

## The Reality of Redundancy

The recent financial crisis has created havoc throughout the world. Governments around the world are having to spend billions and trillions of pounds to support the financial markets. Locally, we have been hit extremely hard. There is talk of up to 40,000 redundancies at HBOS, many of which will affect staff at branches in Yorkshire. The government was only too content to overrule any objection to the takeover by Lloyds TSB without considering the consequences for thousands of workers. There are also rumours regarding Bradford & Bingley's future. If that is to be taken over by Santander, the Spanish bank, as the Financial Services Authority is trying to make arrangements for, it is likely to result in thousands of Employees losing their jobs in Bradford, Halifax and the surrounding area. The question is whether those employees are aware of their rights?



## Employees Rights

There are minimum rights for employees which are governed by statute. However, it is worth bearing in mind that their contractual rights may be better than those offered by the law.

Employees are entitled to redundancy payments after two years continuous service. The statutory redundancy payment is calculated by reference to age and length of service. An employee is entitled to half a week's wages for each complete year of service from 18 to 21 years of age; one week's wages for each complete year of service from 22 to 40 years of age and one and a half week's wages for each complete year of service from 41 to 64 years of age. They may also be entitled to other fringe benefits such as health care, a mobile phone or a company car as per their contract of employment. However, any payment made is subject to a cap, which is currently £330 per week.

Employees are under an obligation to mitigate their loss. This means that they should actively seek alternative employment to reduce the potential financial loss resulting from the redundancy.

## Insolvent Employers

If the company employing the employee is insolvent, it may not be in a position to make any payments. If that is the case an employee is treated as an unsecured creditor eligible to make certain priority claims for things such as wages and accrued holidays. However, even these preferential claims are limited to £800 for the four months prior to the insolvency. Employees therefore may only secure a small amount.

In these circumstances an employee is entitled to make a claim from the State. These payments are limited to statutory redundancy payments, statutory notice payments, arrears of wages for up to eight weeks and accrued holiday pay for up to six weeks. However, the statute does contain constraints. The notice period in the statute is limited to a maximum of 12 weeks and the weekly maximum pay is also currently limited to £330.

If the company has appointed an insolvency practitioner, an employee is able to submit a claim to that individual. Alternatively, if a claim is made to the State using Form RP1, obtainable from the Insolvency Service website, the Redundancy Payment Office will require a statement from the insolvency practitioner detailing what is due to the employee before any payments will be made.

## Compromise Agreements

If the company is solvent, it may require an employee to sign a Compromise Agreement. This is a legally binding document which usually provides for a severance payment to the employee. However, employees should seek independent legal advice when presented with a Compromise Agreement as in essence, agreement and acceptance of the payment will prevent the parties from bringing or continuing a claim before an Employment Tribunal or Court.

The Compromise Agreement must meet statutory prescribed conditions. If not, it will be void and the employee will be free to bring a claim. Should an employee pursue such a claim, The Employment Tribunal will take any payment made as a result of the Compromise Agreement into consideration in making an award of compensation.

## TUPE

If a company remains solvent but simply changes hands, the Transfer of Undertakings (Protection of Employment) Regulations will act to protect employees.

Effectively, the new employer steps into the shoes of the old employer. Employees therefore transfer to the new employer under the terms of their existing employment contract and continue to work as normal.

If however, the company is insolvent when it changes hands, TUPE Regulations act to protect the new employer. The liability for redundancy, notice and other payments to employees will not transfer to the incoming employer.

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