Dismissal is also prohibited on the basis of gender, family responsibilities or trade union activity.

United Kingdom

In United Kingdom no worker has right to severance pay. Employers are not obliged to reinstate but if a tribunal orders reinstatement or re-engagement in a comparable job and the employer refuses to comply, the tribunal may make an additional award on top of the basic and compensatory awards.

Legally required only for redundancy cases with 2 years tenure: half a week per year of service (age up to 21); 1 week per year (ages 22 to 40); 1.5 weeks per year (ages 41 to 64), limited to 30 weeks and £ 464 per week (The Employment Rights (Increase of Limits) Order 2014) and indexed to inflation. According to a government study, 40% of firms exceed legal minima. Calculation: average of redundancy (assuming worker is aged 35 at the start of employment) and other cases (no severance pay): 9 months tenure: 0, 4 years tenure: 2 weeks, 20 years tenure: 13.5 weeks.

Compensation may consist of various elements: basic award (up to £12 900); compensatory award (up to £72 300); and additional awards (up to £22 360). Unlimited, if the dismissal is connected with health and safety matters or whistleblowing. Compensation under discrimination legislation is also unlimited. Median award is around £4500. Taking all this into account, it is reasonable to assume that average compensation of someone with 20 years of service who is earning close to median salary would reach about 8 months' pay. For those that earn significantly more, or for those where all or most of their 20 years' service was carried out below the age of 41, this award will typically be less (often substantially less) than 8 months of wage.