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REDUNDANCY & SETTLEMENT AGREEMENTS IMPORTANT POINTS TO NOTE

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. Recently, however, we, as dedicated employment lawyers have seen a significant shift from strict adherence to the rules and process required to fairly dismiss for redundancy to the use of a settlement agreement as an alternative. Termination of employment through the use of a settlement 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 settlement 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." - Hina Belitz

But what should you know about redundancy and dismissal under a settlement agreement? And what should you do if you suspect that you may be made redundant? How do you know you 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.

- **What is a redundancy situation?**

A redundancy situation will occur when an employee is dismissed in the following circumstances:

- business closure

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- workplace closure
- reduced requirement for employees to do work of a particular kind.

• 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.

Unless there is what is known as 'Role Redundancy' which applies where there is a reduced requirement for employees to do work of a particular kind and there is only one person doing this kind of work/role. In this case there the employee is in a pool of one. This will be the case if the role is unique. The employee is then essentially self-selected for redundancy.

• What does it mean if I accept Voluntary Redundancy and a Settlement Agreement?

Before making compulsory redundancies, employers will often ask for employees to volunteer for redundancy to mitigate the impact of the redundancies. Any employees who volunteer for redundancy still count, for legal purposes, as dismissed by reason of redundancy. They are not

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‘resigning’ in the true sense of the word, but indicating they are willing to be dismissed in exchange for an agreed payment via a Settlement Agreement.

If an employer is to run a voluntary redundancy programme, they ought to:-

- make it clear in communications that they are seeking applications for voluntary redundancy and that employees who choose to apply may not be accepted;
- make it clear that if employees volunteer for redundancy but are not selected then the fact that they volunteered will not be taken into account when making compulsory redundancies;
- have a fair/non-discriminatory process for determining whether to accept or reject applications. Have a panel, for example, to determine the applications and assess them against appropriate criteria.

• What exactly is a settlement agreement?

A settlement 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 settlement 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 settlement agreement?

Most settlement 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?

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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.

This note does not constitute legal advice and is intended as general guidance only. If you would like further information or would like to arrange a meeting please email hina@partnerslaw.co.uk or call 07809 694400

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