

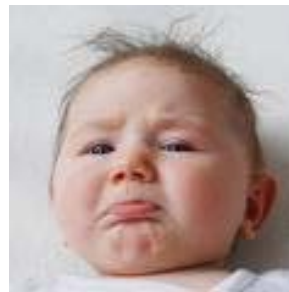
# MANAGING YOUR STAFF COSTS A FEW TIPS AND TRAPS

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# Introduction

- Redundancy
- Renegotiation

# What is Redundancy?



- An employee's dismissal must be wholly or mainly attributable to a business or workplace closure or a reduced requirement for employees

# Relationship to Unfair Dismissal

- Any employee with a year's continuous service has the right to not be unfairly dismissed

A genuine redundancy dismissal will still be an unfair dismissal (entitling the employee to compensation), if the employer has failed to follow the correct procedure, carried out adequate consultation and offered any suitable alternative employment

# How to get the Process right

## Identify the Correct Pool of Employees

- Other groups of employees are doing similar work and
- Employees' jobs are interchangeable

# How to get the Process right ...2

## Criteria

- a fair and objective selection criteria needs to be applied and each employee in the pool
- 'score' the employees
- Those with the lowest scores the ones at risk of redundancy

# Consultation

20 or more employees

The Trade Union and Labour Relations (Consolidation) Act 1992 TULR(C) A 1992) applies

- 20 or more redundancies at one establishment within a 90-day period, then the employer is obliged to inform and consult employee representatives and notify the BERR (formerly the DTI) ("collective consultation")
- Failure to notify the BERR can lead to a fine of up to £5,000
- There is a minimum consultation period of 30 days before the first dismissal takes effect, 90 days if 100
- Failure to collectively consult – 90 days gross pay, in addition to any unfair dismissal compensation

# Consultation

## ...2

### Less than 20 Redundancies

- Statutory disciplinary and dismissal procedures apply ("SDDPs")
- Failure to follow the SDDPs, automatically unfair dismissal
- SDDPs require
  - A written statement as to why dismissal is contemplated
  - A meeting to discuss it
  - Written notification of the decision
  - The right of Appeal

# Top Tips

## Manage the Process Properly

- Work out which regime you are going to be required to operate under
- Work out a realistic time table. Allow for:
  - An initial informal discussion
  - [election of employee representatives if 20 or more redundancies]
  - Letter to invite to first formal meeting – advising them that they are at risk

# Top Tips

## ...2

- First Formal Meeting to Discuss
- Letter picking up on points raised in the meeting – deal with alternative employment opportunities and invite to second meeting warning unless matters change, dismissal likely
- Second meeting pick up on anything said at first meeting, write following meeting to confirm selection for redundancy, give them the right to appeal
- Appeal Meeting

# Draw Up the Criteria Carefully

	Score	Weighting	Total	Notes or queries
Skills/qualifications/training				
Experience				
Attendance				
Time keeping				
Disciplinary record				
Future potential				
Flexibility				
Performance				
Total score				

# Manage Your Paperwork

- Keep a paper trail
- But be careful what you write down

# Be Alert To Potential Difficulties

- Women on maternity leave
- Discriminatory criteria or unfairly applied
- Predetermined

# Changing Terms And Conditions



- You want to keep staff but may need to renegotiate their terms e.g. lower salary changes to bonus structure
- May want to lock staff in or stop them nicking clients or employees on the way out

# Changing Terms of Employment

- Basic Principle: contract may be amended only in accordance with its terms or by agreement
- Terms of the contract of employment maybe express or implied

# Changing Terms of Employment ...2

- Check the contract of employment to see if the variation is permitted by the terms of the agreement
  - Can you interpret a term in the agreement sufficiently broadly to accommodate the change?
  - Is there an express right for the employer to make changes (a specific flexibility clause)?
  - Does the contract give a general power to vary the terms (a general flexibility clause)?

# Changing Terms of Employment ...3

- Flexibility clauses will be given a restrictive interpretation
- The implied terms of an employment contract may curtail the operation of an express flexibility clause

# Changing Terms of Employment ...4

No contractual right then:

- Get the employee's agreement to the new terms
- Unilaterally impose the change and rely on the employee's conduct
- Terminate the employee's employment and offer re-employment on new terms

# What if the Employee Will Not Agree?

An imposition of a contractual change without the employee's express or implied agreement will be in breach of contract

The employee can respond by:

- Working under protest. This is sometimes known as "standing and suing"
- Resign and bring a claim for constructive dismissal
- Refuse to work under the new terms and wait to get dismissed

# What Should the Employer do if the Employee Refuses to Agree?

The best option is likely to be to terminate the existing contract and offer continued employment on new terms. However this cause problems:

- Wrongful dismissal
- Unfair dismissal

# Avoiding an Unfair Dismissal Claim

To defend an unfair dismissal claim an employer must:

- Establish a potentially fair reason for dismissal 'some other substantial reason' or possibly redundancy (if the change involves a change in location)
- Show that it acted reasonably in dismissing the employee for failure to agree to the change in terms of employment

# Legislative Considerations

Where less than 20 employees are potentially affected by the changes, the employer must follow the SDDPs

Where 20 or more employees are potentially affected then there is an obligation to follow the group consultation rules

# Practical Bits

- Step 1: Ascertain the nature of the consultation:
  - Will the change affect 20 or more employees, if so collective consultation
  - Less than 20 employees then follow the SDDPs

# Practical Bits

# ...2

- Step 2: Presentation to all affected employees as early as possible. Present proposed revised contracts/written variations
- Step 3: Hold individual consultation meetings with the employees concerned (or elections and group consultation if 20 or more (as appropriate))

# Practical Bits

## ...3

- Step 4: In light of representations at step 3, consider whether the changes can be varied to address the concerns of the employees
  
- Step 5: Hold a further consultation meeting
  - Respond to any employee representations made at step 3
  - Note any further written representations made in response
  - Warn the employees

# Practical Bits

...4

- Step 6: Write to employees and set a deadline for obtaining written agreement to the new terms. Warn that if agreement is not obtained you will contemplate terminating their employment for a refusal to agree to the change

# Practical Bits

...5

- Step 7: Hold individual meetings to discuss the employee's refusal to agree and proposed termination of employment

# Practical Bits

# ...6

- Step 8: Send written notice of termination of employment:
  - Enclose the offer of employment on revised terms and request written agreement to the new terms before the date on which they are intended to take effect
  - Offer the employee a right of appeal from the decision to terminate original contract

# Practical Bits

...7

- Step 9: Hold appeal meeting if the employee invokes right of appeal
- Step 10: Write to the employee confirming outcome of appeal and that this is final decision