SHOOSMITHS

HOW TO

Achieve a successful senior executive termination

Terminating the employment of a senior executive can be a challenging process.

A combination of employment, corporate and tax issues can all influence how the situation should be handled, particularly if disruption to the business is to be minimised.

This "How To" guide sets out the key legal and practical issues for businesses to be aware of.

Reason for dismissal

The reason for the executive's termination should be identified from the outset. For example, are there conduct issues?

Is the executive falling short in their performance? Is the executive's role redundant?

The reason for termination will be key to the overall management of the exit process. Not only will it have an impact on the executive's contractual entitlements and the risk of legal claims, it will also influence the strategic direction of termination discussions.

Refer to the contract

After identifying the reason for termination, the next step is to review the contractual arrangements between:

- the executive and the business. This may include the executive's service agreement together with any corporate
- documentation and company policies relating to the termination of employment.

When considering the paperwork, there will be a number of key questions to address, including:

- what termination procedures apply to the executive?
- can the employment be terminated summarily or is the executive entitled to receive notice of termination?
- how long is the executive's notice period and is there a discretion to pay in lieu of notice?
- what is the impact of termination on corporate entitlements, such as company shares?

Minimising legal risks

Senior executive terminations tend to be sensitive and business critical. As a result, it may not be commercially

feasible for the business to follow 'best practice' employment procedures to achieve termination.

This may give rise to an increased risk of legal claims from the executive, including:

- unfair dismissal
- discrimination
- wrongful dismissal or breach of contract

With this in mind, most terminations will involve a negotiated settlement agreement between the executive and

the business. The settlement agreement will settle any contractual or statutory claims that the executive may have

against the business, usually in exchange for a financial package.

The level of any settlement package will depend on the negotiating position of the parties, but will also reflect the

benefit to both sides of an amicable resolution.

Cost of termination

The cost of a senior executive termination will vary significantly on a case by case basis.

However, the following aspects are likely to be the subject of negotiations:

- contractual entitlements, such as notice pay, benefits and pension
- corporate entitlements, such as shares and share options
- ex-gratia payments, to reflect potential claims such as unfair dismissal
- legal costs, including independent legal advice on the terms of the settlement agreement

Each element of the settlement package will need to be treated appropriately for tax purposes.

Protect your business interests

There are a number of other legal and practical issues which businesses need to be aware of when considering senior executive exits. These issues are often critical in ensuring that the interests of the business are adequately protected.

They include:

- terms and enforceability of post-termination restrictions
- confidentiality
- publicity, including announcements to clients and colleagues

These issues can all be managed as part of the settlement agreement between the executive and the business.

Our employment team can help you with:

- pre-termination strategy
- identifying reasons for termination
- reviewing contractual documentation
- drafting and negotiating settlement agreements

For any further information please contact **howto@shoosmiths.com**