Client Alert | **Newsflash** | Employment, Compensation & Benefits/Financial Institutions Advisory

COVID-19 FAQ 7: Do employers have to inform and consult with employees if they want to make redundancies during the COVID-19 pandemic?

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This FAQ provides insight around key information and/or consultation obligations that financial services companies need to consider across multiple jurisdictions when contemplating making redundancies during the pandemic.

Companies and their workforces are facing extraordinary challenges during the period of disruption caused by COVID-19, and Governments around the world are introducing new legislation and guidance on a frequent basis to help businesses meet these challenges. In this FAQ, we set out the key issues faced by businesses in relation to redundancy consultations across multiple jurisdictions.

This FAQ focuses on six main jurisdictions. In each of these jurisdictions, despite the extraordinary circumstances companies are currently faced with in light of COVID-19, this does not exempt an employer from the obligations it owes to employees when contemplating redundancies. The exact obligations differ by jurisdiction and, in most jurisdictions, different obligations will be owed depending upon how many employees an employer is proposing to make redundant. Additional requirements may also apply if there is a collective bargaining agreement or other negotiated agreement. For further details in respect of the information and/or consultation obligations owed to employees, please see our publication, Global Employee Consultations here.

Responses in specific jurisdictions:

Jurisdiction	Information and consultation obligations

United Kingdom	**Yes.**
	
	<u>Less than 20 redundancies proposed</u>
	
	• There is no prescribed procedure or timing. In practice:
	  ○ there is an obligation to inform and consult with the employee(s) individually; and
	  ○ sufficient time should be allowed for meaningful consultation.
	• The employer should have an initial discussion with each employee to: (i) explain that their role may be made redundant; (ii) inform them of the reasons for the proposed redundancy; and (iii) explain the process.
	• Consultation meetings should also be held to discuss why the employee's role has been selected, the selection criteria used, the proposed timing and whether there is any alternative to making the employee redundant.
	
	<u>20 or more redundancies proposed at one establishment over a period of 90 days or less</u>
	
	• There is an obligation to inform and consult with appropriate representatives of the affected employees (being either an existing trade union or elected representatives).
	• The process must begin in "good time" before the redundancies, and in any event:
	  ○ at least 30 days before the first dismissal takes effect, where between 20 and 99 redundancies are proposed within a 90-day period; or
	  ○ at least 45 days before the first dismissal takes effect, where 100 or more redundancies are proposed within a 90-day period.
	• Certain information prescribed by statute must be provided in writing to the representatives, including, the reason for the proposals, the numbers and descriptions of employees proposed to be made redundant, and the proposed method of selecting employees.
	• The employer must notify BEIS of certain details of the proposed redundancies on a form HR1, a copy of which must also be given to the employee representatives. The timing for submission of this form is the same as that for the consultation.
	• Consultation should cover ways of avoiding dismissals, reducing the number of employees to be dismissed, and mitigating the consequences of the dismissals.
	• There is no requirement to reach an agreement with the employee representatives.

United States	**Yes, if dealing with collective redundancies that meet the federal or state law thresholds or if the employees are represented by a labour organisation.**
	
	<u>Collective redundancies (all figures exclude part-time employees)</u>
	
	• Where an employer has 100 or more employees and it:
	  ○ Undergoes a plant closure that results in an "employment loss" affecting 50 or more employees at a single site; or
	  ○ Implements a mass layoff resulting in the employment loss of 500 or more employees at a single site, or 50 or more employees at a single site representing at least 33 per cent. of the employees at that site, during a 30-day (or in certain circumstances 90-day) period, the below obligations are triggered under federal law. Thresholds and employer obligations may vary between states.
	• The employer must provide 60 days' written notice in advance of the plant closure or mass layoff to: (i) the chief elected officer of any existing trade union representing the affected employees or, where there is no chief elected officer, the affected employees;

Jurisdiction	Information and consultation obligations
	(ii) the state dislocated worker unit; and (iii) the chief elected official of the unit of local government in which the employment site is located. In each case, confirmation as to whether the action is permanent or temporary and details of the company official who can be contacted for further information must be provided. • There is no mandatory obligation to consult with the employees, unless the employees are members of a trade union, in which case, the employer may be required to negotiate with the trade union regarding the effects of the plant closure and mass layoff. • There are no additional mandatory obligations under federal law as a result of the COVID-19 pandemic. • Some US states have their own collective redundancy laws that might have lower thresholds than federal law and/or require more notice. **Where the threshold for a collective redundancy is not met** There are no mandatory obligations to inform or consult with employees.
France	**Yes.** **Where one redundancy is proposed over a 30-day period** • There is normally no obligation to inform or consult employee representatives (unless the individual redundancy is part of a global reorganisation). • The employer must invite (giving at least five working days' notice) the employee to a pre-redundancy meeting in which it explains the rationale behind the redundancy. • An executive employee must be notified of his/her redundancy in writing no earlier than 15 days after the pre-redundancy meeting. All other employees must be notified of their redundancy in writing no earlier than seven days after the pre-redundancy meeting. • The employer must notify the local labour administration ("DIRECCTE") within eight days of the notification of the redundancy. **Where at least two redundancies are proposed in the absence of employee representatives** • The employer must invite (giving at least five working days' notice) the employees to a pre-redundancy meeting to explain the rationale behind the redundancy. • The employees must be notified of their redundancy in writing no earlier than seven days after the pre-redundancy meeting. • The employer must also notify DIRECCTE. The timing of this notification depends on the number of affected employees. **Where less than 10 redundancies are proposed over a 30-day period** • The Social and Economic Committee ("SEC") must be informed and consulted with on the proposed redundancies and the rationale behind them. • The employer must invite the employees to pre-redundancy meetings. • The employees must be notified of their redundancy in writing no earlier than seven days after the pre-redundancy meeting. • The employer must notify DIRECCTE within eight days from the notification of the redundancies. **Where an employer has less than 50 employees and 10 or more redundancies are proposed over a 30-day period** • The SEC must be consulted on the proposed redundancies and the rationale behind them. The employer must notify DIRECCTE after the first meeting with the SEC. • There is no obligation to invite the employees to pre-redundancy meetings.

Jurisdiction	Information and consultation obligations
	• The employees must be notified of their redundancy in writing no earlier than 30 days after the notification to DIRECCTE. **<u>Where an employer has at least 50 employees and 10 or more redundancies are proposed over a 30-day period</u>** • The SEC must be consulted on the proposed redundancies and the rationale behind them. A collective redundancy plan must be negotiated with the trade unions (the "Redundancy Plan"). • A Redundancy Plan process can take between two to four months, depending on the number of redundancies. • The SEC must be notified of the following in writing, in advance of (but at the latest, during) the first meeting: o the economic rationale behind the Redundancy Plan and details on the implementation measures; and o the redundancy details (such as the estimated number of redundancies and the proposed timetable for the redundancies). • At the end of the consultation process, the Redundancy Plan is sent to DIRECCTE for validation. • There is no obligation to invite the employees to pre-redundancy meetings. • The employees must be notified of their redundancy in writing no earlier than the validation of the Redundancy Plan by DIRECCTE.
Germany	**Yes.** **<u>Collective redundancies</u>** • If there is a Works Council, the employer must inform and consult with it where, within a 30-day period, an employer proposes to make redundant more than: o five employees in an operational unit which regularly employs 21 - 59 employees; o more than 25 employees, or 10 per cent. of the workforce, in an operational unit which regularly employs 60 - 499 employees; or o 30 employees in an operational unit which regularly employs at least 500 employees. • The Works Council must be provided with written information concerning the redundancy (such as the number and job titles of the affected employees). • Regardless of whether a Works Council exists or not, the employer must also notify the employment agency prior to the delivery of the notices of termination. If a Works Council does exist, notification must be after completion of the consultation procedure with the Works Council (and no earlier than the 15th day after the Works Council is informed). • The employer must also inform the Works Council with respect to each individual planned notice of termination. The employer must then wait at least one week before sending notices of termination to the employees. • Where a collective redundancy constitutes or is part of an operational change (under the Works Constitution Act), the employer will need to: o inform the Works Council; o negotiate a reconciliation of interests (focusing on the reasons for the proposals, the number of people who will be affected, the process that will be followed and the manner in which any redundancy calculations will be made); and o negotiate a social plan (focusing on redundancy packages).

Jurisdiction	Information and consultation obligations
	• The time period for this process depends on the actions of the Works Council. Often the process takes approximately three months. • If there is no Works Council, there is no obligation to consult with the affected employees. **Where the threshold for a collective redundancy is not met** • If individual redundancies result in or are part of an "operational change" (within the meaning prescribed by the Works Constitution Act), the collective redundancy rules apply. The employer will not need to notify the employment agency where the threshold for a collective redundancy is not met (however, in many scenarios an operational change will also qualify as a collective redundancy). • Where the individual redundancies will not result in or be part of an "operational change" (and also do not qualify as a collective redundancy) and there is also no Works Council, there is no prescribed process to follow (other than the notification to the employee) and no prescribed timeframe. • If a Works Council exists, it must be notified about the proposed dismissal(s). Written information, including the reason for the dismissal, must be provided to the Works Council. The employer then has to wait one week before sending out termination notices. • There is no obligation to consult with the affected employee(s). However, the employee(s) must be sent the original signed version of the termination notice.

Spain	**Yes.**
	Collective redundancies
	• There is an obligation to inform and consult with the Works Council or employee representatives where the employer proposes to make redundant within a period of 90 days:
	  ○ 10 employees in a business employing fewer than 100 employees;
	  ○ 10 percent of employees in a business with more than 100 but less than 300 employees; or
	  ○ 30 employees in a business with more than 300 employees.
	• Where there are no existing employee representatives, employees are entitled to elect an ad hoc committee to represent them during consultation.
	• Written information must be provided to the employee representatives, including the grounds for the redundancies, the number and description of the employees affected and the criteria that will be used to select employees.
	• The employer must consult with the employee representatives with a view to reaching an agreement but there is no obligation to reach an agreement before redundancies can be made.
	• The information and consultation process should be commenced in sufficient time to allow for meaningful consultation. Generally, the consultation process should last for:
	  ○ 30 calendar days where the company employs more than 50 employees; and
	  ○ 15 calendar days where the company employs fewer than 50 employees.
	• If more than 50 employees will be made redundant, a social plan is required.
	Where the threshold for a collective redundancy is not met
	• There is an obligation to inform employees in writing of the grounds for the proposed redundancy. There is no obligation to consult with employees or to appoint employee representatives.

Jurisdiction	Information and consultation obligations
	• There is no prescribed timeframe for the redundancy process. In practice, the employer should inform the employee in writing of the reasons for the proposed redundancy at least 15 days before the dismissal.

Singapore	**Yes.**
	• Irrespective of the number of employees being made redundant, the employer must provide the affected employee(s) with notice in writing about the proposed redundancies. Notice should be provided early and before the public notice of retrenchment is given.
	• The notification should include details of the reason(s) for the proposed redundancies, the process to be followed and what assistance will be offered to affected employee(s).
	• The amount of notice to be provided will depend on:
	  ○ whether the employee is covered by the Singapore Employment Act (Cap.91) (which applies to all employees (including part-time employees) except seafarers, domestic workers and public servants who are covered separately under other laws); and
	  ○ whether a minimum notice period was agreed between the employee and the employer.
	Notwithstanding this, the Ministry of Manpower's Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment ("Tripartite Advisory") encourages employers either to adopt a longer retrenchment notice period than that normally given under the termination of an employment contract, or to pay in lieu of such notice.
	• There is no obligation to consult with the affected employees. But, where the affected employees are members of a trade union, the Tripartite Advisory guidelines recommend that the relevant trade union be consulted with as early as possible. Where there is a collective bargaining agreement, it is customary to consult with the union at least one month before notifying the affected employees about the proposed redundancies.

*Our FIA team has developed the **COVID-19 Regulatory and Legislative Dashboard** as a resource to help clients and affected institutions, companies, governments, other entities and individuals around the world navigate the complexities of the crisis and the policy response. Please refer to the Dashboard for our periodic updates and insights on the issues addressed in this FAQ.*

*Find out more about the business response to the Coronavirus outbreak: **Coronavirus: Managing business impact and legal risks**.*

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