



Economic crisis – the potential employment issues

With the effects of the credit crunch starting to percolate down to both employers and employees alike, Victoria Windle and Simon Pritchard highlight some issues of interest to employment lawyers.

By Victoria Windle and Simon Pritchard

A recent study conducted by the Chartered Institute of Personnel and Development and KPMG found that 59% of employers are planning to make some redundancies within the next 3 months and more than a quarter of employers have made contingency plans to make new or further redundancies in the next twelve months.

Although it is impossible to discuss each and every potential legal issue arising from the current economic crisis, in this article we seek to highlight some topics employment lawyers may wish to familiarise themselves with. First, the patently obvious topics:

Redundancies

The study mentioned above indicates that employers are preparing themselves for imminent job cuts and therefore employment lawyers should be well rehearsed in the legal requirements for redundancy selection and the associated procedures.

In addition, as an increasing number of employers fall into financial difficulties, claimants may need to be advised on the risks associated with claiming against defendants who have become or are at risk of becoming insolvent. In the current economic climate, knowledge of the requirements for claiming from the National Insurance Fund may prove useful.

Bonuses

Although financial bonuses have been blamed by some commentators for some of the current economic difficulties, the bonus culture combined with a global fall in profitability provides the setting for disappointed employees to initiate proceedings against their employers for reductions in bonuses. However, advisers should be alert to the fact that employers may be able to justify, and employees may accept, smaller bonuses as an unavoidable consequence of the economic conditions.

In any event, where the bonus pool is significantly smaller than it has been in the recent past, employers must diligently ensure that the distribution does not give rise to claims of unfairness, particularly on the grounds of sex, race, age or part-time status.

Employment relationships may also be affected in less obvious ways:

Expenses

Companies seeking to reduce costs are likely to place tighter controls on their employees' expenses. As a result disgruntled employees may find their requests rejected, or worse careful scrutiny by employers may uncover fraudulent claims resulting in disciplinary action.

Trade union activity

With jobs at risk, employees are more likely to seek union protection. Indeed, previous economic slowdowns saw an increase in trade union activity and a similar upturn in union activity may result in a greater number of collective actions and harder bargaining by unions.

Employees' lack of solvency

The credit crunch may affect employees' personal situations, for example employees may be at risk of home repossession or bankruptcy. Either matter directly impacts upon the employee, but may also affect the employment relationship.

Generally, an undischarged bankrupt cannot act as a company director. An employee who is also a statutory director will therefore have to resign his or her directorship if he or she is made bankrupt, regardless of any contrary condition in the employee's employment contract.

Banks will be cautious before offering banking facilities to persons who have been made bankrupt. Any failure by an employee to obtain a bank account will impact the employer's payroll function. Similarly employees willing previously to pay for expenses on a personal credit card and recover them from their employer at a later date may be unable, due to tightening credit facilities, or unwilling, to do so in the future.

Some potential consequences of the credit crunch may be extremely traumatic to employees, for example a family member's redundancy, house repossession or mortgage foreclosure. If such circumstances arise, employers will be required to consider the extent to which they are able to accommodate requests from employees for time off to attend to their personal affairs.

Employee shareholders

Redundant employees may also be shareholders of their former employer. Post-redundancy acquisition of the shareholding will require careful valuation. Valuation is straight forward for publicly listed companies but more complicated for private firms where the exercise may necessitate the instruction of accountants and industry experts to assess the company's value and that of the minority shareholding.

It is evident that the potential impact of the worsening economy on employees and employers is wide. The coming months may prove the apocalyptic warnings excessive, but until then, employment lawyers would be wise to arm fully for battle.