



RETAINING YOUR KEY EMPLOYEES IN REDUNDANCY

By Michael D Fitzsimons, Solicitor

Redundancy is back on the agenda for Irish business. Retaining key staff is vital to managing a downturn to take advantage of the upturn that follows. Your policies should enable you to retain your key staff - last in should not have to be first out.

Many companies have had to implement, formerly unpalatable, measures during the downturn, including short-time, temporary lay-offs and redundancies. All of these measures relate to the loss of employment positions and not necessarily to how an individual employee is performing. However, if you operate the right selection process, your company can justify the retention of key staff in place of others who may be longer with the company, to ensure the long term survival and recovery of your slimmed down business.

Selection Procedures - Check your Contracts and Policies

While there will be occasions when a redundancy may have to be dealt with according to individual circumstances, the establishment of a formal procedure is good industrial relations practice. An employer must always be seen to act fairly and risks a finding of unfair dismissal even when there are genuine redundancies. A formal procedure will reduce the chances of an employer dismissing employees unfairly and safeguards against claims by former employees.

You may already have a policy in place under your contracts of employment and workplace policies. The terms of these contracts and policies will have to be reviewed with a view to putting in place the most appropriate procedure.

Retain Key Staff - LIFO or Skills

Selection criteria other than Last In First Out (LIFO) may be necessary in order to retain the expertise required by your company if it is to continue in business following redundancies. This pressing need can justify the use of a process that may not have been negotiated with employees. Now is the time to put in place criteria based on skills, performance and experience for selection in a redundancy, short-time or lay-off and prioritizing these for your business needs. The precise procedure implemented will depend on your business and the skills and strengths you need to retain in-house in order to gain the outcome your business requires and yet will still provide a fair and objective basis for selection for redundancies.

Fair and Objective Selection

If you are not using LIFO, the selection process must be seen to be fair and objective. Not only must the selection criteria be fair, but the way in which they are applied also has to be seen to be reasonable.

There must be adequate records and evidence to support the decision making process. In particular performance appraisals and internal paper-trails and records should support the selection. The company should also consider explanations for the performance of an individual employee in the selection process.

Simply deciding who you want to leave and then trying to fit that selection into the redundancy selection process will leave an employer exposed. An employee who feels they have been unfairly targeted can cost a business significant time and money even if their claim proves unfounded. If you properly manage your human resources, redundancy selection should not come down to this.

Consult with Employees

For best practice, you should be open with employees about the redundancy selection process and should consult with the employees before finalising the process and notifying your employees of the outcome. In reality, regular ongoing performance reviews should be conducted with your employees, in good times and bad. You should use these reviews to set performance goals and targets and to plan workplace training and assistance, where necessary, for your employees. These reviews should be supported by written review documents, which should provide objective measurements, in which an employee has participated, to justify your selection.

What should you do?

It is vital to ensure that your selection policies and performance appraisals meet your needs and do not inadvertently cause more damage to your business. Now may be the time to put in place procedures to give your company the policies it needs to retain key staff in the downturn and ensure its long term survival.