



Surviving the downturn - Business Reorganisation

We are sure you are already fed up hearing the term “*credit crunch*”, but with speculation continuing about a prolonged global recession the feedback we are receiving from our clients suggests that most are at least considering whether they can survive the downturn with their existing workforce intact.

If you are thinking about a business reorganisation then it is vital to ensure that the process is properly planned, both to minimise disruption to your business and to reduce the risk of costly Employment Tribunal applications.

To help you identify whether a redundancy situation exists in relation to your business we have provided a summary of the legal position below. Our employment team are also on hand to provide advice and assistance - please do not hesitate to get in touch for a confidential discussion.

WHAT IS REDUNDANCY?

Redundancy will occur where an employee's dismissal is wholly or mainly attributable to:

- business closure – where the employer ceases or intends to cease to carry on the business for the purposes of which the employee was employed; or
- workplace closure – where the employer ceases or intends to cease to carry on that business in the place where the employee was so employed; or
- reduced requirement for employees – where the employer has a reduced requirement for employees to carry out work of a particular kind or to carry out work of a particular kind at the place where the employee was employed to work.

Your statutory *duty to consult* with employees potentially at risk of redundancy commences from the moment you begin to contemplate the need for redundancies. If you are considering dismissing 20 or more employees within a 90 day period you are also obliged to notify the Government and enter into collective consultation.

The aim of consultation is to try and establish whether or not there are any means by which you can avoid making compulsory redundancies. Alternatives may include:

- imposing a recruitment freeze;
- stopping or reducing overtime;
- offering early retirement;
- retraining or redeployment;
- enforcing the statutory retirement policy (in accordance with The Employment Equality (Age) Regulations 2006); or
- inviting volunteers for redundancy.

If there are no suitable alternatives to compulsory redundancies then you need to ensure that you follow the appropriate procedures for selection, assessment and dismissal. Your duty to consult continues throughout the whole process.

NEXT STEPS

If compulsory redundancies are necessary the next step is to identify the pool of employees from which those who are to be made redundant will be selected. You must genuinely apply your mind to the question of which employees have been affected by the downturn in work.

Selection criteria to be applied to the affected employees should then be identified. The criteria must be objective and should be clearly defined from the outset so that employees are aware of those areas against which they are to be assessed. You must remember to ensure that none of your criteria can be viewed as being discriminatory.

Once you have assessed the employees in your selection pool fairly and objectively against your criteria you will then have reached the stage where certain employees have been provisionally selected for redundancy. In making those employees redundant you will have to ensure you comply with the requirements of the three step statutory dismissal procedure. This will not apply if you are making 20 or more employees redundant within a 90 day period, in which case we suggest you contact our team for more information.

The above summary is clearly a brief outline only of what is a complex and challenging area of employment law. Strict adherence to procedural requirements will be required to ensure that any eventual dismissals are fair. This can, however, be achieved with proper preparation and by taking legal advice at an early stage.

