

# A redundant system?

In the current economic situation, we should make it easier for employers to dismiss staff, says Patricia Wheatley Burt

**THE UK'S EMPLOYMENT** legislation inhibits effective and sympathetic management in the current economic situation. At a time when we should be challenging all our working practices – by reducing salaries across the board, renegotiating hours and benefits and revisiting the concept of bonuses to include 'maluses' (whereby previously earned bonuses will be forfeited if staff underperform) – should we now go so far as to include a review of our employment legislation?

Reorganisation and redundancy projects can be extremely painful experiences for everyone, from those 'at risk' to those 'guiltily OK'. Currently partners and managers are inhibited by a totally inhuman and undignified legal process.

The current employment laws affecting reorganisations, redundancy, TUPE transfer and renegotiating terms and conditions (T&Cs) of employment are the areas we need to suspend, if not repeal and rewrite. At the moment every management board in every law firm and in-house team are working out how they will manage through the tough economic times that are upon us. Inevitably at these covert meetings, 'management' is making decisions about who should be selected, and why. They then have to face their staff with a charade.

## Reorganisations and redundancy

How many of the law makers have actually had to sit with someone, tell them in meeting one that they are 'at risk', then repeat this at meeting two, and then again at meeting three, and still not be able to say: 'Yes, you are redundant'. This agonising process makes a mockery of any goodwill there might have been between employer and employee – everyone agrees the law is an ass, and yet we do nothing about it. Why not?

The process is often further mismanaged when ineffective managers use redundancy to select the poor performers with trumped-up criteria, when in fact these staff should have been fired months if not years ago. This allows incompetent management to continue in its most insidious form and at the same time blacken an already cumbersome process. It also skews the figures on how many staff are made redundant.

In the first place, we should make it easier for employers to dismiss staff, following a



reasonable process, not render them fearful of being tripped up with charges of harassment, etc, because a manager finally tackles a poor performer. (This is most prevalent within the public sector, where thousands of staff are still employed because the managers are too scared claims may be made against them – frankly, the tail wagging the dog).

**“Are we too slothful, reluctant or apathetic to pick up this challenge and do something about our legislation?”**

Secondly, we need to have a swifter process for discussing or consulting with staff on changes to the structure, which on the one hand does protect staff from abuse/mismanagement but on the other does not let incompetent staff slip under the wire yet again.

## Acquisitions/mergers – and TUPE

With an increasing number of firms needing to merge, or be rescued or acquired, the greatest restriction to swift and painless action is the requirement for the acquiring firm to take on the acquired staff T&Cs through TUPE. At a time when all JCB staff, 25,000 Corus steel workers, and many car manufacturers in the UK are agreeing pay cuts of between 10 and 25 per cent from top to bottom, we need to be free to agree these

changes swiftly and efficiently: not to have to take the 30 or 90 days' consultation or to gain the full agreement of everyone before implementing those changes.

There has to be a balance between the good of the individual and the good of the whole organisation. Some people are just stubborn – maybe firms would be better off without them anyway. There should therefore be a more effective guillotine process that allows employers the opportunity to keep the able and willing and reject the uncooperative. This is after all going to be a time of survival of the swiftest.

## Arrogance is for aardvarks

Agile, swift, consultative, collegiate, team-spirited, even war-time-spirited partners and staff are required, and partners and their management teams should be free to discuss openly and honestly with their staff what the situation is, and respond within hours or days. And staff need to recognise they cannot keep hiding behind the legal process if they want to keep their jobs – they too have to be creative, innovative and practical. Whinging at an Employment Tribunal will not bring back a job once it (and the firm, perhaps) has gone.

## Are we complying while Britain burns?

Like Emperor Nero, fiddling while Rome burned, are we really going to sit and do nothing? Are we are too slothful, reluctant or apathetic to pick up this challenge and do something about our legislation? Do we prefer to brand the law makers as useless and ask how many of them have had to manage a redundancy programme? Our government and opposition parties should address these issues quickly, working with practitioners, lawyers, the EU, employers, trade unions and the public to stop this nonsensical, politically correct behaviour, and allow common sense to prevail. This requires vocal support from influential law firms to lobby for change – we can all play a part in achieving these changes.

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