

The Bear Necessities

Things seem to be going from bad to worse with the US economy. Spurred on by the sub-prime crisis, Bear Stearns has had to be rescued by the Fed (the bank was worth \$18 billion last year, now worth \$240 million) and the US Treasury is about to drop interest rates by 0.75%. All other indicators aside, if it is true that the most accurate predictor of a recession is the number of times the dreaded 'r' word appears in the media, we're in for a rough ride.

And as in all economic downturns, there will be casualties. We're already seeing cuts in the city bonuses, the larger law firms have been tightening their belts and among businesses and individuals there seems to be a shift back to basics - pared down business practice and pared down living.

For employers caught up in the credit crunch there are important considerations – where to cut the costs, and how. Unfortunately, this usually leads to consideration of the other dreaded 'r' word – redundancies. For both employers and employees redundancies are difficult, unsettling and unless the proper steps are taken, costly. The days when a business could rid itself of surplus employees with a quick pat on the back and a 'thanks' are long gone and it is now necessary to undertake a consultation process with those affected. If an employer doesn't carry out appropriate consultation, it leaves itself open to potentially expensive Tribunal claims.

Nor can redundancy be used to 'clear away the dead wood'. A genuine redundancy requires that the work being done by the redundant employees no longer exists. This can be the result of a restructure, or the loss of a contract, or a business downturn – anything that requires 'downsizing'.

Further, even when the redundancy is genuine, and the necessary consultation carried out perfectly there may be continuing obligations the employer owes the employee. If the employee has over two years continuous service there will be a statutory redundancy payment (based on the employee's age and length of service) and may be more generous contractual redundancy entitlements regardless of the length of service. Employees are also entitled to be given proper notice or paid in lieu of their notice period and may have additional employment benefits owing during this period such as pension contributions, car allowance or private health care. Bonus payments and commissions are more difficult to claim because these payments are often discretionary or based on future factors but they are often part of what is owed to an employee and can amount to sizeable sums. For a strategy designed to cut costs, redundancies can be an expensive business!

For employees, it is vital that they are aware of their rights. Though redundancy is a potentially fair reason for dismissal any employee who suspects that their redundancy is motivated by anything other than business need (for example age, sexual orientation, performance, personality clash, gender, race, disability ...), or whose employer hasn't followed a fair and proper selection procedure may have a valid claim. In the case of some city workers, their losses may be significant and worth pursuing as new jobs may be very hard to come by in the present climate.

Most of such claims don't end up in Tribunal – it is usually in the best interests of both parties to settle out of court. This is often done with a compromise agreement – a special type of contract used in settling employment disputes. Even where the redundancy is amicable, it is usual for the employer to minimize the risks of any tribunal claims by asking the employees to sign such an agreement.

For a compromise agreement to be valid, the employee has to receive independent legal advice to ensure they aren't signing anything to their detriment. Employers usually contribute (or pay entirely) the employee's legal fees for this advice.

Sometimes, compromise agreements don't just deal with the money and potential claims, they can also include restrictive covenants or in some situations the employee may remain bound by restrictive covenants in his or her employment contract. These can place restrictions on where, or how, or with whom an employee can work in the future and are used by employers to protect their businesses. It is vital that both employer and employee understand these obligations, particularly in redundancy situations where the employee already has a new job, or a clear plan regarding their future working arrangements. They need to know that they can do the job, or follow the plan without any repercussions and their old employer needs to be sure that their business interests will remain protected.

In the current difficult economic climate it is vital to know your rights to ensure you can protect yourself or your business from whatever fate (or the knock on effects of the US recession) may hand you.

If you'd like help with any redundancy issues (whether you're giving or receiving) contact Guy Hollebon, Head of the Employment Team or Lucinda Bromfield. Employment Solicitor at Bevans on 020 7353 9995.

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