
Senior Executives and Professionals in COVID-19



As advisers to many senior executives we have seen a variety of issues arise because of the COVID-19 pandemic and changes to the way we work. Many of our clients work in large corporates or professional service firms and most of them have been working from home for an extended period now.

This has put additional strain on senior people for lots of reasons including the challenges of remote working coupled with conditions so drastically changed for most businesses, that senior executives and professionals are under even more pressure to deliver in very challenging times.

CC Solicitors are members of Innangard Executives, an international forum of employment lawyers that specialise in advising senior executives.

Senior executives and professionals are not immune to the difficulties facing employees because of the COVID-19 pandemic. It is apparent that many are being asked to take significant pay-cuts while at the same time manage the business and generate revenue often with reduced resources and less support. Emotionally and physically this is taking its toll and it makes sense to seek professional advice when facing decisions, which may have long-term implications for your career and financial well-being.

Pay-cuts

While professional firms may be slower to terminate employees, they are quick to implement pay-cuts. So, what should you do if you are approached about a pay-cut?

- Bear in the mind that your employer cannot change a key term of your contract, such as pay, without your agreement. The contract itself may require any amendment to be in writing but that could include an email. In some cases, verbal agreement might be effective. This does not mean to say you should not agree to a pay-cut but once you do, the change is effective and will be permanent, unless specified otherwise. It therefore makes sense to find out as much as possible from your employer before you agree anything and ensure whatever is agreed is fair and reasonable.
- Questions you might want to ask:
 - What is the basis for the decision to make pay-cuts?
 - Has revenue fallen or is it forecast to fall?
 - What are the projections for your part of the business?
 - If some staff have become very quiet, but you are going to continue to be very busy, is it fair to apply the cut across the board to include you?
 - Is the Company using pay-cuts to avoid making redundancies?
 - Are your peers being asked to take the same pay-cut?
 - Are senior management or the equity partners in a professional firm also taking some of the pain?
- If you conclude that agreeing a pay-cut is the right thing to do, then consider negotiating. Options include:
 - Keep your base salary but agree to work a 4-day-

week for a pro-rated salary. This may suit those whose workload has reduced or who need more time for childcare and home-schooling or want to pursue a personal project.

- If you are struggling with demands at home, this may be the ideal time to seek to take some unpaid leave rather than a pay-cut.
- Negotiate the percentage cut. If your employer is looking for 20% see if they will agree 10%.
- The reduction should be temporary for a fixed period with the agreement that you will revert to your full salary thereafter. The company can always review the situation then and if trading conditions continue to be challenging propose an extension.
- If projections for reduced revenue do not materialise, will your employer make you whole?
- You may be able to negotiate something in exchange for taking the cut now – a year-end bonus if the company's fortunes pick up quickly or some companies might be prepared to offer equity.

What if you do not agree?

Your employer might leave things be – for now at least, if you are a strong revenue generator, have important relationships, or are a key leader. Think about the relative strength of your negotiating position and how this is likely to play out before deciding to dig in.

Many companies will simply say this is a decision that is going to apply across the board and will move ahead with the cuts. If you refuse to agree, they could temporarily lay you off in which case you would be entitled to the temporary wage subsidy - significantly less than any reduced salary would be. They could also make you redundant.

Job Security

We are seeing a lot of organisations making redundancies and often executives in standalone senior and well-paid positions can be in the firing line where salary and property costs are often the most significant costs to the business.

What if you do not agree?

You have two key sets of rights when your employment is terminated by your employer: your contractual and your statutory rights..

First, look at your contract of employment.

■ **What notice are you entitled to?**

Many senior executives and professionals will have between 3 and 6 months' notice, some longer. Your employer is likely to have discretion to require you to work out your notice, put you on garden leave or pay you in lieu of notice. Many people believe they are entitled to be paid in lieu when made redundant but while it is common practice there is no such entitlement.

■ **Are there any other outstanding contractual entitlements such as commission or bonuses/STIs?**

Are these dependent on you still being in employment on a certain date? Sometimes companies make exceptions for redundancy dismissals and pay a pro-rated bonus for the year to termination date. Make sure you check the letter of the bonus scheme or commission plan and ask the question.

■ **Long-term Incentive Plans (LTIPs)**

You need to check what the Plan Rules and if you would be considered a good leaver if you are made redundant and if you are entitled to any favourable terms on vesting.

■ **Equity**

You need to check the shareholders' agreement and other relevant documentation to ascertain if you would be a good leaver if made redundant and therefore entitled to any favourable treatment on valuation.

■ **Contractual redundancy entitlements**

Is very unusual for private sector employees to have any contractual entitlement to redundancy or severance pay but it is worth checking your contract, the Employee Handbook and other relevant policy documents. The company may offer an ex gratia payment too on a redundancy but there is usually no contractual entitlement to this.

If in any doubt about your contractual entitlements, this is worth taking some legal advice on.

Statutory Rights

If you have at least two years' service, you will have a statutory redundancy entitlement calculated based on your length of service. The formula is number of years' service x 2 weeks' pay (capped at €600) plus a bonus week's pay.

If you have at least one year's service, you have the right to bring an unfair dismissal claim. The potential compensation for unfair dismissal is up to two years' gross remuneration but based on actual financial loss.

Questions to ask in a redundancy situation which are relevant to whether you may have an unfair dismissal claim include:

- Why has my role been selected for redundancy?
- How is the work I was doing going to be carried out going forward if my redundancy is confirmed?
- How was the selection process carried out? What were the criteria, if any?
- Who else was in the pool for selection?
- What suitable alternative roles may be available in the company or group?
- What other alternatives to redundancy were or are being considered?

Always remember it is the role not the person that is redundant – consider if this is this a genuine and objective business decision or is there some other agenda or unfair reason for your termination?

Other Claims

There may be an equality claim if for example you think you have been selected because of your gender or age. For example, have you been on maternity leave. Why is your role (female) and not another senior person role (male) being selected? Is it a fair and objective decision?

There may be a whistleblowing claim under the *Protected Disclosures Act 2014*, if you believe you have been selected for a pay-cut or redundancy because you have complained. Have you complained about the legality of your employer's practices either during or before the pandemic? Have you complained about health and safety in the workplace since the pandemic started? Equality and whistleblowing claims do not require you to have a minimum length of service. If you have any concerns about either it makes sense to take specialist advice.

Remember resilience is key during these times, but senior executives are not super humans. An employer is obliged to provide a safe place of work for their employees not just in relation to the present physical dangers of the virus but also to protect and support staff in the mental and emotional challenges that they face in the workplace.

Employers will be advised to put in place protections that avoid future resultant "stress at work" personal injuries claims for psychiatric conditions developed by employees during this period. The advice is not to suffer in silence, put your employer on notice and thereafter they will be obliged to take steps to protect you from exposure to excessive stress.

The team at CC Solicitors are experienced specialist advisers to senior executives and professionals. If you need assistance in relation to contractual arrangements for a new role, a dispute, a prospective move or a departure, please do not hesitate to contact one of the team.

CC Solicitors

10 Pembroke Street Upper, Dublin 2
+353 1 9058680
www.ccsolicitors.ie

Colleen Cleary - Founder colleen@ccsolicitors.ie
Regan O'Driscoll - Partner regan@ccsolicitors.ie
Claire Dawson - Partner claire@ccsolicitors.ie