Coping with redundancy

Choosing to let some of your staff go could be a reality in these times of recession. ASPD member Sunil Abeyewickreme gives an in-depth explanation of the process to help you decide what to do.

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ith the British economy now officially in a recession, even though the nation’s oral health requirements may not change, a significant number of dental practices are likely to experience some down-turn in demand. Private dentistry – and in particular practices carrying out cosmetic dentistry may well be the first to suffer, but NHS dental practices could also be affected, especially those facing clawbacks for underperformance of UDAs. As banks are not as inclined to lend these days, Sunil Abeyewickreme writes about the handling of redundancies in order to weather the storm.

Redundancies occur when employees are dismissed because their employer no longer needs them. Generally, this happens for one of the following reasons:

• The employer’s business ceases, for example, when a practice owner decides not to continue with the business of dentistry.
• The shutting down of the employer’s place of work, for example, when a dental practice closes.
• Reduction in the number of workers needed to do the employee’s job, for example, when an associate dentist leaves and is not replaced.

Once redundancies are being proposed, the employer should carefully identify the appropriate ‘pool’ of employees from which to select the redundant employees. By example, if there was a need to reduce the number of dental nurses in a dental practice, usually all those who undertake the duties of a dental nurse would be in the ‘pool’.

The consultation period

Before a decision is made, employers must consider whether there are any alternatives to dismissing employees for redundancy, otherwise the dismissal may be rendered unfair. These alternatives could include a lay-off or a period of short-time working if the employees consent to such steps.

In order for employers to consider the alternatives to redundancy they must consult with staff. If an employee who is dismissed by reason of redundancy has not been consulted, the dismissal can be unfair. Consultation must allow discussion as to whether the proposed redundancies are necessary at all and whether the employee has an ability to fulfil other functions within the practice or whether there might be part-time work available. It should begin at least 30 days before the first dismissal takes effect.

There are strict European regulations concerning consultation when there are 20 or more employees at the same place of work whose services are no longer required through no fault of their own. In such circumstances the employer must consult with a recognised trade union or elected non-union representatives within prescribed time-limits which vary according to the number of employees to be made-redundant.

The selection process

Having consulted staff, if the employer still considers that it is appropriate to make redundancies, they must ensure that they have used a fair method of selecting those to be made redundant. A justifiable set of criteria, for example, skills, qualifications, disciplinary proceedings should be used to select from the ‘pool’ the employees to be made redundant. The chosen criteria usually are set out in a selection matrix, which must be applied rigorously and without bias. A point-scoring system is commonly used where points are given for the selection criteria. The lowest scoring employees will be selected for redundancy.

Once an employee has been given notice of dismissal for redundancy, the employer should then invite to a meeting to discuss the proposed redundancy. This invitation should be in writing and state the reason for contemplating the employee’s dismissal, in redundancy and the selection criteria which was used and the score given.

The dismissal stage

At the meeting during which the employee can be accompanied by a Trade Union representative or work colleague, the employer should take into account any views the employee may have about the intended redundancy dismissal. In particular, any views that the employee may have about alternatives to redundancy such as their ability to fulfil other functions within the practice or whether there might be part-time work available. After the meeting, once the employer has considered the employee’s response, the employee should inform the employer of its decision and the right to appeal against the decision if not satisfied with it.

The employer must give the employee notice to terminate the contract or pay wages in lieu of notice, if it is decided to dismiss by reason of redundancy. The length of notice required is that specified in the contract (as long that notice is not less than the statutory minimum).

Assistance finding work

The employer should always consider giving the employee suitable alternative employment. If the employee unreasonably refuses to undertake suitable alternative employment and this is not to start later than four weeks after the end of the old job, the employee will lose his right to a redundancy payment. The employee can take the alternative employment on a four-week trial as long as they start the job not later than four weeks after the end of the old job.

Employees who have been given notice of dismissal for redundancy have a statutory right to a limited amount of time off work to seek new employment or to make arrangements for re-training.

Redundancy payment

Provided the employees have been working for the employer for more than two years, they are entitled to a redundancy payment, which is a tax-free sum that proportionately reflects the length of service.

The amount of redundancy payments will be calculated as follows:

• 6.5 weeks’ pay for each full year of service where age during year is 22 or above, but less than 41
• 1 week’s pay for each full year of service where age during year is 41

From February 2009, the maximum weekly pay which can contribute to a redundancy payment has increased from £530 to £550. The maximum number of years continuous service that can be counted for statutory redundancy payments purposes is 20 which means that the statutory redundancy payment cannot be more than £10,500. The employer should provide a written statement showing how the amount of the statutory redundancy payment is calculated.

Redundancies can be either voluntary or involuntary. Employers take voluntary redundancy when they agree to leave a post that is being removed from the workforce. In contrast, involuntary redundancy is when the job loss is forced upon an employee. Both types of redundancy may incur some form of payment or time off in lieu as compensation.

This article has been written in February 2009 and takes into account proposed changes to the statutory disciplinary and dismissal procedures, however as case law develops the advice could change. As employees are likely to feel disgruntled if they are being made redundant, employers should take legal advice at an early stage when considering upon making redundancies.

About the author

Sunil Abeyewickreme qualified as a barrister and heads the Employment Law Department at the leading dental law firm, Cohen Cramer. Prior to joining the firm in October 2008 he had been a legal adviser to the BDA for four years. He has considerable experience in the field of employment law and has given a number of presentations across the country on various legal subjects relevant to dentistry.

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