Briefing

Employment

BURGES SALMON

October 2015

Collective redundancies: the risk of criminal prosecution

The decision to prosecute three former directors of parcel delivery firm City Link (the "Company") serves as a stark reminder of the importance of following the correct procedures in redundancy situations.

The Company called in administrators on Christmas Eve 2014. 2,356 job losses were announced on New Year's Eve 2014, with a further 230 redundancies announced the following week. As a result, the Insolvency Service is reported to have paid out some £5m in statutory redundancy pay to former employees of the Company.

Of more immediate significance is the fact that the Department for Business, Innovation and Skills ("BIS") is bringing criminal prosecutions against three former directors of the Company under section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the "Act") for failing to give the Business Secretary sufficient notice of the Company's intention to make redundancies. They will be tried at Coventry Magistrates' Court in November.

If an employer proposes to make 20 or more employees redundant at one establishment within a period of 90 days or less, notice should be given to BIS by completing a form HR1. The deadlines for providing this notification are the same as for commencing collective consultation (see below). Any failure to do so is a criminal offence and the employer will be liable on summary conviction to a fine. Since 12 March 2015, the fine is unlimited (before that date the maximum fine was £5,000). Furthermore, if it is found that the offence was committed with the consent, connivance or because of the neglect of any director, the director in question also commits an offence.

In addition, whenever large scale redundancies such as this are proposed, the employer is under a duty to carry out collective consultation with employee representatives. Consultation should begin in good time and in any event:

- at least 30 days before the first dismissal takes effect where 20-99 redundancies are proposed; or
- at least 45 days before the first dismissal takes effect where 100 or more redundancies are proposed.

It has been reported that around 260 former workers have lodged an employment tribunal claim for the Company's failure to properly consult on redundancies. The claim is expected to be heard early next year.

Failure to consult, or to consult properly, could result in a tribunal making a protective award to each employee affected by the failure to consult. The protective award is a punitive award and can be up to 90 days' actual pay per affected employee. In insolvency situations such as this one, the employer is still under a duty to consult with employees but, if they fail to do so, it is the Redundancy Payments Office (part of the Insolvency Service) that ultimately has to cover the cost of compensation.

City Link is reported to be the first decision to prosecute under section 194 of the Act and demonstrates a desire to hold company officers to account. This, and other litigation arising from other recent large scale insolvencies, has thrown into sharp relief the consequences of getting consultation wrong.

Contacts

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