RGA | Richard Grogan & ASSOCIATES

Guide to Collective Redundancies

Covid-19 is a unique challenge for employers. The challenges for employers are changing effectively on a weekly basis. Employers are trying to minimise the impact on their workforce, to look after the health and safety of their employees, and to protect the business going forward.

One issue which we see as going to be arising unfortunately is the issue of collective redundancies.

Now the first question is always what is a collective redundancy. A collective redundancy occurs where a particular number of employees in any employment are made redundant within a thirty-day period. The thirty days must be consecutive or put in very simply language one after another. Therefore, for example if employees were made redundant on the 28th February and further employees were made redundant on the 2nd or 3rd of April that would not be a collective redundancy provided the numbers did not exceed the threshold.

The issue then is what are the thresholds. This depends on the number of workers.

Under 21 workers there can be no collective redundancies.

Between 21 and 49 employees then 5 or more must be made redundant.

Between 50 and 99 employees then 10 or more must be made redundant.

Between 100 and 299 employees 10% or more must be made redundant.

300 employees or over then 30 employees or more.

In looking at the numbers of employees the provisions of the Protection of Employment Act 1997 set out that you must look at the number of employees averaged over the 12 months before the date on which the first dismissal takes effect. What does this mean? It means in the previous example let us take a company which has 24 workers. Three are made redundant at the end of February. That does not

create collective redundancy. One more is made redundant in April therefore there is no collective redundancy as it is not within the 30 consecutive days. The employment is then down to 20 employees. If in June five more employees are to made redundant at that stage you look at the number of employees that were there in the preceding 12 months and in those circumstances in respect of the redundancies in June these would be a collective redundancy because of the fact that there would have been 24 employees previously in the preceding 12 months.

In the case of a collective redundancy an employer is obliged to provide certain information to the employee's representatives and to consult with them. They must also notify the Minister who also has to be provided with relevant information.

The representatives will be a trade union, a staff association or a body which has been the practice of the employer to conduct collectively bargaining negotiations with. In the absence of a trade union, staff association or such a body then it is a person or persons chosen by the employees to represent them and negotiate with the employer. It is not a matter of the employer nominating somebody.

The employer can decide on the method of election and the number of representatives but it is the employees who elect the representatives. It may be appropriate if there are different classes of employees who could be affected that representatives would be elected from each class. Take for example a company which is involved in distribution. There will be office staff, there will be those working in the warehouse and there will be those who will be drivers delivering goods. On a very simple basis there would therefore potentially be three different groups of workers who would have possibly different issues but certainly would be defined constituencies.

The employer is obliged to provide certain information and this includes the reasons for the proposed redundancies, the number and description of categories of employees who it is proposed to make redundant, the number of employees and categories normally employed, the number of agency workers to which the Protection of Employees (Temporary Agency Work) Act 2012 applies, to specify those parts of the business in which the agency workers are working and the type of work those agency workers are engaged to do. The employer must also set out the period during which it is proposed to put in place the redundancies, the selection criteria and the method of

calculating the redundancy payments. The employer must give all of this information also to the Minister.

The consultation period with the representatives must be at the earliest opportunity but in any event at least 30 days before the first notice of dismissal is given. The employer must look at the possibility in these negotiations of avoiding the redundancies, reducing the numbers to be made redundant and must look at issues such as redeployment or retraining of employees made redundant.

The company cannot avoid going through this process as failure to do so can be a breach of the requirements.

Some employers mistakenly believe that once the collective redundancy negotiations have finished that that is the end of matters. That is not the position. Individual consultations must be carried out with the at-risk employees. An employer who fails to do so can be liable on convictions to a fine not exceeding €5,000. It should also be noted that failure to consult can result in a complaint to the WRC. In some cases, it can result in an injunction.

It is likely that the issue of collective redundancies is going to become a significant issue over the coming months. It is important for both employers, employees and representatives to be aware of the relevant collective redundancy legislation.