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Reducing payroll without redundancies

The news is full of employers laying off staff, cutting hours and letting temporary workers go. These can all be viable alternatives to redundancy, but your options on what you can do will depend as much on your employee contracts as they do on general employment law.

No-one enjoys reducing anyone's pay or hours, but if these are viable alternatives to making redundancies, they are worth considering, or (if you don't have an existing contractual right to do this) at least asking for. The problem with redundancy is that it involves paying redundancy pay, and often money in lieu of notice, at a time when a business is short of cash. Keeping people in work can often be a better alternative, provided you monitor the situation carefully.

Reducing the use of agency workers and sub- contractors

Despite recent news reports, agency workers do have employment law rights, but most of them are between the agency and the worker, rather than rights against the end client (you). Reducing the use of agency workers can save money. Of course this only works if your own staff are able to fill the gap.

Reducing the use of sub-contractors can also save money. Be aware that calling someone "self employed" does not necessarily make them self employed. Many "self employed" individuals will be viewed by employment tribunals as employees, and have employment rights. You should take advice before terminating the contract of any sub-contractor who has worked for you for more than a year.

Reducing overtime

Reorganising the workload so that less overtime is worked is another way of reducing costs. Some overtime thresholds are calculated daily, others weekly, so careful work scheduling can reduce the need for overtime. Check your contract to see whether you guarantee a particular level of overtime (which means that you promise to pay, say one hour a day whether or not it is worked). Most employers in the UK do not guarantee overtime.

Pay cuts

Most employers do not have the contractual right to reduce basic pay without consent. Many bonus or benefits schemes are labelled "discretionary", but you should take advice before withdrawing benefits. Some 'discretionary' schemes actually set up contractual rights. Even if the scheme is discretionary, you should go through a process of consultation and announcement, rather than just stopping it overnight.

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This document contains brief general guidance on complex topics.
Take specialist advice on particular situations before action.

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You cannot, even with consent, reduce basic pay to below national minimum wage levels [adult rate £5.73 per hour].

Reduction in hours worked

Most employers do not have a contractual right to reduce the number of hours their employee works. You can ask them to work fewer hours, but if you want to pay them for fewer hours (which is surely the point) this can only be done if your contract says you can (in no uncertain terms). If the contract does not give the right, you must get consent. This takes time, and it is a good idea to get an agreement in principle about how and when this is to be done, rather than wait till the last minute. This allows people to plan their finances and know what is likely to happen. But it will often be true that people would rather have most of their job, than no job at all.

You should be careful how arrangements are made. If they are a temporary reduction, make sure everyone knows when the arrangement is to be reviewed. Employees' redundancy pay is calculated on the basis of their gross basic pay [to a maximum of £350 per week] and if they vary their contracts to reduce hours permanently, this may also affect their redundancy and notice calculations.

Workers who are being paid for less than 50% of their ordinary working time (with consent) are subject to additional rules concerning short time working (see below).

Lay-offs and short time working

Employers in the UK do not have a general right to send employees home unpaid. You only have the right to unpaid lay offs if your contracts specifically give you that right. Even if you do have the contractual right to lay off without pay, you still need to pay statutory "guarantee pay" for the first five days of unpaid lay off in any three months. Guarantee pay is an ordinary day's pay, but subject to a maximum of £21.50.

If you don't have the contractual right to unpaid layoffs, you can ask staff to accept them voluntarily, but they cannot waive their right to the minimum guarantee pay.

If pay falls below 50% of normal pay for four consecutive weeks, or six weeks in a 13-week period, employees can require their employer to put them back onto full time working or insist on being made redundant.

Holiday

Make sure you make proper arrangements for holiday accrual during a reduced-hours period. This is often a disputed area afterwards.

Under the Working Time Regulations, employers can give notice that holiday must

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be used on certain dates. If your workforce has a large amount of unused leave, you can consider whether it would help if they took a week off in the next month, thus using up accrued holiday. This does not help cashflow, since you still have to pay the holiday, but it can be useful in reducing long term liabilities. And if you also shut the premises for the same week, you would save electricity and other similar costs.

Flexible working

Many employers have resisted requests for part time and flexible working from working parents. Now may be a good time to explore reduced hours and flexible working, and take the time to get your managerial and supervisory skills up to speed on this.

Retraining

The Government's Train to Gain Scheme is offering some funding for retraining. In some circumstances this can be 100% funding. Now might be a good time to see if there are any skill shortages in your organisation that can be addressed.

Irenicon Limited offer an initial 20 minutes free advice for new clients - telephone 08452 303050 for your free 20 minute call with one of our consultants.

All advice is given subject to our [terms of trade](#)

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