



The Bigger Picture



we need to talk about...

How to restructure and reorganise your workforce

The outlook for Bath businesses is increasingly positive. So why would a successful, prosperous business consider reorganising, restructuring or changing the way it operates? Richard White, a partner at Withy King, discusses the benefits of change and points out some of the employment issues which need to be considered along the way.

It is important for businesses to review their structures regularly to ensure they fit with their overall plans and objectives – and this often means change. Businesses with aspirations to grow will often react to fluctuations in demand, technological developments and new opportunities by restructuring their workforce and working practices. Some may consider merger or acquisition which brings its own set of internal challenges.

Proper planning is essential to weed out inefficient working practices. It also helps the business to implement changes in the way it wants and identify the costs involved at an early stage.

Communicating with staff about the need for change is equally important; employees must be on board for the proposed changes to be successful. They will want to understand how changes will be carried out and how they will affect them.

When it comes to implementing

change, it's important to pay particular attention to areas which will affect employees' individual employment rights, such as their transfer rights in the event of merger or acquisition, alterations to their contractual terms and conditions, and redundancies.

Transferring employees (TUPE)

Mergers and acquisitions come with transfer rights under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). If you purchase or acquire a business, you will not only be purchasing the client base or work in progress, but you are also likely to inherit that business's employees.

As well as an employee's straightforward right to transfer on their existing terms and conditions to the new employer, there are further obligations as far as information and consultation are concerned. Failing to adhere can have costly consequences, highlighting the importance of taking advice and careful planning throughout the process.

Changing contracts

Most changes will be uncontroversial. When a business is flourishing employers often consider incentives to retain key staff. But sometimes a business will want to do something that the employee is less willing to accept. In these cases, the business must understand how to make the change legally binding while minimising any possible disruption. A contract can only be amended in accordance with its terms or with the agreement of the parties. Therefore unilaterally changing an employee's terms and conditions without their knowledge and agreement, could give rise to a legal claim, such as constructive unfair dismissal or breach of contract.

Redundancies

All too often, reorganisation and restructuring in an employment context can involve redundancies. While redundancy is potentially a fair reason for dismissal, businesses need to proceed

carefully to show that they acted fairly. It is important for the business to fairly identify who should be selected for redundancy and consult with the employees who are affected.

Businesses should also consider alternatives to redundancy. If a business is making 20 or more employees redundant over a period of 90 days or less, it must inform and consult appropriate employee representatives to avoid a legal claim for failure to inform and consult – as well as unfair dismissal.

Whatever the business changes are, it is important to be realistic.

Change can cause short term disruption before it reaps the longer term results. Employees are one of a business's biggest assets, so it's wise to set clear goals, provide training and monitor progress over a period of time. Above all, be mindful of each individual's employment rights and follow due process.



RICHARD WHITE is head of the employment law team at Withy King in Bath. He regularly advises on discrimination issues, complex redundancies, restructuring and transfers. Richard is recommended as a leader in his field in Chambers Independent Guide to the Legal Profession and is described as a 'standout lawyer' in the Legal 500 directory. For advice on restructuring and reorganising your workforce or any other employment matter, please contact Richard on 01225 730100 or email richard.white@withyking.co.uk

THE FIRST FOUR THINGS YOU SHOULD KNOW IF...

you are planning to restructure your business

Have a fully considered business plan

Try to cater for the long term and short term implications for the business. Decide what skills, knowledge or resources need to be retained and where the areas for change will be. If you offer voluntary redundancy, who is likely to leave and what does this mean for the business?

Agree a time frame

Make a decision on the time frame you are working to. Employees need to be told as soon as you reasonably can, of any changes affecting their employment, including changes to their contracts, roles and responsibilities, working environment, place of work, merger, acquisition or redundancy.

Develop a clear communication strategy

Communication is key during periods of change. Ensure that your staff are coached on what to say and how to present the rationale for any changes to the workforce. In particular, explain the reasons for the change, the support that will be given and what the employees' financial entitlements will be if you end their employment. Communication should be formal and regular. Even if you have little to say, say it. Silence is often interpreted as the worst-case scenario.

Remember your employees' rights

Consider the payments that you will need to make to the employee if you end their contract. For example, what salary will they be due on their last day of employment? Do they have any outstanding holiday entitlement? What notice pay are they due? And are they entitled to a statutory redundancy payment? Note that employees who have been with the business for two years or more will be entitled to a statutory redundancy payment. They can also bring claims of unfair dismissal.