Woolworth's – notice payments, redundancy and your rights when your employer becomes insolvent

The recent collapse of Woolworth's shocked Jersey and the situation of its former employees in the Island has been well publicised. In the UK, its redundant employees had the benefit of a government scheme guaranteeing redundancy payment, and the States were criticised for not having brought in such a scheme sooner. A proposition bringing in redundancy rights is due to be debated in the States at the end of this month, but what are your rights now, and how will they change?

Employment law

Under the Employment (Jersey) Law 2003 there are three basic awards that can be made in the event of termination of employment (by redundancy or otherwise). Firstly, an award can be made for a period of notice pay if that has not been paid by the employer. The minimum periods of notice are set out in the law on a sliding scale, from 1 week if you have been in your job fewer than 6 months, up to 16 weeks if you have served over 15 years. These limits were deliberately long in order to compensate for the lack of redundancy protection – the new proposition will reduce these limits. However, it is open to employers to grant longer than the statutory minimum period in your contract of employment – this will be upheld by the Tribunal.

Secondly, any claim for untaken holiday pay or outstanding sick pay could be upheld. An order will be made compelling your former employer to pay this.

Finally, in the case where the termination of employment was unfair, an award for compensation on the grounds of unfair dismissal may be made. These are also awarded on a sliding scale dependant on length of service (the scale is not the same as the one for notice pay). In order for a dismissal to be fair, the employer must have a fair reason and follow a fair process. Redundancy is, potentially, a fair reason for dismissal. Dismissal by redundancy is automatically unfair if it would apply to one or more other employees within the employer who have not been dismissed. In order to satisfy the requirement to

follow fair process, the employer should consult with the employees, give them sufficient notice of potential redundancy, and wherever possible attempt to redeploy the employees elsewhere within the firm. Retraining should be considered where relevant.

Bankruptcy

In the event your employer goes en desastre, all the above rights still apply, but the legal landscape changes. Rather than a former employee you will be deemed a creditor of the company and will be requested to prove and register your claim against your former employer. All other creditors will also be required to do so – suppliers, mortgage providers, lenders etc. The assets of the company will be liquidated by the Viscount and will be applied to pay off the creditors. Hopefully, there will be sufficient assets to pay everyone what they are owed, but this does not always happen. The Bankruptcy (Desastre) (Jersey) Law 1990 sets out the order in which the debts will be paid.

Firstly, the Viscount's own fees will be paid. Secondly, arrears of wages and salary, and outstanding holiday pay and bonuses will be paid. Note that this does not include monies in lieu of notice pay, only payment for time actually worked. Thirdly, tax and social security will be paid, along with arrears of rental due, and finally all other debts will rank equally. This latter category includes notice pay and awards for unfair dismissal. Creditors who have mortgages registered over property or shares will be able to reclaim their debt from the proceeds of their sale, in order of date of registration. If there is not enough money to pay all of the debts, the same proportion of each will be paid (i.e. if the amount liquidated is enough to pay 75% of each of the debts, each debt will be 75% paid off). This means that an employee made redundant when their employer goes en desastre may go through the process with the Employment Tribunal but will still rank alongside ordinary creditors – the employment law does not give them any preference.

Proposed new redundancy procedure

The new amendment to the employment law would mean that when an employee is made redundant, subject to a qualifying period of two years, they would be entitled to an award equal to one week's pay (capped at £600pw) for every year worked. They would have a

duty to search for work and not to unreasonably refuse it after redundancy. The employer must consult ahead of making redundancies.

In the event of mass redundancies (more than 21 staff), employers must consult ahead of time with the trade union, if one is present, or otherwise with representatives of the employees. If meaningful consultation is not offered, the Employment Tribunal can make a protective award of up to 13 weeks pay to each employee.

This undoubtedly provides greater protection for the employee, however, what happens if the employer is en desastre? Under the equivalent UK legislation, a protective award is a preferential claim in a bankruptcy – it ranks alongside salary and holiday pay. The draft legislation does not amend the bankruptcy law to include this – it would seem that it would rank as an ordinary claim, the same as an unfair dismissal award or award for notice. Although this proposition is a step in the right direction, and will provide comfort for employees provided that the employer is solvent, it will not affect the rights of employees made redundant when their employer becomes insolvent, and would have made no difference to the plight of the employees of Woolworth's.