



Work Force Restructuring in Germany

Labor law is a critical success factor in restructuring companies and corporate transactions.

According to a study, the three most important reasons why restructurings and transactions fail are: Lack of experience in transactional and crisis situations (64% of the respondents), too much ambition (40% of the respondents) and (reportedly) lack of room to maneuver (36% of the respondents).

Restructurings and transactions should not be insurmountable obstacles for companies. Whether under external pressure (globalization, cutthroat competition, company crisis) or by internal insight (preventive restructuring as a strategy for growth): Many companies recognize that great competitive advantages can be achieved through projects aimed at increasing productivity and reducing HR costs. For example, potential savings of 20% or more within a few months are realistic and can be planned.

Therefore, project management with regard to labor law is crucial. In this respect, a three-step approach can help:

- In a conception and planning phase, the project objectives will be developed, e.g. optimizing productivity and labor costs. This also includes a detailed plan for the project, the development of the negotiating strategy, and the calculation of a budget for a social compensation plan (Sozialplan).
- Then an information and consultation phase is presented and run through with the participating employee representatives (works council / central works council / combine/group works council). Works councils receive detailed information concerning the project planning of the company. A reconciliation of interests (Interessenausgleich) concerning the implementation of the restructuring measures is negotiated with the works council. For measures concerning staff cuts of a certain size, a social compensation plan (compensation or mitigation of the economic disadvantages of the employees affected) is to be concluded with the works council.

The works council can force a social compensation plan on the company against its will by calling on an conciliation committee to decide. At this phase, professional project management by labor law specialists pays off. Any delay can lead to the company incurring monthly costs of several hundred thousands or even millions of euros. For example, if it is illegal to terminate employees as long as negotiations for the reconciliation of interests and a social compensation plan are still pending. The termination date is then delayed and the salaries of the affected employees must still be paid.

- An implementation phase follows the conception and information/consultation. This includes the defense against wrongful termination, a lawsuit which the affected employees may file with the court. In the implementation phase, potential savings are realized through the reduction of HR costs, mainly by releasing employees.

Often, companies are subject to collective and concerted activities of the works council and the labor union during transactions and restructuring situations, for example, if – in addition to the works council, which increases pressure on the company with maximum financial demands during the negotiations for a balancing of interests and a social plan – the labor union shows up and threatens to strike in order to achieve a collective bargaining agreement. Labor unions often demand severance payments in the amount of 1.5 of the gross monthly salary for each year of service and extension of notice periods (for example, by seven months) in addition to the payments specified in the social compensation plan. Again, experienced advisors who routinely deal with works councils and labor unions and ensure optimal results in negotiations oriented to the interests of the company are essential and sought-after.

Companies must clear certain hurdles when further implementing a restructuring project. A notification of collective redundancies must be submitted to the labor office in the case of collective redundancies. Regulations, which are strictly reviewed by the labor courts, must be followed here. The same applies for the official hearing of the works council that must be held before notice can be given pursuant to the Works Constitution Act (Betriebsverfassungsgesetz).

If a transfer company (Transfergesellschaft) is used for the further training and placement of the dismissed employees, the formalities vis-a-vis the labor office are important. Only in this way can the company use public funds for the transfer of reduced hours compensation for the restructuring measures. The appropriate service contract is to be negotiated with the operator of a transfer company in order to achieve the best possible solution.

In addition to pure personnel reductions, making working hours and payment more flexible can also be used as restructuring instruments. As part of project planning, it is possible to combine these instruments with a reduction in the workforce. More flexible working hours and payment are frequently implemented only against the strong opposition of the workers' representatives and trade unions. Here, everything depends on the negotiating skills and assertiveness of seasoned labor law experts.

Labor law-related restructuring is an important consulting focus of our law firm. We are happy to support you with our experience and expertise.

Our Team

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