How To Consult During Redundancy Proceedings: What Can We Learn From Wilko's £2million Penalty?

An Employment Tribunal has ruled that almost 10,000 former Wilko employees will receive a share of a £2 million payout due to the high-street retailer's failure to consult staff before making redundancies when it went into administration in 2023.

9,000 former employees who worked in a shop with 20 or more people will get four days' pay, while around 1,100 employees who worked in a distribution centre or support centre role will get 13 days' pay. Why the difference? The statutory consultation period varies according to the number of redundancies proposed at a single establishment: 30 days for 20 to 99 redundancies, and 45 days for 100 or more. Different breach, different compensation.

In the current economic climate, we are finding more employers are considering downsizing, so we thought it would be timely to explore what happened in the Wilko case and what businesses can take away from this to minimise legal risks when making redundancies.

The Employment Tribunal findings

The Employment Tribunal found that Wilko breached its legal duty to carry out timely and meaningful collective consultation before making mass redundancies in 2023. Wilko did not meet the minimum consultation periods before dismissals began. Although consultation eventually occurred, it was too late to comply with the law.

The judge's "technical breach" ruling made clear that insolvency does not excuse failure to consult properly. The protective award compensation reflects the seriousness of Wilko's failings to engage employees in consultation, even in an administration scenario.

This case highlights that entering administration or insolvency is not a "get out of jail free card" for employers to ignore their statutory duties which remain binding regardless of financial distress – and they can incur significant penalties for non-compliance.

What are the legal requirements for redundancy consultation?

Employers proposing to make 20 or more redundancies at one establishment within a 90-day period must enter into collective consultation with recognised trade unions or elected employee representatives. Employers must also notify the Secretary of State of redundancies using the official online HR1 form.

Where employers propose to make fewer than 20 redundancies, they still have a legal duty to consult with affected team members, however there is not a statutory minimum duration for the consultation period and employers may consult directly with employees rather than via representatives. The consultation period is required to be "meaningful". In practice, this typically this tends to be anything from around one week to one month, depending on circumstances. This timeframe may be extended should suggestions or concerns arise during the process which require further exploration before final decisions are made.

How can HR professionals minimise risks during restructuring or administration?

- HR professionals should be involved early when redundancies are anticipated, ensuring consultation triggers are identified promptly and to plan a fair, supportive and compliant process.
- In an administration scenario, HR professionals need to work closely with the business owners and insolvency practitioners to schedule consultation within the statutory timeframes, or to allow sufficient meaningful consultation where numbers of employees affected is below the threshold of 20 people.
- For collective consultation, HR should support the engagement of recognised unions or, where none exist, facilitate employee representative elections.
- Thorough record-keeping of consultation meetings, proposals, and employee feedback is essential.
- You cannot overcommunicate! Transparent communication throughout the process helps protect employees' rights and reduces the risk of costly tribunal claims or time-consuming appeals.
- Clear communication about the business case at the outset is vital so individuals understand what is proposed and why, and can contribute fully to the consultation process. We have seen unfortunate cases of time-consuming appeals where the grounds for redundancy were genuine, but the information provided during the process was insufficient and unclear, so individuals felt misled, confused and upset.
- Identify support options for affected individuals, such as CV writing or interview coaching, employee assistance programme or other counselling provision.

If you are planning to restructure and would like advice on ensuring that you get both the legal and human elements right, get in touch with our experienced team for an initial chat.