

Business Briefing

March 2009

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Ways of managing your workforce in an economic downturn

There has been a steady increase in enquires from commercial clients seeking to reorganise their businesses. We have found that reviewing their working structures can result in positive changes for employers. By identifying the real needs of the business and the roles which are essential for its future, a business can be reshaped to survive a downturn.

Given the current climate, most businesses will have little choice but to make changes. Many clients have a preconception that it is difficult to make changes and that it will always be costly and damaging to morale. In fact neither need be true: employment legislation can accommodate the need for businesses to reorganise to meet their commercial needs and the process can be relatively pain-free so long as any changes are planned properly.

We understand that businesses are nervous of spending money at the moment but spending time now reviewing your business model and looking for ways to reduce unnecessary costs can save you money in the future. This is where we at the employment team at Golden Leaver LLP can be of assistance and add value to your business.

- We have an in-depth understanding of the complexities of employment law and understand the need for a

commercial approach. Businesses do not want to be tied up in red tape and it is important that you should not be prevented from doing what needs to be done.

- We can assist you in the analysis of your business needs and help you make any necessary changes. Ways in which businesses may look to reduce unnecessary costs include:
 - Deciding what in a business is a 'must have' and what is a 'nice to have'
 - Reviewing roles and considering:
 - redeployment to understaffed areas and/or combining or eliminating roles no longer required, and
 - hiring staff with the right skills where they are needed
 - Reviewing individual employees' performance and weeding out those employees who are underperforming.
 - Reviewing terms and conditions of employment, salaries, bonus schemes and benefits to reduce costs.

All these are vital elements involved in a sensible redundancy process, and may or may not result in job losses.

Changing terms and conditions

Rather than making redundancies an employer may choose to reduce salaries, benefits or bonuses across the board. Any change to an employee's contract of employment requires his/her prior agreement.

There are various ways that a company can go about altering an employee's terms and conditions but on a practical note you are more likely to get the staff to 'buy in' to any proposed changes if they feel that they have all the facts (including what would happen if remuneration packages were not reduced) and the company is being candid.

Redeployment

Employees are employed to carry out a particular role or function although their contracts of employment may allow for the employer to redeploy them into other jobs.

Redeployment should be considered as an alternative to redundancy even if there is no contractual right to do so under the contract, as an employee may prefer to be employed in another role than risk unemployment.

Redundancies

As an employer you may have to consider redundancies as a way of reducing overheads.

A redundancy occurs when the reason for a dismissal is wholly or mainly because:

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- a) The employer is ceasing or intending to cease to carry on the business for the purposes of which the employee was employed by it (business closure)
- b) The employer is ceasing or intending to cease to carry on that business in the place where the employee was employed (workplace closure)
- c) 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 (reduced requirement for employees).

Redundancy is a potentially fair reason for dismissal but a company must still carry out a fair procedure in selecting those to be made redundant. This will include consulting with the staff and looking for ways to avoid a redundancy by considering whether suitable alternative employment can be offered.

An employee who has been employed for two or more continuous years with the company will be entitled to a statutory redundancy payment. This is not a particularly generous sum as it is calculated on the basis that an employee's weekly salary is capped at £350. Interestingly we have noticed that where in the past employers may have been offering enhanced redundancy payments to their staff, normally in return for the employee

waiving their right to bring an employment claim against the employer, employees are now only being given the statutory minimum. Employers should also note that even though an employee may not have two years' service, they can still bring a claim for unfair dismissal or discrimination if they feel that they have been unfairly selected for redundancy.

Performance issues

In this environment no employer can afford to overlook underperformance. It can be hard at times to ascertain whether problems with an employee relate to their performance (capability) or a lack of work (redundancy). It is therefore important to establish which is the case before a company embarks on a procedure since dressing up a capability issue by calling it a redundancy can result in an unfair dismissal especially if you are looking to recruit into that same role once the employee has left. In these circumstances it would be sensible to carry out a capability procedure.

Getting the right results

If there is a genuine redundancy and the employees for redundancy are selected by using an objective criteria, then it is likely that those who are underperforming will receive the lower marks whereas the employees you wish to keep will 'float to the surface'. A well managed redundancy process should result in an employer retaining the right staff in roles which leave it well placed to weather the financial storm and enjoy the benefits of the recovery when it comes.

If you wish to discuss any of the matters referred to in this note, please contact either:



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