



Question: *what does it mean when the Prime Minister announces that he is holding a breakfast summit on youth employment on the day the jobless figures come out?*

Answer: *it means bad news.*

Unemployment rose at its fastest rate for almost 17 years, employment fell even more and the number of young people out of work rose past the one million mark.

It is anticipated that redundancies in 2011 will exceed those seen in 2008. Thus far it has always been a taboo subject to discuss, but YVA Solicitors recognise that it is a hot topic for employers, and we have prepared this guide as a point of reference for those who are considering making staff redundant this year.

Planning

1. The employer must draw up a plan to decide who will be kept on and who will be made redundant and why.
2. The employer must inform the workforce as soon as possible, so they have a chance to put forward alternatives or apply for other jobs with the current employer or with another employer.
3. The employer should consider any proposals that the employees or their representatives make as an alternative to redundancy.
4. The employer should decide as soon as possible how many employees will be made redundant.

Consulting

1. The employer must consult the employees' representatives (this includes Unions) if 20 or more people are going to be made redundant. This involves discussion of the business reasons for making the closure. These discussions must take place before a final decision on closure of a workplace is made.
2. The employer must discuss alternatives to redundancy and the selection criteria for redundancy.
3. The employer can carry on the redundancy procedures whilst the consultation is going on (for example, sending out redundancy notices to the affected employees). However, the employer should not issue redundancy notices before he has had a chance to consult properly.
4. If the employer does not consult properly the Employment Tribunal can make the employer pay a "Protective Award". This states that the employer must keep the employees on and must pay their wages for a certain amount of time (whether they actually remain working or not). The length of this Protective Award period is usually fairly short.
5. Whilst there is a duty to consult, an employer is not prevented from making redundancies if after meaningful consultation has taken place, no agreement can be reached.

6. The employer must consult the Department for Business Enterprise & Regulatory Reform (BERR) (formerly the DTI) 30 days before dismissal if they are going to make between 20 - 99 employees redundant. Or 90 days if over 100 are to be dismissed. One of the reasons for this is so that accurate employment statistics and records can be compiled.

The selection procedure and criteria cannot be based upon unfair reasons such as Trade Union membership or activity. If the selection criteria is based upon Race, Disability, Age or Sex the affected employee can claim under Unfair Dismissal or the relevant discrimination law.

Selection Procedure

1. If a group of employees are selected for redundancy the employer must show what type of work they do and why the demand for that work has decreased or stopped completely.
2. If the amount of work has decreased so that only some of the employees within a group are selected, the employer must show how they picked those unlucky ones.
3. The employer must show in detail the selection procedure and criteria. This can range from "last in first out" to a scoring system, with the employer giving points for certain job skills.
4. The selection criteria should not be based upon an individual's view of each employee, (for example, what the personnel manager thinks).
5. Once the criteria has been agreed it should be kept to.

The employer should also try and agree the selection criteria with the employees' representatives or Union.

The selection procedure and criteria cannot be based upon unfair reasons such as Trade Union membership or activity. If the selection criteria is based upon Race, Disability, Age or Sex the affected employee can claim under Unfair Dismissal or the relevant discrimination law.

Consulting each employee

The employer must consult each affected employee before dismissal notices are handed out, so that there is a chance of real consultation and time for the employee to respond. The selected group may change due to the consultation process.

The consultation must involve the following: Why their type of job is under threat. Explain why according to the selection criteria this employee may be chosen for redundancy. (They have not been selected yet as the dismissal notices have yet to be sent out). The employee should be given a couple of days to respond after being told. The employer should consider any views or opinions expressed by the employee.

Both the employer and employee should consider any alternative work that the employee could do or any ways in which the employee could stay in their current job.

Once the selection has been finally decided the employer should have a second interview with each of the effected employees. This is when the employer can actually hand out the dismissal notices.

Other work

The employer can offer the employee other work instead of making them redundant. The employee has a choice whether to accept it or not. Though if the employee unreasonably refuses the offer the employer may avoid paying them redundancy pay. The employer can offer the employee a job identical to their current job or a job with similar skills. The job must have similar pay, conditions and skill requirements. Any refusal is looked at from each individual employee's view. Some employees may accept the offer, others for their own personal reasons may not. For example, the new job may require more travelling for some employees than their current job, but less for others.

The alternative job offer must be made before the current job ends and the start date must be no more than 4 weeks after the old job ended. The first 4 weeks of the new job will be a trial period. During this time or when the 4 weeks have finished the employee can still leave the job and claim dismissal and redundancy pay. The employer and employee can agree a longer trial period for the new job if they want, 4 weeks is the minimum period.

An employer may claim that a dismissal is because of reorganisation, in order to avoid making a redundancy payment. An employer can legitimately dismiss an employee if he or she will not accept a change in terms and conditions resulting from a reorganisation if the employer can show such changes are necessary to the continued management and efficiency of the business, and the employee's refusal to "fit in" justifies the dismissal.

It is sufficient for an employer to show the reorganisation is for sound business reasons, which require a change in an employee's terms and conditions.

What can YVA do for you?

YVA Solicitors has a long history of representing employers in relation to all aspects of employment law including matters of unfair dismissal, redundancy, sex discrimination and harassment, race and disability discrimination and comprise agreements and we can advise on a range of issues in respect of employment contracts.

What next?

Should you wish to discuss matters generally or require case specific advice please do not hesitate to contact the Employment Department at YVA Solicitors.