

## Redundancy - the employer's perspective

With the economic outlook remaining extremely uncertain, many organisations may have to consider redundancies for the first time.

### Re-organisation

Write a plan out for the reorganisation of the company's affairs ('the Plan'). This will;

- Give your solicitor an overview of the changes proposed
- Indicate the extent to which the Plan has been implemented ('the Progress Note')

Any **application to the Tribunal** by an employee might challenge whether there is, truly, a redundancy situation at all. An employer is certainly allowed to manage its affairs in a commercially viable way and if this means redundancies, so be it. The Plan and the Progress Note will go a long way to showing that this is a serious re-organisation, and not just a 'scheme' to get rid of an inconvenient employee or two.

An application to the Tribunal may also allege that the employee has been 'unfairly selected for redundancy'. This involves an examination of his position in relation to comparable other employees in the workplace, and possibly in a wider area. Hence the need to see who else is employed and understand their roles with a view to considering whether the employee might be able to say that the employer made no proper appraisal of whether someone else should have been made redundant, rather than him.

Does the employer have a company redundancy procedure? This might be either contractual or non-contractual? Has it been followed precisely? You might need to start it running so examine existing structures and policies.

In the UK, we now have a **Statutory Dismissal Procedure** which must be followed if a dismissal (even one by way of redundancy) is not to be 'unfair dismissal'. It lays down the **minimum** requirements. In other words, if you **do not** follow it, any dismissal will be unfair automatically. If you **do** follow it, the dismissal could **still** be unfair depending on the circumstances of the case and the particular employee. Most company redundancy procedures will comply with the minimum requirements, but your solicitor should check.

### Compromise agreements

An employee cannot 'sign away' his rights to bring claims in Court (for wrongful dismissal i.e. in breach of contract of employment) or in the Tribunal (for unfair dismissal, being unfairly selected for redundancy) unless there is an agreement in writing signed by the employee and counter signed by an independent solicitor. The idea is that the employee gets independent advice on whether he has got any grounds to bring a claim. If not, the employee tends to sign.



Even if the employee has got grounds, but the employer is offering compensation over and above the contractual entitlement **plus the statutory minimum redundancy payment**, he still sometimes signs rather than incur the stress, delay and expense of making claims. But please note, there is no obligation on an employer to offer a compromise agreement. It can dismiss the employee, pay what it thinks is the right amount of money and wait to see whether the employee makes a claim (within 6 years for contractual claims but only 3 months for Tribunal claims).

**For more details please contact Michael Breeze on 07900 195 195.**

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