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King's Bench Walk

Collective Redundancy

The Basic Toolkit

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What's going on?

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STAY ALERT **CONTROL THE VIRUS** **SAVE LIVES**



Coronavirus: 612,000 UK workers lose their jobs during lockdown

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Will the Premier League pass the tests? Liverpool and Tottenham players head into training as they await the first coronavirus results which will dictate who can train in groups in first big step towards a restart next month

Business Economics Banking Money Markets Project Syndicate B2B Retail

Willie Walsh

BA to press ahead with job cuts plans despite furlough extension

Willie Walsh says scheme will not compensate for 'reality' in coronavirus-hit aviation sector

THE TIMES

Today's sections

Past six days

FINANCIAL TIMES

Hertz avoids bankruptcy with last-minute deal

US car rental group backed by billionaire Carl Icahn extends crucial payment deadline



Half of firms to lay off staff at end of furlough

When is the Obligation Triggered?

- ▶ 20 or more employees
- ▶ Across one “establishment”
- ▶ A “proposal to dismiss”

Timetable

- ▶ In good time / promptly
- ▶ At least 30 / 45 days before the first dismissal
 - ▶ N.B. This is not a minimum consultation period
- ▶ Tips for planning a timetable
- ▶ HR1 notice

Appropriate Representatives

- ▶ Representatives of an independent, recognised trade union
 - ▶ Can include non-union employees
 - ▶ Only covers employees the union is recognised for
- ▶ Standing representatives
- ▶ Elected representatives
 - ▶ Requirements for election
 - ▶ How does it impact on the timetable?

Content of the Consultation

- ▶ The employer *must meaningfully* consult upon:
 - ▶ (a) avoiding the dismissals;
 - ▶ (b) reducing the number of employees to be dismissed; *and*
 - ▶ (c) mitigating the consequences of the dismissals.

Information

- ▶ Duty is to inform and consult – don't forget the information!
- ▶ What information must you provide?
 - ▶ Nine categories at s188(4)
- ▶ This must be provided “*in good time*”

Special Circumstances Defence

- ▶ Defence to fully comply with the information and consultation obligations
- ▶ Not reasonably practicable to
 - ▶ Begin consultation in good time / within the minimum period
 - ▶ Consult about ways of avoiding / reducing dismissals
 - ▶ Disclose information
- ▶ This is very restrictively interpreted
- ▶ Not a complete defence
 - ▶ Still have to show you took steps towards compliance

Practical Pointers

Employers

- ▶ Pretend Covid-19 does not exist, and consider what you would have done.
- ▶ Give me evidence or give me claim for unfair dismissal / protective awards.
- ▶ Covid-19 might be a special circumstance defence, but you do not want to be the Respondent having to run that argument.
- ▶ You must still consult individually

Practical Pointers

Employees

- ▶ Keep in touch with your employer
- ▶ The argument will lie in reasonable alternative to redundancy – *i.e.* that it is unfair to make redundancies now when the furlough scheme was available
- ▶ Ensure there has been a proper period of consultation

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Thank you.

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