



Tips on how to implement a risk-free redundancy exercise in the wake of Covid-19

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For employers who are considering headcount reductions, in particular, across a global workforce, here are some tips to help you manage the risks effectively.



Identify notification requirements

Consider upfront what, if any, notifications you need to make to Government and regulators. Many local laws require such notifications where headcount reductions of a certain magnitude are planned. By way of example, in the UK, businesses need to submit an HR1 form when proposing to dismiss 20 or more employees as redundant at one establishment within a period of 90 days or less. In Singapore, employers with more than ten employees must notify the Ministry of Manpower when five or more employees are given notices of retrenchment within any six-month period. Failure to adhere to applicable requirements may amount to a criminal offence in some locations and can result in fines, ad hoc labour inspections or delays to proposed processes. In regulated industries, local regulators may expect to be notified or kept informed of proposals, to ensure the plans will not impact the stability of the business. In the UK, for example, financial services firms and their senior managers may need to report such plans to the PRA and/or FCA pursuant to their reporting duties under the relevant rules.



Plan for collective consultation

In most European jurisdictions, and in many parts of Asia, redundancies of scale will involve collective consultation processes with relevant consultative bodies. It may be necessary in certain locations (as in the UK) to hold a workplace ballot for the election of employee representatives for consultation purposes, which will need to be factored into the project timeline. In other locations, consultation with unions, works councils or other standing employee representative bodies may be necessary. Where, in a global business, the headcount reductions are to be choreographed to proceed at the same time, this necessitates an early audit of obligations and compliance planning.



Gauge appropriate severance terms

If redundant employees are to be offered severance terms which are more generous than the statutory minimum, businesses should review their past approach and consider a market-mapping exercise to ensure any severance approach remains suitable. In the global financial crisis we saw a review of these arrangements with businesses adjusting them downwards to take account of the challenging operating conditions. Stakeholders such as trade unions and investors/shareholders will doubtless flex their muscles here. Businesses will also need to be mindful of past custom and practice because, in some locations, flexibility to revise enhanced severance arrangements may be limited if the precedent is notorious and has been applied consistently. The approach may have become a contractual entitlement over time.



Don't hinder or reverse progress on diversity

Assess the impact of proposed reductions and preliminary selections on historically under-represented groups. In addition to managing litigation risk, this step is critical for any business which has been focused on improving the diversity of its talent pipeline in recent years. It will also be a consideration in locations where statutory hiring targets are in place to cover certain classes of employee with particular personal characteristics, such as in Japan and Taiwan where there is a requirement for the hiring of persons with a disability. Falling short of these targets on a forward-looking basis may present an additional cost to the business in the form of administrative fines and specialist recruitment services when looking to correct the shortfall. Much has already been documented in the press about the adverse impact of the Covid-19 lockdown on working mothers, who in many locations have assumed a larger share of the childcare and home-schooling burden in lockdown. Any drive to prioritise previously furloughed workers for a redundancy list would be unwise, particularly where those who were furloughed requested this to help alleviate childcare or other caring responsibilities. Finally, the reported pathology of the virus suggests that the impact and outcomes are disproportionately negative for people from black, South Asian and other minority ethnic groups. In light of this, women and minorities may fare less well in selection processes that are influenced by attendance, recent productivity and performance data, if individual circumstances have not been taken properly into account. Ill-considered redundancy selections could set diversity targets back by several years.



Protect your business

An insecure workforce is one that presents risk in terms of the potential loss of valuable trade secrets, confidential information and client, supplier or employee relationships. Employees who fear job losses may be tempted to remove materials or take steps to prepare to compete. Managing this risk is further challenging in businesses which have significant numbers of employees working from home, because the theft of information or attempted disruptions to business relationships may be harder to detect. Businesses which are considering redundancies should ensure e-surveillance practices remain robust and lawful and that home-working policies make clear what practices are necessary to keep the business secure, for example, via no-printing policies and frequent audits of access permissions in respect of confidential systems and datasets. Leaders should take steps to ensure that critical client, supplier or key employee relationships are not vested in any one person.



Plan your communications strategy

In any redundancy exercise, careful thought should be given to the range of necessary communications – the messaging to impacted employees and their unions or other representatives, and to those who will remain in the business and who may be feeling unsettled – as well as to PR considerations. The delivery of those messages will need particular thought. For businesses currently operating a virtual workforce, the ability to undertake in-person town hall meetings followed by meetings with impacted individuals will be curtailed. There will be a greater use of AV technology, and considerations should be given to aspects such as whether the worker is sharing their living space with others and able to receive a disappointing outcome privately. Equipping managers with thoughtful scripts and FAQs to respond effectively to questions is worthwhile. They should also be encouraged to check in proactively, ideally by video call, on both at-risk employees and on those who are currently not at risk, because there will not be the same ability to “test the waters” by walking the office. Employees may be more inclined than usual to keep their heads down and avoid drawing attention to themselves for fear of coming to the attention of redundancy decision-makers. This, however, is likely to lead to a greater sense of isolation and, potentially, to disengagement or a productivity dip.



Consider pastoral care

Signalling to at-risk employees the availability of employee assistance programmes (**EAP**) continues to be important. Many individuals will be facing an uncertain future in an economic environment that, if reports are to be believed, may be unprecedented in our lifetimes. Those living alone may be especially vulnerable. In addition to EAP referrals, appointing someone to check in on the most vulnerable during any at-risk consultation period is advisable. For those who are confirmed as redundant, outplacement counselling remains a valuable source of support for the transition, subject to feasibility from a costs perspective.



Be sensitive to dignity and cultural considerations

Those managing redundancy processes across a global business should ensure they are well-versed in local cultural considerations that may render any given approach culturally insensitive. For example, the typically Western-style summary exit process involving the employee being informed of their departure and escorted immediately out of the building can be at odds with, and insensitive to, customs in parts of the world, such as the Middle East or Asia, where maintaining “face” or respect and dignity from those they are interacting with is particularly important. Business protection considerations will usually take precedence; however, employers should give some thought to whether redundant employees in certain, less risky areas of the business, such as in administrative or “back office” roles, can be allowed to work during their notice periods or, as a minimum, to say their goodbyes to colleagues and counterparties. Small adjustments such as this, where feasible from a risk perspective, can help significantly to ensure the process is smoothly implemented.

Contacts

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