

Credit Crunch - How can employment cost savings be implemented?

The importance of consultation



It is likely that the vast majority of employers are either already affected by the credit crunch or at least concerned about how their business may be impacted in the future by the difficult economic climate. Here, **Karen Coleman**, an Associate Lawyer in the Employment Unit of McClure Naismith highlights the importance of consulting existing staff and negotiating with them rather than making them surplus to requirements

Businesses that built for growth over the course of the last 2 years now have surplus staff and may not be able, or prepared, to ride out the economic slow down with these overheads in place.

Not surprisingly businesses see cost control as being the key factor to maintaining healthy profit and, equally unsurprisingly, see cutting employment costs as a means to achieve this quickly.

HR personnel will be in the frontline when employers are considering where savings can be made.

Redundancies are the obvious option and often the only method considered of making cost savings, but redundancies should only be viewed as a last resort. Business owners or managers must be made aware by their HR personnel of alternative options which may be available to them such as lay off & short-time working, changes to working practices & terms and conditions of employment and contracting in/out arrangements. In the current climate, employees may well be willing to agree to a 20% pay cut rather than be exposed to the risk of losing their jobs.

If any of the possible cost saving methods are to stand a chance of being successfully implemented, a detailed consultation and negotiation process will be required. Consultation can often be seen by the decision makers within a business as an unnecessary impediment to the implementation of cost saving measures, but in reality the benefits are many, including better staff morale. Sometimes the workforce make suggestions which positively input to the proposed changes or indeed put forward ideas which had not been thought of by management.

Consultation in any event is required by law. Fair consultation usually means consultation whilst the proposals are still at a

formative stage and requires adequate information to be provided to the employees on which they can respond together with providing them with adequate time to respond. There should then be proper consideration of the points raised by the employees, rather than their responses being simply rejected or passed over.

The matters that should be discussed during the consultation process will depend on the specific circumstances but, typically, consultation should include consideration of alternatives to redundancy. Where redundancies are the only option of one of the options, consultation will include the notification of the fact that the individual has been provisionally selected for redundancy, together with verification of the basis for selection and an opportunity for the employee to comment on their redundancy selection assessment. Where available, consideration of any (not just similar) alternative employment positions that may exist should also be dealt with during the consultation period (as well as continuing during any notice period).

In addition to the obligation to engage in collective consultation where appropriate, case law has firmly established that, for a redundancy dismissal to be fair, the employer must warn employees of the possibility of redundancy and then also consult individually with them before reaching any firm decision regarding their dismissal. A procedural failure does not automatically lead to a finding of unfair dismissal (unless the minimum statutory dismissal procedures are not complied with) but the tribunal will look at all the circumstances to decide if, in the particular circumstances, the employer has acted reasonably in dismissing the employee.

The aim of consultation will be to reach an agreement; this could include agreement to a temporary pay cut, reduction in working hours or, where redundancies are inevitable, the basis for selection. Negotiation will form a part of this process, however, in the absence of agreement, an employer is entitled to implement redundancy procedures that it considers necessary to secure the profitability, and sometimes the very future, of its business.

These will indeed be difficult times for many employers. It will be all too easy for the fear surrounding job losses to invade and destroy a positive culture within an organisation. Employers should keep in mind however that these difficult times will pass and that the commitment of employees will be vital during this time and when growing the business in the future. Genuine involvement and consultation with employees when cost saving measures need to be made can only help ensure that good staff are retained and that the long term future of the business is secured.