

## **“For better for worse, for richer for poorer: Avoiding Redundancies in the downturn”**

There is talk of “green shoots” in the media. You may be hearing that the longed for recovery is on the horizon. But your business may still be suffering. Your management team may still be facing tough dilemmas and torn between the choice of either rescuing or sacrificing your most valuable asset – your employees. As Ray Kroc once said ‘your business is only as good as the people who work for you’.

If you have made a decision to hang on in there and keep as many employees as possible but you still need to make some changes to steer your business out of the gloom, here are some suggestions as to how you may achieve this and some words of caution as to what legal obstacles you may come up against in the process:

### Review your business

- Implement strict rules on debt collection. Debtors are often overlooked, but effective debt collection can drastically improve your turnover and increase your profits.
- Review your contracts with suppliers and service providers. Shopping around and switching to some environmentally friendly products may help reduce your overheads.
- Consider not renewing the contracts of contractors and workers supplied by agencies.
- Reduce or ban overtime if you are paying your employees for it.
- Fill your vacancies with existing employees and offer them retraining.
- Implement a recruitment freeze.

### Flexi-working

Generally, the right to request flexible working does not guarantee an employee flexible or part-time work. This right imposes an obligation on an employer to consider a request from a qualified employee to work flexibly. The employer has to go through a statutory request procedure and there are a limited number of grounds on which the employer can refuse the request. Any requests and rejections should be considered carefully, especially in cases of employees who are either about to go or about to return from maternity leave, as employers may be caught out by discrimination legislation.

However, flexible working can benefit your business to get through the tough times: by offering your employees to work reduced hours or part time, you can cut costs and improve staff motivation and productivity.

### Pay cuts

Alternatively, you can implement temporary salary and bonus freezes or agree pay cuts with your employees and if conditions improve, bonuses could make up the deficit. However, a contract can only be changed in accordance with its terms or with the agreement of the parties. If you unilaterally impose a pay cut on an employee, you will be in breach of the employment contract, which may also lead to a constructive dismissal of the employee. Any agreement with your employees should be in writing, so that there is no dispute about whether they agreed.

If none of the above solutions have been sufficient to keep your business going and you feel you need to let some of your employees go after all, then you may want to invite your employees to consider early retirement or ask for volunteers to be made redundant.

### Early retirement

Inviting employees to consider early retirement is an acceptable alternative to redundancy for employees and trade unions.

However, employers should be wary of adopting a compulsory early retirement policy, as this may be unlawful age discrimination, indirectly discriminate against women and part-timers and amount to unfair selection for redundancy. In some cases, this option may be expensive, as your business may have to fund a long-term pension. This may be off-set by appointing a more junior employee on a lower salary for the role.

### Voluntary Redundancies

You may consider requesting volunteers for redundancy, as this would further minimise the effect on morale of compulsory redundancies. If you are worried that you may lose the key staff in the process, you should make it clear that you will consider all requests for voluntary redundancy but that you reserve the right not to accept all applications. You may need to offer enhanced redundancy payments to attract people to leave. However, less time will be spent on checking that redundancy selection criteria are fair.

### The ACAS Code of Practice on Discipline and Grievance

If you managed to avoid redundancies but you need to dismiss some employees for other reasons, remember that from 6<sup>th</sup> April 2009, the statutory dispute resolution procedures are no longer in force. Instead a non-binding ACAS Code of Practice on Discipline and Grievance which sets out minimum standards for handling disciplinary issues and grievances should be followed. Although the Code is 'non-binding', tribunals will assess whether a failure to follow it is reasonable and will be able to increase or decrease awards in unfair dismissal cases by up to 25% if either party has unreasonably failed to comply with the Code. The new procedures do not, however, apply to the renewal of fixed-term contracts or to redundancy dismissals. But beware: if you are making someone redundant you still need to follow a fair procedure and in particular you need to consult with the individuals. If you are planning to make 20 or more people redundant specific statutory consultation provisions apply.

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