

## **-REDUNDANCY-** **THE NEW COMPROMISE CULTURE**



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In the current financial climate unprecedented numbers of employees are facing redundancy. Losing your job can be difficult to face on a personal level and this is not helped by the fact that the law surrounding redundancy is notoriously complex and can easily be misinterpreted. In the last few months, however, the dedicated employment lawyer has seen a significant shift from strict adherence to the rules and process required to fairly dismiss for redundancy to the use of the little known compromise agreement as an alternative. Termination of employment through the use of a compromise agreement has been around for many years, but remains relatively unknown to the majority of employees who are about to lose their jobs. "In the last few months our firm has seen a tenfold increase in the use of compromise agreements as a means of bringing the employment relationship to an end. Despite the large numbers of these agreements we've seen over many years, generally employees are unaware of what they are when they come to us." says **Hina Belitz** of Partners Employment Lawyers.

But what should you know about redundancy and dismissal under a compromise agreement? And what should you do if you suspect that you may be made redundant? How do I know I have been treated fairly and in accordance with the law? See below for answers to these and other important points those suspecting redundancy should be aware of.

- **How would I know if redundancy is going to affect me?**

Redundancy generally starts with staff being notified orally or in writing that they may be at risk. This is generally termed an 'at risk' letter.

- **If I am made redundant how much notice am I entitled to?**

If you discover you have been selected for redundancy you are entitled to a minimum period of notice. Although your employer will sometimes offer you more under your contract of employment the minimum level of notice you are legally entitled to is one week for every year you have worked up to a maximum of 12 weeks.

- **Does my employer have to follow a process in order to make me redundant?**

Yes, there is a set process which your employer must follow. As a minimum you must:

- be informed and consulted about the redundancy and the reason for the redundancy;
- be selected in accordance with a fair and objective selection criteria;
- be allowed to bring a colleague or trade union representative with you to any redundancy meetings;
- be offered any alternative roles within the business;
- be given the right to appeal the decision;
- be allowed to take reasonable time off to look for alternative work.

- **Can my employer just pick and choose who to make redundant?**

No- any selection for redundancy must be based on fair and objective selection criteria such as attendance records, skills, performance and length of service and must not be discriminatory. If asked your employer must be able to give you a clear explanation of why you have been selected for redundancy.

- **Can my employer ask me to stay at home during the consultation period?**

Yes, for some employers it is standard practice to put their employees on garden leave with immediate effect.

- **My employer has asked me to sign a compromise agreement- what is this?**

A compromise agreement is a legally binding document which sets out the terms of your redundancy. In return for signing the agreement you effectively agree not to bring a claim against your employer. In return for signing, your employer will usually offer you a compensation payment. The first £30,000 of any such compensation is usually free of both tax and National Insurance contributions but in order for it to be legally binding you need to take advice from an independent legal advisor who should be an expert in employment law. It is effectively a pay off and is sometimes provided so that the employer can avoid going through statutory and other legal procedures which are required in a redundancy situation.

- **Why should I sign a compromise agreement?**

The employer cannot force you to sign such an agreement. The decision is based on balancing the claims you may have against your employer against the compensation being offered, while taking into account the realities of suing your employer, such as legal fees, time delay and uncertainty. An expert advisor should be able to guide you to the right decision, or negotiate terms that you are happy to accept.

- **Will I still receive my bonus if I sign a compromise agreement?**

Most compromise agreements are in 'full and final settlement' and therefore, unless it states to the contrary, once you have signed you will not be entitled to any additional payments such as your bonus. Bonuses are classically an area of contention and although much depends on how your contract is drafted, typically you will not receive your bonus if you are made redundant.

- **Is there anything to stop me starting another job with a competitor and taking my clients with me?**

This will be governed in accordance with the post-termination restraints in your contract of employment. You should seek expert advice on these if you think you may be competing or contacting clients of your ex-employer. Some contracts can be very onerous and the consequences of breaching these restraints can be serious. Therefore it is important that you seek specialist advice before accepting another job.

**If you have been or are about to be made redundant please contact us for further advice and assistance.**

**PARTNERS EMPLOYMENT LAWYERS**

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