



## ARE THERE ANY ALTERNATIVES TO REDUNDANCY? - “LAY OFFS” & “SHORT-TIME WORKING”

With the number of people unemployed predicted to top 2 million in the next few weeks, it seems that festive cheer was lacking for many this Christmas.

Nevertheless, employers suffering difficulties in the current economic climate should bear in mind that making redundancies is not the only way of reducing staff costs. Other measures, such as laying off staff or implementing “short-time working”, might be more appropriate, particularly where a downturn in work is predicted to be temporary. These measures are likely to be more palatable for the workers as an alternative to redundancies. There have been several announcements to this effect by major companies in the last few weeks.

A lay-off generally occurs when an employer temporarily shuts down because it cannot find any or enough work for its employees. Short-time working occurs when employees are laid off for a number of hours during a working day, or for a number of contractual days per week.

The key consideration is whether employees are entitled to be paid despite a reduction in their working hours. This will depend on whether the employer has an express or implied contractual right to withhold payment. It could be set out in the employee’s contract of employment, in a

collective agreement with a trade union, or in a national agreement for the particular industry. If there is no existing provision, it is best to obtain written consent from the employees. Failure to pay employees, in the absence of an express or implied contractual right or written consent, could result in the employee bringing a claim for unlawful deduction of wages or (constructive) unfair dismissal.

The duration of any lay off or short-time working is also crucial. When an employee has been laid off for 4 or more consecutive weeks, or for a total of 6 weeks or more in a period of 13 weeks, the employee has the right to claim a statutory redundancy payment. The procedure for collective redundancies may also be triggered if more than 20 employees are considered to have been dismissed by reason of redundancy within a period of 90 days. This would result in the employer having to notify the Department for Business, Enterprise and Regulatory Reform of the redundancies and to carry out consultation with trade unions for a fixed period before the first dismissal takes effect. Failure to comply with consultation obligations can lead to tribunal claims and awards of up to 90 days’ pay per employee.

At Martineau, our team of 11 specialist employment lawyers is on hand to guide you

through this and other difficult areas of employment law. Also, our Automotive Team has the breadth of experience to advise on all aspects of your business. We focus on providing practical and commercial solutions which reduce your exposure to risk.



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