DGR Law News and Articles

Redundancy – some important points to consider for both employer and employee

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On the 6th April the law regarding redundancies changed. It is not a cheerful subject but, for many, redundancy remains a pertinent one. For an employer redundancy can be a mine field, catching the unwary, where without proper regard to the law, even genuine attempts to do the best for their employees can end up in legal action. For an employee it can, quite naturally, be a stressful time, with their job in the balance, and events seemingly out of their control. This article is not intended to give an overview of redundancy, more to highlight some important points and pitfalls, which both employee and employer should be aware of.

The point on which employers often fall down is that even if dismissals are on genuine grounds of redundancy they may still be unfair if the employer fails to consult with individuals, fails to properly identify the correct pool of employees to select, fails to apply objective selection criteria for redundancy, or fails to offer suitable alternative employment. I shall look briefly at consultation and selection.

Consultation

The formality and length of consultation will depend on how many proposed redundancies there are. But, in all situations, an employer must consult with his employees when their proposals to dismiss are in a formative stage. This is because consultations must be fair and genuine. In addition, where there are twenty or more proposed redundancies consultation must be meaningful, and must cover ways of avoiding dismissals, reducing the numbers of dismissals and mitigating the consequences of dismissals. It would be good practice for all consultations to cover these points.

An employer should include in the consultation all those employees who are affected by the proposed dismissal, or those who may be affected by any proposed measure. It should not be limited to only those the employer proposes to make redundant.

These affected employees should be allowed to express their views; and themselves or their representatives should be involved in the process and be able to give ideas. As such, the employer should avoid agenda, or talk, of finalising decisions, which give the impression that consultation will not change anything.

Where there are more than 20 proposed dismissals the employer must consult with employee representatives. As an employee, your representatives will usually be trade union representatives. Where there is no current representative all the affected employees should be free to vote and stand as a representative.

Selection

An Employer must disclose in writing the proposed method by which they will select the employees for redundancy. The selection must be done fairly and the employer must genuinely apply their mind to which employees should be selected for the pool for consideration for redundancy. Many employers will have an established procedure, which should be followed provided it is appropriate and during the consultation period the employer and employee representatives should have established what redundancy selection procedure is to be followed.

Choosing selection criteria can be tricky, and the more subjective the criteria the more consultation with affected employees is required. Most selection used to be based on the principle of 'last in first out', but now it is more common to use scoring systems based on criteria such as skills, standards of work and disciplinary record.

While it would seem straight forward to select objective criteria, there are a number of dangers. Some criteria could lead to discrimination claims, for example employers must be careful when considering criterion based on length of service, as this could amount to age discrimination. Equally, employers can take the objectivity test too far. This is shown in a recent case where the employer selected a competency assessment, together with the disciplinary record and absence record as their redundancy selection criteria. The employer brought in outside professionals and HR specialists to carry out competency assessment, which included a test, interview and group discussion. The result was a number of the best performing employees were selected, due to low scores, and dismissed. Subsequently, the Employment Tribunal and Employment Appeals Tribunal held the dismissals were unfair.

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