

# GOUGH'S

## SOLICITORS



### *In this month's "Ask Goughs" column we answer a question which reflects the uncertain times we all currently face...*

***My employer has announced that he wants to restructure the business and make redundancies – What are the implications for me?***

Regrettably we have already seen more than two years of high levels of redundancy as businesses rationalise and save costs in order to survive the recession. This trend looks likely to continue for the foreseeable future.

Employers are legally entitled to reorganise and rationalise their business and make redundancies as they see fit. Provided they do it fairly and in accordance with the law, paying the appropriate statutory compensation where it is due, then the employee may be able to do little about it.

If the employer gets the procedure wrong or acts unfairly in any selection or dismissal process, e.g. by discriminating against an individual employee, then that employee may then have a claim for unfair dismissal or discrimination.

Employees with less than one year's continuous service do not generally have protection from unfair dismissal and, other than their right to receive appropriate notice, have very few rights in the event that they are selected for redundancy. Those employees with between one and two year's service may have protection from unfair dismissal, but do not have the right to receive a "statutory redundancy payment".

The majority of employers do not want to make redundancies and it is often an indication that their business is struggling. They would rather grow their businesses and, if appropriate, increase skills and staff. Some employers leave rationalising, restructuring and redundancies too late and go bust. Then everyone loses.

It is worth remembering that employers are obliged to consult with employees if they wish to achieve fair redundancies and avoid unfair dismissal claims.

If you enjoy working for your employer and would like to retain your job it may be worthwhile thinking about how you might help yourself by helping your employer. This could include agreeing to reduced pay for a period of time, reduced hours or different shift patterns. This can aid efficiency and enable

the employer to save money in order to get through the difficult times.

Some employers will ask for voluntary redundancies and that may be attractive to you. However, you would be wise to ascertain what your statutory and contractual entitlements would be before agreeing to take voluntary redundancy or even indicating an interest. Some employers have schemes or contractual arrangements for paying redundancy payments considerably higher than the statutory terms and you would not wish to lose out through being unaware of these.

Most redundancy procedures involve some form of selection and often criteria are applied to the selection process such as skills, sickness absence, flexibility, etc to enable the employer to select who will stay and who will be dismissed. Employers are less likely to select employees for redundancy if they are prepared to be flexible and helpful.

The consultation and selection process can be an extremely difficult and unsettling time both for the employee and the business. To avoid this some employers take advantage of "Compromise Agreements", statutory contracts which provide compensation to the employee provided they sign away their rights and claims against the employer.

Compromise agreements are often on better terms than compulsory redundancy payments. For the agreement to be binding the employee has to have advice from an appropriately qualified legal specialist and get a certificate to that effect.

These are difficult and uncertain times for many employers and employees. If, as an employee, you are concerned about your position or, as an employer, you are concerned about your business please email [employment@goughs.co.uk](mailto:employment@goughs.co.uk) or phone Kevin Basnett or Gabby Corp on 01249 812086.

This article does not constitute legal advice and no action can be taken as a result of reading it. A qualified lawyer should always be consulted before taking any legal action.

\*Statutory redundancy payments are calculated in accordance with a formula which involves age, length of service and normal weekly pay. They are capped so that the maximum statutory redundancy payment is currently £11,400.

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