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‘The Chairman would like a quiet word with you.....’

Alan Jones, partner at Averta Employment Lawyers, a specialist practice focusing on senior executives and professionals, gives ‘fat cats’ some advice on what they can expect if they are dismissed.

These was a time, not many years ago, when a senior executive who was dismissed by his employers could reasonably expect to receive a compensation payment equivalent to his full notice period, probably coupled with continued use of car, payment of bonus’, share options, and other incidental benefits. Notice periods were sometimes two or three years long and it was not unknown to find a senior executive walking into an alternative highly paid job quite quickly, and certainly well within the term of their notice period.

This gave rise to the concept of the “Fat Cat” with all the attendant bad publicity and criticism.

In more recent times, largely as a result of pressure from institutional shareholders and guidance on corporate governance principles from such committees as Greenbury, there has been a significant change in approach.

The start was a general reduction in notice periods from two or three years down to no more than 12 months. So you might expect the departing executive to receive compensation based on his full notice entitlement? Unfortunately not, as there is an increasing expectation that the employer should look more closely at the departing senior executive’s prospects of securing alternative employment, and take this into account when offering compensation. Employers also look very hard at whether they need to include bonus’ payments or executive share options into the termination package. Pressure from pension fund managers, of course, has significantly reduced the latitude employers have to enhance a departing executive’s pension arrangements.

So, as things stand at the moment, a departing executive may not have an easy time, and his expectation of full payment on dismissal may well be disappointed.

However an executive still has a number of strings to his bow. Firstly, since October 1st 2004, employment tribunals can penalise employers who fail to follow proper procedures of warning and consultation when dismissing an employee, even a senior executive, and so the days of “a quiet word with the Chairman” may well be numbered.

Then the departing executive can take comfort in the fact that the new principles of corporate governance have no statutory or contractual effect - or at least until the government decides otherwise.

The executive can still challenge an employer’s refusal to pay bonus during notice, for example, by arguing that the elements of “employer’s discretion” must be exercised rationally and fairly. If payable upon achievement of certain performance criteria he should receive the payment, once it is clear the criteria will be satisfied.

Sometimes executives have restrictive covenants in their contract. An employer who dismisses an executive in breach of contract (which means without paying his or her full contractual package) runs the risk that these covenants will be extinguished. That raises an interesting bargaining point.

However, the length of time the executive is likely to take to get another job is usually the key issue between the employer and the employee.

It does not lend itself to scientific analysis, but as a general rule the more senior and highly paid the executive (who is likely to be of mature years) the more difficult it is for him or her to secure employment at a similar level of remuneration. So the executive has a powerful argument for substantial compensation when the HR director puts his head round the office door and says “The chairman would like a quiet word with you.....”

Ends – Words 592

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Note to editors:

Issues that Averta Employment Lawyers handle include, negotiating severance terms, advising on boardroom disputes, compromise agreements, contractual problems, drafting service agreements or consultancy agreements, restrictive covenants, notice and garden leave, unfair dismissal, whistle blowing and discrimination issues.

Averta Employment Lawyers are based at Birmingham International Park, close to junction 6 M42, Birmingham International Station and Birmingham International Airport.