Manchester Update

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Redundancy: Common Myths and Pitfalls for Employers

It is forecast that as many as 200,000 jobs could be lost in 2011 in what is predicted to be the 'worst year for jobs' in 17 years, according to the Chartered Institute of Personnel and Development (CIPD). In such circumstances it is inevitable that many employers will be faced with the unfortunate prospect of making some of their employees redundant and indeed many employees will be faced with the prospect of losing their jobs by reason of redundancy. Alan Lewis, Head of our Employment Law department, addresses some of the common myths and pitfalls in respect of the law relating to redundancies.

1. It is easy to declare a position redundant.

NOT SO

Many employers use the term 'redundancy' when dismissing an employee when a true redundancy situation does not exist. Quite often, the real reason for dismissal is poor performance.

The key point to understand is that in order to fairly dismiss somebody for redundancy, an employer will have to establish that the statutory definition of redundancy is satisfied.

The definition is quite technical and has led to numerous cases in the Employment Appeal Tribunal and Court of Appeal to clarify when a true redundancy situation exists. If employers are unable to satisfy the statutory definition of redundancy then any redundancy dismissal is likely to be unfair.

2. If an employee has less than one year's service they can be made redundant without risk.

WRONG

There are numerous ways in which employees with less than one year's service can pursue claims for unfair dismissal if they are made redundant.

For example if they are selected for redundancy because they are pregnant, have made a complaint about various statutory employment rights or for certain specified health and safety reasons.

Furthermore, employees with less than one year's service can pursue claims for discrimination if the reason for their selection for redundancy is in any way connected to their sex, race, disability, age, sexuality or religion.

3. I don't need to consult with employee representatives if there is no Trade Union.

NOT TRUE

If an employee is considering making 20 or more redundancies at any one establishment, then they are under a strict legal duty to consult with elected representatives of the workforce. If there is no Trade Union or elected representatives then an employer is under an obligation to arrange elections and then enter into conscientious and meaningful consultation with such representatives.

Failure to do this can lead to significant awards of compensation regardless of whether there is a true redundancy situation. Furthermore, even if such collective consultation takes place, an employer is also under a separate duty to consult individually with each employee selected for redundancy and this duty applies in all cases, regardless of the number of redundancies being made.

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4. I don't have to consult with any other employees as it is only one employee's position at risk.

MAYBE NOT

A common pitfall experienced by employers is the failure to give adequate consideration to defining a pool for selection for redundancies. This is a particular problem area where employees hold similar positions or where employees' skills are interchangeable and/or where employees have been involved in undertaking other jobs throughout the course of their employment.

In such circumstances consideration ought to be given to including all employees employed in similar positions or whose skills and tasks are interchangeable in a pool for selection for redundancies before deciding which particular employee should be made redundant.

5. I have complete discretion in establishing selection criteria for redundancies.

NOT RIGHT

Another pitfall experienced by employers is the failure to establish fair and objective selection criteria when determining which employees should be selected for redundancy. Subjective criteria such as 'attitude' should be avoided at all costs.

Similarly, it is equally important to have a rigorous and objective process of scoring employees against objective criteria. Quite often employers are unable to demonstrate how they have arrived at the scores they have provided for individual employees on an objective basis with reference to relevant documentation (such as appraisals and performance statistics). Inevitably, a finding of unfair dismissal follows.

6. All payments I make to an employee on redundancy are tax free.

NO

Another common mistake for employers is to assume that any payment made to an employee under £30,000 can be paid free of tax.

However, many employers make payments in lieu of notice on a redundancy rather than requiring an employee to work their notice period.

If there is a provision within the employee's contract of employment entitling an employer to make a payment in lieu of notice, then any payment will be subject to deduction of tax and National Insurance contributions.

Ultimately employers should be aware that if they embark upon a redundancy process without obtaining sound legal advice they face the risk of Employment Tribunal proceedings, substantial compensation payments and the legal costs and wasted management time involved in defending such proceedings.

Partner Alan Lewis regularly advises employers, including other firms of solicitors, in respect of making redundancies and can be contacted on 0161 837 6807 for further advice.

Regulatory Law

In December 2010, Linder Myers welcomed a new Partner, Stuart Sutton. Stuart is heading up the newly formed Regulatory and Compliance department and helping to even further enhance our legal service offering.

The team will offer a broad spectrum of regulatory and compliance legal issues, acting for both individuals and organisations.

One of Stuart's specialisms that he brings to the team is the regulatory defence of individuals before professional bodies. Stuart works closely with health professionals such as chiropodists, osteopaths and chiropractors. He also acts for property professionals like architects, estate agents and surveyors on disciplinary matters. This niche specialism will enhance the Manchester legal market by providing a much-needed service to the workers of the city and further afield.

Stuart says: *"I am thrilled to have joined Linder Myers Solicitors, a firm which I know echoes my vision of growth and success, whilst retaining client care at all times. Moving to a practice of this size allows me to offer my clients and contacts the full spectrum of commercial and private client services."*

Learn more about Stuart's work at www.lindermyers.co.uk or email stuart.sutton@lindermyers.co.uk

Shareholders' Agreements

Where a private limited trading company has two or more shareholders, the shareholders should seriously consider the possibility of putting a shareholders agreement in place.

A shareholders' agreement regulates the relationship between shareholders in connection with the affairs of a private company. It is an important foundation for any investment, as it offers clarity and protection on a number of issues. Such an agreement is tailored to suit the priorities and commercial objectives of the shareholders concerned.

The agreement itself is essentially a contract. Generally all shareholders of a private company would enter into a shareholders' agreement. It is a private document and exists alongside the company's constitution, or articles of association, which is open to public inspection at Companies House. Please note adoption of a shareholders' agreement will involve a review of the company's articles to ensure that both documents are compliant with one another.

There are a wide range of issues that a shareholders' agreement could cover, but commonly dealt with matters include:

- who has control and how decisions are made
- the transfer of shares between existing and to new shareholders
- the issue of new shares by the company
- dividend policy
- arrangements in connection with a departing shareholder
- sale of the business to a third party
- valuation of shares when a shareholder leaves
- availability of up to date financial information in order that shareholders can monitor the company's performance
- remedies where a shareholder breaches the terms of the agreement
- competition restrictions on a departing shareholder

A shareholders' agreement has the effect of setting a clear precedent for the company to structure day-to-day management as well as significant strategic decision making.

Failure to have a shareholders' agreement will mean that in the event of a disagreement or dispute between shareholders the parties will have to rely on provisions of general law. This can often have an unsatisfactory outcome for the parties concerned. It can lead to expensive disputes and conflict amongst shareholders. Any conflict is likely to absorb management time and have a damaging effect on the business in general.

The Corporate team at Linder Myers have extensive experience in drafting shareholders agreements and have worked with companies of various sizes in a variety of sectors. We aim to provide practical advice that is tailored to the needs of both the individual shareholder and the company to meet strategic objectives.

Our Shareholders' Agreement checklist is available to view online.

Please call Andrew Brown on 0161 837 6849 or email andrew.brown@lindermyers.co.uk

Andrew Brown
Partner

Case of interest: negligent gastro-intestinal surgery

Re: S v R B Trust

Settlement: £90,000 plus costs

Ms S was 65 years old when she was referred to the Defendant hospital, having been diagnosed as suffering from gall stones following a previous admission to a hospital in North Wales.

She was due to have a removal of the gallbladder procedure in July 2007. Ms S spent some time in intensive care before being discharged some 10 days post operation. A year later she was re-admitted to the hospital with evidence of a stricture of the bowel duct. She underwent further procedure for dilatation of the narrowing. Ms S had ongoing symptoms of inflammation of the bile duct with additional problems of post surgery hernia and breathlessness.

Folowing this, Ms S required a degree of care and assistance particularly in relation to gardening and looking after her disabled husband.

Linder Myers became involved with the matter, and investigated the case with the assistance of an expert gastro-intestinal surgeon. A pre-action protocol letter was submitted and the claim was admitted but causation and quantum denied. Proceedings were issued and served claiming provisional damages in view of the risk associated with further problems.

Eventually following service of a Defence and an admission in relation to causation together with examination by the Defendant's nominated expert. Ms S was awarded £90,000 plus costs for her medical negligence claim.

If you believe you have received negligent surgical or other medical care please contact our specialist Medical Negligence team to discuss your claim. Email law@lindermyers.co.uk or call direct on 0161 832 6872.

Bernard's Column

2010 for Linder Myers

In 2010, we continued our progress to becoming one of the leading practices in the UK.

In July we merged with another practice in St Annes, furthering our development to become one of the larger firms on the Fylde Coast.

We undertook a corporate rebrand project and developed a new website that will help enhance our users' online experience.

Throughout the year, we have welcomed new staff members at each of our offices.

One of these is Stuart Sutton, who heads the newly formed Regulatory and Compliance department.

Bernard Seymour
Managing Partner

What 2011 will bring

Overall, 2010 has been a very successful year for the firm and we have thrived in what for many has been a very difficult economic year. For 2011 we are planning even greater things, some of which I'd like to share with you now.

The Legal Services Act

The Legal Services Act 2007 set out a new regulatory framework for regulators and the ownership of legal services providers. The Act enables new forms of legal practice to develop alternative business structures (ABSs), which will allow external ownership of legal businesses and multi-disciplinary practices. We see this not as a time of threat but a time for great opportunities. We will be able to develop strategic alliances and joint ventures with clients and contacts and provide even greater client care and genuine added-value.

Supply-Line

We have already mentioned in previous issues a number of new lines we offer including our training academy and debt recovery service. These are all-legal based services but a new product that we have developed recently will provide us with no direct legal benefits. Supply-line, as we call it, is a professional procurement service using a reputable and tried and tested supplier base.

It offers savings on a wide range of products and services through an extensive list of authorised suppliers. Linder Myers is using the service and we have saved over £40,000 on our stationery and over £10,000 on our telephone bills. This cost saving service is only available to Linder Myers clients and contacts. It's an added benefit for using our services and we hope it helps strengthen ties with you, our valued customers. Should you be interested then please liaise with your contact at the firm and they will put you in touch with our marketing team who will give you details of how you sign up. Alternatively you can email us directly on supply-line@lindermyers.co.uk

International Joint Ventures

Linder Myers are part of the international network of lawyers, Consulegis. We are developing international joint ventures with one of our partners Morvilliers Sentenac who has offices in Paris and Toulouse.

We will be offering legal services to property owners covering issues such as purchases, renovations and loan documentation.

We are also offering legal services specific to the secondment, expatriation and employment of nations of one state in another. This will involve employment contracts, commercial agents and pensions.

In 2011 we are hoping to see such developments in other countries as well as France.

We will keep you abreast of all of our new developments, and thank you for your continued support in 2011.