What to do if redundancy is looming

Redundancies have always been a way of life in the City, but in the current economic climate, the spectre of redundancy can be especially worrying. In recent months, there have been reports that major employers such as Credit Suisse, Goldman Sachs, Blackrock and Deutsche Bank are restructuring. In this article we set out how to put your best foot forward in this worrying situation.

Follow our guidance for dealing with a potential redundancy to ensure you have the best chance of keeping your role, and the best compensation if you do not.

How to prepare yourself for a potential redundancy situation

1. Do your homework

Check what your employment contract, company policies, and any relevant collective agreement says about redundancy. They might refer to a right to enhanced redundancy pay (over and above the statutory entitlement) or fixed consultation procedures. If so, make sure that your employer is doing what they are supposed to do. Enhanced redundancy terms for City employees are common and range from a multiple of two weeks per complete year of service upwards. Law firms tend to have less generous enhanced terms whereas the traditional banks with unionised workforces tend to be more generous. Also, check bonus, LTIP and share schemes – they might incorporate "good leaver" terms if you are made redundant.

2. Phone a friend

Most employers allow employees to be accompanied at redundancy "at risk" or consultation meetings by a colleague or trade union representative. Although there is no legal obligation to

do so, it is good practice. If your employer does not say that you can be accompanied at an “at risk” meeting, then ask. If your employer’s notes are inconsistent with your own (or your companion’s), ask your employer to put a copy of your notes on file.

3. Question time

In order to fairly dismiss for redundancy, your employer should consult with you individually about the redundancy situation, consider alternative ways of saving the role and avoiding the redundancy, give you time to respond, and enable you to apply for different roles within the business. If you have any questions during the consultation process, ask them. Some key issues to look for (but there are more):

- Why now? When was the decision made to make redundancies?
- Have you been told why your role is at risk? Does it make sense?
- Have you been told who else is at risk? Has one of your colleagues been “missed out”?
- Do you think that other people should have been included in the ‘at risk’ pool?
- Do you think that your employer should have considered “bumping” (i.e. removing others from their roles so that you can fill their vacancy)?
- If you are going through a competitive application process for roles, do you know the selection criteria and what other factors (such as past appraisals) are being taken into consideration?
- Do any selection criteria disadvantage you due to your particular circumstances e.g. disability or pregnancy/maternity leave?
- Have you been told about all existing vacancies (including roles that are junior/senior to yours)? Have you been given a fair opportunity to apply for those roles?

- Have you seen the selection criteria for alternative roles? Do you think they are fair?
- Is there a job vacancy that you haven't been told about?

4. What are the possible alternatives to redundancy?

We are in exceptional times. Many businesses are faced with a situation that they have not planned for and are reluctantly having to face – the loss of valued, skilled, hard-working employees.

There may well be a genuine downturn in the requirement for you to continue to do your role, such as investment banking, but that downturn may be short-lived. You may wish to explore other ways of saving your role such as unpaid leave, parental leave, or taking an unpaid sabbatical. This may be a time for quid pro quo whereby an employer wishing to retain an employee but cannot afford to do so offers a retention payment as a sweetener, payable when revenues return to reasonable levels. This would require both parties having confidence that the employer can weather the storm so that the retention payment is not a promise in the wind.

5. It's a numbers game

If your employer is proposing to make 20 or more employees redundant in a period of 90 days, they have additional collective consultation obligations. If they fail to comply with these obligations, you may have an additional claim for up to 90 days' pay.

6. Is there another reason?

Employers often view redundancy as the easiest way to eject an employee and retain the employees they really want. For that reason, a redundancy process can be used to cloak an unlawful act (such as discrimination or the repercussions of

whistleblowing). If this is the case, you may have additional, more valuable claims against your employer beyond a claim of unfair dismissal. If you suspect discrimination or other unlawful acts, or you think that redundancy is being used to "mask" another reason for your exit, make a careful note of anything that is said or done which supports your allegation. This can be used as evidence further down the line.

7. Appeal

As part of the redundancy process, as a matter of fairness, you should be given a right of appeal. Exercise your right to do so. Make sure your appeal is submitted in time and identifies the specific issues you have with the redundancy process and the decision.

8. Protected conversations and settlement agreements

In the City, a common scenario is for the employer to circumvent the above procedures and offer a severance package or termination payment under a settlement agreement. Such an offer will be made on a confidential basis and independent legal advice would be needed on the settlement agreement. The written agreement will set out terms that will seek to buy you out of any contractual, statutory and other claims you may have (such as unfair dismissal), by offering you compensation. The settlement agreement will ask you to waive any claims that you have in return for signing the agreement. A standard contribution to legal fees for you to obtain advice on the terms and effect of the agreement is usual, but often negotiable if the advice you need is more involved. Any negotiations on the terms of the agreement will be confidential and are unlikely to be admissible in any proceedings unless your employer behaves in a particularly improper manner towards you during the protected discussions.

Brahams Dutt Badrick French LLP are a leading specialist employment law firm based at Bank in the City. We are

experienced in advising on severance packages arising from redundancy processes and getting clients the best deals whilst protecting their reputations. If you would like any further advice on redundancy and the topics discussed in this article, please contact Paula Chan (paulachan@bdbf.co.uk), Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact. You can also reach us on 020 3828 0350 or at info@bdbf.co.uk.