Notwithstanding the suggestive title of this article, there is nothing sexy about the termination of employment. However, the publication of the arguably eye-watering pay-outs received by civil servants leaving the States and the follow up report from the Comptroller and Auditor General this month examining the States' use of "golden handshakes" has caught the attention of the local press.

The termination of employment may result in claims by employees against the employer. One way of mitigating this risk is by entering into a compromise agreement. A compromise agreement is a legally binding document in which an employee, or ex-employee agrees not to pursue a specific claim or claims against the company in relation to their employment, or the termination of their employment, in return for a financial payment. On the termination of employment, the same are often referred to as "golden handshakes".

It is clear from local press and public opinion that the use of "golden handshakes" in the public sector is frowned upon. In Jersey, former States' members have left office with exit payments that have put a large dent in the taxpayer's pocket. The same are also often reported in the national press in relation to high-flying executives, CEO's and council members. However, ending the employment relationship with a compromise agreement is not always a bad thing, provided that they are used appropriately. The agreed termination of employment and associated compromise agreements are a valid and important management tool that are routinely used as part of the "Exit Strategy" for employees being dismissed for reason of redundancy and are increasingly used in capability dismissals. Utilising compromise agreements allows the parties to part ways without lengthy litigation in employment tribunals. Even in cases where the employer has a reasonable chance of success in an employment tribunal, it may be worth settling to avoid the cost of a tribunal hearing. This is a commercial decision to be taken by the employer.

Other advantages of compromise agreements for both the employer and employee include:

1. Avoiding the publicity of going to the Employment Tribunal.
2. Avoiding the use of large amounts of management time and the time of those who would by necessity be involved in any tribunal hearing.
3. Avoiding the legal costs of bringing and defending a tribunal claim.
4. Enabling the employer and employee to have the circumstances surrounding the termination kept confidential.
5. The employee receives a payment a lot quicker than it would take to pursue a tribunal claim and does not have to go through the rigmarol of litigation.

However, the use of compromise agreements should not be a substitute for the effective management of individuals via good internal policies, procedures and practice which assist in negating the need to terminate employment in the first place.

According to the Comptroller and Auditor General there are still weaknesses in the States' utilisation of compromise agreements despite the implementation of previous recommendations. Consequently, the Comptroller and Auditor General has made a number of further recommendations. Although some of the recommendations are geared towards accountability to the electorate and being able to support the rationale for the use of specific compromise agreements, some of the recommendations are transferable to the private sector and should be noted by organisations and their HR professionals. These

recommendations include; the regular review of contractual terms, particularly for senior staff and the development and utilisation of effective performance management systems. Keeping on top of these elements of the employment relationship will assist in avoiding the situation where the future of the employer/employee relationship is in jeopardy.
Key contractual terms to be included in the employment contract and reviewed regularly include those surrounding the termination of employment such as; the duration of the employment contract, probation periods, gardening leave, notice periods and pay in lieu of notice, specific provisions about the termination of employment on the grounds of incapacity, post-termination restrictions on subsequent employment, the return of property and confidentiality.

As for performance management, the absence of appropriate, timely and documented procedures to monitor the performance of employees leaves employers at risk that any under performance is not addressed in a timely manner which may result in the termination of the employment (with high compensation payments) as opposed to such under-performance being managed and improved or the employer being able to terminate the employment relationship fairly on the ground of capability. Should an employer wish to use an employee's capability as the reason for their dismissal, the same needs to be supported by a comprehensive performance management procedure and capability process that has been implemented and followed by the employer. For the employer, the result of not doing so is apparent in the recent decision of the Royal Court in Wood v JT (Jersey) Limited [2016] JRC089B, an appeal against the decision of the Employment Tribunal, where the procedures utilised by the employer in relation to performance review were criticised by the Court as being unable to demonstrate a lack of capability.

It is hoped that the recommendations of the Comptroller and Auditor General will help to prevent big pay-offs for civil servants when they leave their job. However, the ability to negoatiate the termination of employment remains an impotant tool in both the public and private sectors.

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