

Limiting economic dismissals and protecting workers against unfair dismissal

A number of OECD countries introduced restrictions to collective and individual dismissals during the current crisis to limit an immediate rise in layoffs and ensure high take-up of STW schemes. These measures include:

- **An explicit ban on economic dismissals:** Italy made invalid collective or individual dismissals based on economic grounds that were initiated after start of the confinement measures. This includes dismissals for reasons connected to the reduction or the transformation of activities, to the reorganisation of work, and to the closing of the business for total cessation of activities. At the moment of writing, the ban is in force until 17 August 2020. Greece also introduced some limitations to economic dismissals but limited them to companies that benefitted from the COVID-19 support measures.
- **Increased scrutiny and costs:** In Spain, any dismissal related to COVID-19 would be qualified by a judge as either null, resulting with the employee being reinstated, or unfair in which case the employee receives a compensation of 33 days of pay per year of tenure. France announced increased scrutiny of collective dismissals in companies with more than 50 employees by the authority to which these companies must notify the intention to dismiss a worker.

Limiting dismissals of employees with a permanent contract can contribute to maintaining incomes and demand of workers during a period of already strong anxiety, limit opportunistic behaviour of few employers who may use the crisis as an excuse to dismiss “difficult” workers and protect workers from the social stigma of being fired.

However, in particular in case of economic dismissals, a strict ban may also provoke additional company bankruptcies if access to JRS and other liquidity support programmes turns out to be incomplete, impractical, delayed or too costly. A ban on dismissals also risks further shifting the burden of the adjustment on temporary contracts, which can be terminated by simply not renewing them. Also limits on the number of renewals and maximum durations of fixed-term contracts (see Chapter 3) may further limit the possibility of renewal during the pandemic. To limit such risk, Spain allowed the continuation of temporary contracts reaching the legal maximum duration during the crisis. Facing a surge in non-renewal of temporary contracts, Italy relaxed in May the valid cases for renewal of fixed-term contracts beyond the first year.

During post-confinement, and when combined with generous JRS, strict limitations to economic dismissals may inhibit restructuring processes and slow down the recovery. Some workers may remain locked in unviable companies instead of being taken care of by public employment services, which could offer re-training and other support. They can also hold back necessary structural change in the labour market, inhibiting mobility from sectors whose activity may remain subdued for some time (such as aviation, tourism and entertainment) to those that may be growing again more quick (such as health care and online and delivery services).

An economic crisis that results from a pandemic also raises important questions on the boundaries of what may or may not qualify as dismissals on personal grounds. The current crisis greatly increased the number of work absences by employees who were sick, had to deal with family care needs or could neither come to the office nor effectively work from home. Sick workers are protected against dismissal by sick-leave policies (where such policies exist). However, employers may dismiss their staff for personal or economic reasons during a medical leave provided that the sickness is not the reason for dismissal. Unauthorised absences may also be a reason for fair dismissal in cases where employees have used the totality of leave days and are still unable to return to work. This is an issue in times where schools are closed and family members may be sick. Finally, dismissals on personal grounds may affect employees unable to perform efficiently their work duties from home, and those refusing to come to work because of sanitary concerns at the workplace or on the commute.

To avoid such risks, Italy and the Slovak Republic also introduced some provisions to limit dismissal on personal grounds. In Italy, parents living with a disabled child cannot be dismissed from work if they are absent to care for their child provided that the absence has been previously communicated and motivated. Parents of children between 12 and 16 years have the right to abstain from work during the period of school closures, and their absence cannot be a cause for dismissal. In the Slovak Republic, employees who have to take care of sick family members or young children following school’ closings are considered to be temporarily unfit for work and therefore protected from dismissal.