

Avoiding redundancies in the downturn

A Guest Article by Irina Junk
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How to survive while keeping your employees

There is talk of “green shoots” in the media. You may be hearing that the longed-for recovery is on the horizon. But your business may still be suffering. Your management team may still be facing tough dilemmas and torn between rescuing or sacrificing your most valuable asset – your employees. As Ray Kroc once said, “Your business is only as good as the people who work for you.”

If you have made a decision to hang on in there and keep as many employees as possible but you still need to make some changes to steer your business out of the gloom, here are some suggestions as to how you may achieve this and some words of caution as to what legal obstacles you may come up against in the process.

1. Review your business

- Implement strict rules on debt collection. Debtors are often overlooked, but effective debt collection can drastically improve your turnover and increase your profits.
- Review your contracts with suppliers and service providers. Shopping around and switching to some environmentally friendly products may help reduce your overheads.
- Consider not renewing the contracts of contractors and workers supplied by agencies.
- Reduce or ban overtime if you are paying your employees for it.
- Fill your vacancies with existing employees and offer them retraining.
- Implement a recruitment freeze.

2. Consider flexi-working

Generally, the right to request flexible working does not guarantee an employee flexible or part-time work. This right imposes an obligation on an employer to consider a request from a qualified employee to work flexibly. The employer has to go through a statutory request procedure and there are a limited number of grounds on which the employer can refuse the request.

Any requests and rejections should be considered carefully, especially in cases of employees who are about to go on or return from maternity leave, as employers may be caught out by discrimination legislation.

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However, flexible working can help your business to get through the tough times: by offering your employees the opportunity to work reduced hours or part time, you can cut costs and improve staff motivation and productivity.

3. Freeze or cut pay

Alternatively, you can implement temporary salary and bonus freezes or agree pay cuts with your employees; if conditions improve, bonuses could make up the deficit.

However, a contract can only be changed in accordance with its terms or with the agreement of the parties. If you unilaterally impose a pay cut on an employee, you will be in breach of the employment contract, which may also lead to a constructive dismissal of the employee. Any agreement with your employees should be in writing, so that there is no dispute about whether they agreed.

4. Invite applications for early retirement

If the above solutions have not been sufficient to keep your business going and you feel you need to let some of your employees go after all, then you may want to invite your employees to consider early retirement or ask for volunteers to be made redundant.

Inviting employees to consider early retirement is an acceptable alternative to redundancy for employees and trade unions.

However, employers should be wary of adopting a compulsory early retirement policy, as this may be unlawful age discrimination, indirectly discriminate against women and part-timers, and amount to unfair selection for redundancy.

In some cases this option may be expensive, as your business may have to fund a long-term pension. This may be offset by appointing a more junior employee on a lower salary for the role.

5. Voluntary redundancies

You may consider requesting volunteers for redundancy, as this would have less effect on morale than compulsory redundancies. If you are worried that you might lose key staff in the process, you should make it clear that you will consider all requests for voluntary redundancy but that you reserve the right not to accept all applications.

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You may need to offer enhanced redundancy payments to encourage people to leave. However, less time will be spent on checking that redundancy selection criteria are fair.

The ACAS Code of Practice on Discipline and Grievance

If you managed to avoid redundancies but you need to dismiss some employees for other reasons, remember that as of 6 April 2009, the statutory dispute resolution procedures are no longer in force. Instead, you should follow the ACAS Code of Practice on Discipline and Grievance, which sets out minimum standards for handling disciplinary issues and grievances.

Although this Code is non-binding, tribunals will assess whether a failure to follow it is reasonable. They will be able to increase or decrease awards in unfair dismissal cases by up to 25% if either party has unreasonably failed to comply with the Code.

The new procedures do not apply to the renewal of fixed-term contracts or to redundancy dismissals. But beware: if you are making someone redundant, you still need to follow a fair procedure. In particular, you need to consult with the individuals.

If you are planning to make 20 or more people redundant, specific statutory consultation provisions apply.

Please note that this article does not constitute legal advice and should not be relied upon as legal advice.

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If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.