

THIS TRANSCRIPT IS ISSUED ON THE UNDERSTANDING THAT IT IS TAKEN FROM A LIVE PROGRAMME AS IT WAS BROADCAST. THE NATURE OF LIVE BROADCASTING MEANS THAT NEITHER THE BBC NOR THE PARTICIPANTS IN THE PROGRAMME CAN GUARANTEE THE ACCURACY OF THE INFORMATION HERE.

MONEY BOX LIVE

Presenter: PAUL LEWIS

TRANSMISSION: 15th JULY 2009 3.00-3.30 RADIO 4

LEWIS: Hello. Well, as we've been hearing all day today, unemployment has risen by a record amount. More people are looking for a job; more people are claiming jobless benefits; there are fewer people in work; and redundancies are still running at around 23,000 every week. Although wages for full-time work are growing slightly, the annual 2.6% rise is the lowest since at least 2001. And we know that many people are going on short time work or taking unpaid leave - or work in some cases - to help their employer survive. So today, as part of the BBC's look at the health of the UK economy, taking its pulse, Money Box Live is taking your questions on your rights at work. Can your boss ask you to work fewer hours or longer hours for the same money? What if you're asked to take a pay cut? And if all that doesn't work and you are threatened with redundancy, what rights do you have to object? And if you're made redundant, what can you get? So why not call Money Box Live now - 03700 100 444. And with me today to answer your questions about employment, and indeed unemployment rights and finances, are Jane Amphlett who's employment partner at lawyers Finers Stephens Innocent; Rachel Hadwen, who's Rights Advisor at the charity Working Families; and Sian Keall, a partner at lawyers Travers Smith. Our first question today is from Alison who's calling from her mobile. Alison, your question?

ALISON: It's just a very quick one. At the beginning of the credit crunch, we had to unfortunately let our two plumbing apprentices go; and with things locally improving financially, we have the need to re-employ one apprentice. How do we stand when we've obviously laid off two? Are we able to take on one of the original apprentices?

LEWIS: Well it's so good, Alison, to start, what could be a very gloomy programme with some good news - work looking up and you're taking someone back. So what are the rights because it's difficult if you've made someone redundant? Sian Keall, what are the rights here?

KEALL: Well the good news is that it's absolutely possible for you to offer employment to somebody who you have previously made redundant. That doesn't mean they have to repay their redundancy pay or anything of that sort. Unless the gap between their original employment with you and their new employment is very short, they probably will start with sort of zero service again. But the only thing that I can think that you need to think about carefully in this case, because otherwise I think it's an entirely straightforward issue of just re-employing and offering a contract to somebody, is whether you advertise the post and let both people apply for it. I suppose if there were some discrimination issue in terms of who you were to choose one above the other, that might cause you some difficulties. But aside from that issue, I think, you know, fantastic news that you can do it and you can get along with hiring them in a normal way.

LEWIS: Okay. And what is the period? Jane Amphlett, what is the period that you have to allow to pass? Because it isn't right, is it, to make someone redundant and then take them straight back? You can't do that.

AMPHLETT: No, that's right, but there's no specific period within which you have to leave it before you can re-employ somebody. The redundancy is a redundancy where at the time that you make the redundancy, you don't have any plans to re-employ. That's the crucial issue.

LEWIS: So it has to be genuine business fall and then business coming back?

AMPHLETT: That's absolutely right.

LEWIS: Both for the redundancy and the re-employment.

AMPHLETT: Yeah.

LEWIS: Okay. And Rachel Hadwen, what are the benefit implications here for these two apprentices who've been out of work? They're presumably starting to claim benefits. What about when they get back to work? Those will stop, presumably?

HADWEN: Yes, that's right. I mean if they've been claiming jobseeker's allowance and then they're going back into work for 16 hours or more, you would expect that benefit to stop. It will be more complicated than that because they may have a partner who's also working. Working tax credit could be involved. Maybe that needs to be revived. Or if there are two people working, maybe they can now claim childcare costs when they couldn't before. So it will be very specific to their circumstances.

LEWIS: Yes, but it is those changes that make things like working tax credit very difficult, isn't it?

HADWEN: Yes. The key message is to report everything even if you're not sure whether it affects your benefits and tax credits.

LEWIS: And hope the Revenue gets it right, which they don't always do.

HADWEN: That is true.

LEWIS: Jane, you wanted to add something?

AMPHLETT: Well it's only to say that I'm not sure, Alison, how long it is since you made these two redundant, but it does, in terms of other employers, it raises the issue as to whether it may be possible to effect some changes without making redundancies at least to buy some time to see if things improve. And we've all seen things in the press about BT and BA asking people to take unpaid holidays and that sort of thing.

LEWIS: Indeed, and I think we're going to get some questions on that shortly. So, Alison, does that help you?

ALISON: Yes. Yeah, it does. Thank you very much.

LEWIS: Okay, well thank you, and very glad to hear your business is picking up. Thanks for that call, Alison. We'll move onto Julie now in Truro. Julie, your question?

JULIE: Hello. I've got a question about an existing contract of employment as a bank nurse and also a new contract which they've suggested we sign, which means I'm going to get a pay cut of £2,717 annually.

LEWIS: Julie, can I interrupt you a second and just ask you what a bank nurse is because I'm sure a lot of people don't know?

JULIE: Right, a bank of nurses work hours to suit the hospital and they work for themselves. There's no fixed rate of hours.

LEWIS: *(over)* Right, so it's almost like an employment agency for nurses with the NHS?

JULIE: Yes.

LEWIS: Right. Okay, I'm clear now ... okay. And you've been offered a new contract, but, as you say, well over £2,000 a year less?

JULIE: That's right, yes.

LEWIS: And you want to know if that's legal or not, I suppose?

JULIE: I want to know if it's legal, yes.

LEWIS: Yes, okay. Well let's start with Sian Keall again. Is that legal?

KEALL: Well it depends slightly. Julie, you said as part of your question that you're an

employee ...

LEWIS: That's right.

KEALL: ... so you're employed by your local healthcare trust?

JULIE: Yes, that's right.

KEALL: Okay. Well I think that puts you in an easier position. Some people who are described as 'bank nurses' who might be asking this question would actually be a casual worker or not an employee, and actually their position would be more difficult, so I think you as an employee are in a better position. The starting point as an employee - and this will apply to lots of people in the situation you're in or a similar situation where they're being asked to take a pay cut - is that if you have a contract with your employer that they will pay you a certain amount to do a job, it isn't the employer's right to unilaterally change that. And if they do unilaterally change it, you have a number of choices. You could make a claim against them for the kind of loss in earnings that are being suffered or you could decide that what they'd done was such a fundamental breach that you decided to resign and claim constructive dismissal. Now in this kind of economic climate, I wouldn't be encouraging anyone to take that sort of step, but I suppose what you need to look at is they've given you a new contract. I would recommend going back and asking them to explain why the pay differential exists and, in particular, whether that's a permanent pay differential because lots of employees who have employers in difficult situations are currently discussing with them accepting a pay cut that might last for a short period of time - say 6 months - to allow an employer to get over a difficult period.

JULIE: Right. No, this is permanent.

KEALL: I suppose what I'm saying is it's worth talking to them about why it would be permanent and also why they feel able to simply offer you a new contract without having given you the background of explaining why your existing right is being taken away because the starting point is you do have the right to claim?

JULIE: Right, okay.

LEWIS: Rachel Hadwen, you must have had a lot of calls like this?

HADWEN: We have had a lot of calls like this and they vary. Some are to do with pay cuts and some are to do with losing hours, and some of them are a combination of the two. And it's very difficult because essentially if you are an employee and one side (the employer) decides to change your contract, that could be a breach of contract, you don't agree to it. But in itself, that may not get you very far. Perhaps you have a discrimination argument; but even if you do, it may be that the employer can still defend that by saying this is a requirement and it's justified. However, I think it's worth looking at the other side of this, which is the benefits side, which is that if you have a tax year in which you're expecting £2,700 less than you did in the previous tax year, it might be worth informing the tax credit office of that and getting your award revised. Maybe you'd get more money that way and maybe that would enable you to go back to your employer and say, "Alright then, we'll have to go with this" rather than resign.

LEWIS: That might be small comfort, I think, but it's a very practical point if it really happens.

HADWEN: It depends how much difference it makes.

LEWIS: Okay. And, Julie, this is less money for the same work, is it?

JULIE: Absolutely, yeah.

LEWIS: Yes, it is a bit strange. Yes, Sian, you want to come in there.

KEALL: One quick further point that I think it's just worth you looking at your contract for is how the pay cut would affect your benefits because some benefits ...

LEWIS: You mean benefits at work like holiday pay and that kind of thing?

KEALL: Holiday pay, but in particular benefits that are a function of salary - so things like life assurance, which is normally a multiple of salary. If your salary goes down, your life assurance will go down, so it's always worth looking at not just the pay cut, but actually the knock-on effect for your other benefits.

LEWIS: And your pension and National Health Service.

KEALL: And of course your pension.

LEWIS: Jane Amphlett?

AMPHLETT: I just wondered, Julie, if you're a member of a union because ...

JULIE: Yes.

AMPHLETT: ... obviously it is worthwhile talking to your union about what steps could be taken.

LEWIS: Because presumably this isn't just Julie? I mean, Julie, presumably your colleagues have found the same thing?

JULIE: All the bank nurses have had the same contract offered to them.

LEWIS: Yes, so it's the kind of thing where unions would very typically get involved and perhaps could find out more and negotiate something better.

AMPHLETT: And it may be that they're able to negotiate on your behalf because you don't want to necessarily stick your neck out on your own. But if it's all of the bank nurses being treated the same, it may be easier to make a claim in respect of unlawful deduction of wages or unfair dismissal.

LEWIS: Okay, well thanks very much for your call, Julie, and I hope you get it sorted out. I

must say to me from the outside, it seems remarkable that your contract says one thing but because of the financial difficulties in a sense employers are almost in a position to say well, tough, we've got to do something else. It's a strange world we live in. Just before taking the next call, I'm just going to go through a few emails all on the same subject and it's about a big company that is American owned, has gone into chapter 11 (as they call it over there) and its UK subsidiary has gone into administration. And we've had a number of emails, all making very similar points, that figures between 150 and more than 200 people made redundant 30th March, no notice, no pay in lieu, outstanding holiday pay; and instead of getting the redundancy pay they were expecting from this company, they're going to get the statutory redundancy pay which in most people's cases is a lot less. They are all, I have to say from these lengthy and detailed emails, very, very cross about it - and understandably so. Jane Amphlett, what are your rights when a company, excuse the loose term, goes bust or goes into administration?

AMPHLETT: Well insolvency covers a wide range of situations and actually what your rights are will depend on precisely what type of insolvency it is. But generally speaking, employees' rights if their employment is terminated or indeed if they have not had wages paid, they will have certain of their wages as preferential debts, which means they get paid out prior to any of the other debtors. But that's only up to certain limits, like £800 per employee plus holiday pay. But it is also possible for employees to make claims out of the National Insurance Fund, so they'd have to apply to the Government.

LEWIS: And this is a separate fund from the Insolvency Service?

AMPHLETT: It's the National Insurance Fund and you can get redundancy payments plus unpaid wages up to again certain maximum.

LEWIS: I mean this all sounds fairly complicated, Sian Keall. Should people be getting together and maybe getting legal advice about what they can claim because it sounds as if they may be able to get more depending on exactly what happens when this company either is rescued or goes back in business, though I believe it is still trading? It's all those subtle differences that people may not be aware of.

KEALL: Yes. I mean I'm always loathe to encourage people to take legal advice because of course that's the sort of thing that lawyers do.

LEWIS: You know how expensive you are.

KEALL: But, on the other hand, in a situation like this where, as I understand it, quite large numbers of people are in the same position at the same time ...

LEWIS: 150 to 220 odd, we're told, yes.

KEALL: And depending on the circumstances, some of them could have very considerable claims against the organisation. And even if they're only paid 10 pence in the pound, for example, that could still be quite a lot of money over the long-term. I think it could be worth banding together and trying to seek advice because there are time periods within which employees have to take action and start proceedings or they need to go through the Government in order to get their preferential rights paid if appropriate, and I think if it's possible for somebody to try and band together with 20 or 30 or as many employees as possible to get some advice, help them put in proceedings, help them make their claims, actually it shouldn't be terribly expensive per person to do that because all of their claims will effectively be the same.

LEWIS: They'll all be the same, yes. Yes, just clarifying the numbers - I'm just looking at this email - apparently 228 were made redundant on 30th March and another 150 in June/July. And you know one of our emailers says he'd worked there for 23 years and was just made redundant without any notification. So it sounds a pretty tough action.

KEALL: Yes and just to give you an example of the sort of claim we might be thinking about. As well as unfair dismissal, making large numbers of redundancies all at the same time can trigger an obligation to consult and it's a 90 day obligation.

LEWIS: They say they haven't had that.

KEALL: And 90 days pay is a lot of money, you know, whatever your salary is. And even if you only get a small percentage of it, that can still be worth suing for.

LEWIS: So well worth taking some legal advice on that. Okay, let's move onto the next call now. And thanks to all those people. I'm very sorry to hear what's happened to you with that company. Let's move onto Christine from Northampton.

CHRISTINE: Oh hello, yes.

LEWIS: Your question?

CHRISTINE: I've been made redundant. I was made redundant on Monday and I leave at the end of this month with 2 months pay in lieu of notice. Now I have had confirmation in a letter - in fact the whole redundancy was on the telephone in a conference call - and I've been told I can appeal. And it was really just some help in what to put down for appeal really - how much detail they would like because I think I've got five days to get it in and then they look at it for five more days.

LEWIS: Okay. What are the grounds for appeal against redundancy? I suppose the first thing is what were you made redundant for? What did they say to you?

CHRISTINE: Well they just said ... There wasn't ... The thing is we were taken over by another company last year and they just said - not in the letter - they just said, this is just verbally, that our department was surplus to the needs of the new company. There wasn't really any reason given.

LEWIS: Right. Jane?

AMPHLETT: Christine, how many people are affected by this?

CHRISTINE: In our particular department, it's about 25, but in the UK it's about ... I don't know the reasons given, but there's about 850.

AMPHLETT: Because the first thought is that they should have collectively consulted with you if you've got over 20 people within 90 days being made redundant; and so in terms of collective consultation, you can , if they've failed to do that - that's consult with your employee representatives or trade union - you can make a claim for a protective award in respect of that. So, as Sian was saying, up to 90 days pay. And one of the issues that they need to discuss with you is actually the rationale for making the redundancies. In terms of your individual redundancy, the issues that you'll want to thrash out with them will be what is the rationale, but, more importantly, how have you been selected, what efforts have they made to look for alternatives for you within the group of companies, and looking at the substance of the consultation process - were you adequately consulted?

CHRISTINE: The consultation was by email. In other words, we just had emails, so they wouldn't have checked that we'd read them really. There are works councils and I'm assuming that they would have said that that was consultation. But, you know, there was nothing asked to me ...

AMPHLETT: They need to consult both collectively with the works councils and with you individually.

CHRISTINE: Right.

AMPHLETT: And the process of consultation is obviously a two-way process, so they can't simply just give you information without listening to your response.

LEWIS: Yes. I'm looking at expressions. People don't seem to think from their expressions they've consulted quite as well as they should. Sian?

KEALL: Well I suppose the point about works councils is that a proper consultation, collective consultation involves telling the affected employees at the beginning that there's a potential redundancy process that might affect them and then having consultation with representatives of those individuals because the representatives are there to put forward the views of the employees' affected. And so if they've talked to your works council but you

weren't told first, then actually I don't think that would constitute proper consultation because you haven't really had an opportunity to put your own view forward through somebody who represents you.

LEWIS: And on the practical side. Christine wants advice on what to say and how to appeal. What should she actually say?

AMPHLETT: In terms of getting your appeal in, I would try and get it in within the time limit that they have specified, although it wouldn't necessarily be fatal if you didn't. But at least get your intention to appeal in and you can then flesh out exactly the grounds that you're going to state during what should be an appeal hearing that they should hold with you in due course.

CHRISTINE: I see.

LEWIS: Okay, well thanks very much for your call, Christine. I'm sure a lot of people in that position. We've had a number of emails about ... well a lot of emails about redundancy. Rachel, a couple of them making the point they've been made redundant, they've got a few tens of thousands of pounds redundancy pay. How does that affect their benefit claims, their jobseeker's allowance?

HADWEN: Well it's a good question. The thing about redundancy pay is it counts as capital and you may know that there are some capital rules for means tested benefits. If you're getting your contribution based jobseeker's allowance, that may not be a problem because it's not affected by your capital.

LEWIS: That's the one you get for 6 months based on your national insurance?

HADWEN: Yeah, if you've been working for a while and you've been paying class 1 national insurance, you would expect to get 6 months of contribution based jobseeker's allowance. After that, you may have the opportunity to go onto income based jobseeker's allowance, but that depends on all sorts of other factors, including whether you have a partner

who works. But if you do, your capital will be relevant and there's a £16,000 cut off point. If you have £16,000, more than that, that's it - no income based jobseeker's.

LEWIS: What can you use it for though? I mean we've had an email from Janine who says if I use it to pay my mortgage off, then she gets rid of the capital, she claims benefit?

HADWEN: Probably not going to work, I'm afraid Janine, the issue being that there are some notional capital rules where you'll be treated as still having money if you've got rid of it intentionally in order to claim benefit or to claim more benefit. So unless you can show that that debt was going to be immediately enforced against you, you'll be treated as still having that money.

LEWIS: And there's Tim who gives us a long list. You can't answer all of these, but if he uses it to pay court fines, pay for a hip replacement operation, pay off my debts, get dental treatment, go on holiday, give it to charity, gamble it on a horse ...

HADWEN: Oh what a fabulous list!

LEWIS: Very few of those that ...

HADWEN: *(over)* Well the ones that I might pick out as being perhaps good things to do would be court fines. I mean they are enforceable. He did mention debts in there as well. It would depend on the debt and it would depend on how immediately it was repayable. I mean just to give you an example: if you have a higher purchase agreement and you have to pay it off in instalments, there could be an argument that's not immediately enforceable, so you didn't have to do it. The other things he mentioned, I'm afraid probably not.

LEWIS: No. But if you've got a mortgage - although you can't pay the lump sum off, if you keep making your monthly payments out of your lump sum, that's ...

HADWEN: Absolutely, keep making your monthly payments. You don't want to get into arrears. That would be reasonable.

LEWIS: Okay, well thanks to Tim and Janine for those emails. And we're now going to go to Sheila who's in Swindon. What's your question, Sheila?

SHEILA: Oh good afternoon. I'm phoning on behalf of somebody else, but it's a small family business and they employ one person, and just after Christmas they realised they were struggling. They obviously weren't going to ... You know they thought long and hard about it, but what they wanted to do was ask the person they were employing if they would mind reducing their hours. And when this was posed to the person, she said that she'd already been to the Citizens Advice Bureau to say that they weren't allowed to ask her to do that. So in theory she was saying no, I'm not going to. And I'm just asking the question: a) you know are they allowed to ask her to do that; And can she say no?

LEWIS: Right, well I suppose you can ask anyone anything. It's whether you have a legal right to do it. Sian?

KEALL: Yes, it's absolutely fine to discuss with somebody in the context of a difficult business situation what steps could be taken to retain their employment whilst saving money. Talking to somebody about it is not the same thing as doing it, and I think employers have to be careful of not taking that extra step of "We're talking to you about it, but actually we're going to do it anyway" because then you as an employer do get into difficulty. In practice, and we've referred to this before, an employee who has a contract of employment - it doesn't have to be written - has the right to be paid a certain amount of money for a certain amount of work and, therefore, it isn't up to an employer to just unilaterally change that, but changing it by agreement is fine. And actually there are some circumstances in which if agreement can't be reached, an employer can make out an argument that either the full-time job is effectively sort of redundant and it needs to be alternative employment on a part-time basis is then offered, or to push through a contractual change on the basis that there's a business imperative to do so. But all of those things would require quite a lot of careful consultation and they're not a measure that can just be taken unilaterally overnight.

LEWIS: Meanwhile, what can Sheila do, Sheila's friend do?

KEALL: Well Sheila's friend is presumably running a small business and struggling to pay and control her overheads. I don't think consultation when you're talking about one employee ... When I say you can't do it overnight, that doesn't mean you have to sort of take yourself to the brink of insolvency before taking a step. So I think it's perfectly reasonable that you could set a time period of you know a week or two weeks beyond which actually you're really going to struggle and try to get agreement or take steps during that period.

LEWIS: Yes, Jane?

AMPHLETT: I think that the key thing for your friend to bear in mind is that when she's discussing the situation with her employee to actually have the facts and figures to hand as to how problematic it is for the business.

LEWIS: So be prepared. In fact be prepared whether you're an employer or an employee.

AMPHLETT: Yeah, because then they can explain to the employee more clearly what the options are.

LEWIS: And I suppose that's what's happening, isn't it Rachel? People are being faced with this choice - either work less hours, take less money or, sorry, we'll have to make you redundant?

HADWEN: Effectively, yes, yes.

LEWIS: And that's a tough choice for everyone.

HADWEN: It is a tough choice. And in some cases there may be arguments that they could make, but I think negotiation is usually a better step than taking claims against your employer if there's a chance that you can keep your job.

LEWIS: Okay, well thanks very much for your call, Sheila. I'd like to move on because we're getting close to the end of the programme, and we're moving onto Liza now who's

calling from London.

LIZA: Yes hello, good afternoon. I have been employed by a temporary agency for one employer, the same agency for the same employer for over 4 years. My employer told me 2 months ago that most probably I would not be needed after the end of this month. Now I don't know whether I should be told as soon as possible now, as we've got another 2 weeks to go, whether I should be needed or not; and, if so, what are my redundancy rights if so? The contract with the temporary agency said I would get 2 weeks of pay after 2 years ...

LEWIS: Okay. Let me ask Sian about that because we're running out of time. Sian?

KEALL: You're describing a situation which lots of individuals find themselves in. It's quite complicated, so I'll try and be brief but cover the key issues. Obviously there are two organisations you have to worry about here: the client, which is the body that you work for; and the agency, which is the organisation you have the contract with. In normal circumstances, your rights will not be against the client. If they say we don't need this person anymore to the agency, your rights are against the agency. There are some exceptions to that, but that's the general rule. In terms of the agency, the key issue will be is your contract with them a contract of employment? Sometimes it will be and sometimes it won't be. If it's a contract of employment, you have the right to redundancy pay and so on. If it is *not* a contract of employment, then your rights will depend on what is written in that contract and the notice period that is written into it.

LEWIS: It sounds, Liza, as if you should perhaps get a bit of advice, perhaps from Citizens Advice. They'll be able to give you advice and in particular look at your contract and actually what it says, which is crucial. We are running out of time and I'm very quickly going to go to Marion. Marion, can you do your question in about twenty seconds?

MARION: I will do my best to summarise. As we speak, there's a redundancy consultation going on in my workplace which I'm not at because I'm 5 months into maternity leave. I'm fairly convinced that my job will be one of the ones that goes. However, they currently have somebody in doing my job in a freelance capacity. I'm wondering if they would then be able

to keep that person on if my post is redundant ...

LEWIS: Okay.

MARION: ... or whether I stand a chance of going in in a freelance capacity?

LEWIS: Okay, I think we've got the question. Jane?

AMPHLETT: Your rights will be the same as and in fact enhanced because you're on maternity leave, so you've got the same rights in terms of the unfair dismissal legislation to be consulted for them to look for alternative employment, to treat you fairly. But you also have enhanced, some enhanced rights in terms of having priority for other jobs.

LEWIS: Okay, thanks. We're going to have to stop there, I'm sorry, because we're running out of time. And if there's one rule here, you have to end on time. My thanks to Rachel Hadwen from Working Families; our lawyers Jane Amphlett of Finers Stephens Innocent, and Sian Keall of Travers Smith. And thanks for all your calls. More from the Action Line - 0800 044 044; our website, bbc.co.uk/moneybox. Tonight at 10.30 on BBC2, Newsnight will be looking at youth unemployment and how the recession is affecting young people trying to find work. I'm back at noon on Saturday with Money Box and here to take more of your calls on Money Box Live next Wednesday afternoon.