



Redundancy in Guernsey

by Paul Richardson
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In this time of recession redundancies are unfortunately inevitable as employers look at ways of trimming costs, or business begins to dry up.

In contrast to the UK, the States of Guernsey has decided not to legislate to introduce a statutory entitlement to redundancy pay. This can leave the potentially redundant employee scratching his or her head and wondering exactly what their rights and options are. This article considers briefly the nature of an employee's rights.

Firstly, although redundancy is prima facie a fair reason for dismissal, in carrying out a redundancy process the employer must act in a fair manner. The Commerce and Employment Department has produced a Code of Practice entitled "Handling Redundancy", the spirit of which an employer should follow. The steps an employer must take include establishing a pool of employees for redundancy, drawing up a fair method of deciding which employees may be made redundant, considering alternative positions within the business, and, importantly, consulting with employees at all stages and listening to their comments. If an employer does not follow these procedures in making an employee redundant, the employee may have a claim for unfair dismissal.

Secondly, there may be a contractual entitlement to redundancy pay, either in the contract of employment itself or in a staff handbook. Often contractual redundancy pay is linked to length of service. It is important that the employee checks the contractual documentation carefully in order to ascertain his or her rights. Further, an employer may voluntarily offer redundancy pay to employees.

Thirdly, and commonly, as part of the redundancy process, the employer may wish to sever the employment relationship with certainty, so that there is a clean break between employer and employee. The law recognises a method by which this can be done, that is by way of compromise agreement. This is an agreement regulating the termination of employment, and an employee will usually waive all of his or her claims against the employer and give certain other undertakings (for example concerning confidentiality and the return of company property) in return for receiving a sum of money. In order for such an agreement to be binding, it must be signed off by a legal advisor on behalf of an employee, so that the employer can be sure that the employee has been advised of all his or her legal rights before entering into the agreement (the employer will pay the legal advisor's reasonable fees, usually capped at a certain limit).

At AFR Advocates, our specialist employment team (which is consistently top-ranked in legal publications such as Chambers and Which Lawyer?) is able to advise on all aspects of redundancy dismissals, and are regularly instructed in relation to compromise agreements, either drafting them for employers or advising employees, negotiating on their behalf, and signing the agreement off if appropriate.

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