Can an employer alter salaries without a contractural change?

Jo Gallacher, APRIL 24, 2020

While many workplaces have closed as a result of the current COVID-19 pandemic, Heathrow Airport, the country's biggest transport hub, continues to operate as it deals with repatriation flights and a sharp uptick in cargo flights.

This is amid a backdrop of growing uncertainty over the future of the aviation industry, with many airlines announcing job losses and requesting loans from the government to keep afloat. Heathrow is certainly feeling the pressure too, after a massive drop off in passenger and flight numbers.

Reports by Sky News have said employees at Heathrow were asked earlier this month to accept a pay cut of 15% and told that if they did not accept it, 'dismissal and reinstatement' would be the final step.

It has also been reported that prior to this, Heathrow had agreed with its unions that there would be a 10% pay cut for unionised employees, and that it planned to make a quarter of its senior managers redundant. No doubt many other companies will be looking to impose similar pay cuts, so what are employees' rights in such a situation?

Under English law, before an employer can change an employee's terms and conditions of employment, it must (save in very limited circumstances) first obtain the employee's consent to the change.

Clearly, a pay cut is a significant change to an employee's terms, and one that employees would generally refuse to give their consent to.

In the current climate, however, employers are likely to find it easier to make such changes as employees may feel that they have little alternative but to consent since it will likely be very difficult for them to find employment elsewhere.

From the reference to 'dismissal and reinstatement', it appears that Heathrow is planning to dismiss the employees who don't consent to the pay cut and immediately offer them new employment on the reduced level of pay.

This is a fairly risky but not uncommon approach for employers. The employees will have the choice to accept or reject employment on the new terms.

Those who do not accept the new terms and who have at least two years' service may have unfair dismissal claims against the employer (in addition to other potential claims), unless the employer can show that it had a potentially fair reason for the dismissal and followed a fair process when dismissing.

Where an employer is proposing to dismiss and re-engage 20 or more employees, it will need to carry out a collective consultation process, which among other things will involve arranging for the employees to elect employee representatives with whom the employer would consult about certain matters relating to their employment and proposed dismissal.

Presumably, as Heathrow is potentially looking to dismiss and re-engage employees, it to has sufficient work for the employees to do and there is therefore unlikely to be a redundancy situation.

However, for other employers, where the business is likely to shut down for good, or where there is no longer a need or a reduced need for employees to carry out work of a particular kind, employers may be able to dismiss employees for redundancy.

Alternatively, employers in financial difficulty can, assuming certain conditions are met, place employees on furlough leave under the government's new Coronavirus Job Retention Scheme.

Under the scheme, employers will be able to claim back 80% of their furloughed employees' usual wages (subject to a cap of £2,500 gross per month per employees) until the end of June, plus the associated employer National Insurance contributions and minimum automatic enrolment employer contributions.

The government is encouraging employers to use the scheme, rather than dismiss employees for redundancy, where possible.

The current climate presents challenges for both employers and employees alike, and doubtless employers will be facing some difficult decisions in the months to come.

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