

## REDUNDANCY

In a difficult economic climate, employers may require to consider the possibility of redundancies. This can be a stressful time for everyone involved and employers must ensure they minimise the risk of a successful claim for unfair dismissal.

Many issues need to be considered prior to redundancies taking place including deciding if the business needs give rise to a genuine redundancy situation, choosing selection criteria, consulting with employees, calculating redundancy payments if applicable and following the mandatory statutory dismissal procedure.

This Factsheet sums up the main points and concludes with our Top 10 Tips for handling redundancies.

### A Genuine Redundancy?

The circumstances surrounding the dismissal must be examined in order to ensure that the redundancy is genuine and is in line with the legal definition. It will only be classed as such if it has been carried out for one of the following reasons:-

- The employer's business or part of the employer's business has ceased to operate;
- The employer's business has moved to a different place;
- The need for a particular type of work to be carried out has ceased or diminished.

It is essential that there is a genuine redundancy situation.

### Selection and Consultation

Although there are no longer any statutory dismissal procedures relevant to redundancy, the employer must follow a procedure which is fair, objective and non-discriminatory. The employer must:-

- Try to give as much warning as possible of the potential redundancies;
- Consult fully all employees who may be affected regarding avoiding/reducing redundancies and the process to be adopted;
- Identify any appropriate redundancy pools;
- Use objective criteria in selecting who will be made redundant, ensuring that the selection is fair;
- Try to find alternative employment for the employee.

Where fewer than 20 employees are being made redundant, consultation need only be directly with the employees. However, if a union is recognised, it would be advisable to involve them in the process.

Where 20 or more employees are being made redundant within a 90 day period - a 'collective redundancy' situation arises. In such circumstances the employer must notify the Department of Business Enterprise and Regulatory Reform and consult with a recognised trade union. If there is no recognised trade union representing all of the employees affected, elected employee representatives must be consulted with prior to issuing redundancy notices. Failure to follow the collective redundancy procedure may result in a criminal offence being committed and may also result in awards of up to 13 weeks pay per employee affected.

### Redundancy Payments

Once an employee has completed 2 full years of service there is an entitlement to receive a redundancy payment. Whilst employees with 1 year of service will not receive a redundancy payment, they can still raise a claim for unfair dismissal.

The amount of the redundancy payment depends upon the employee's age and length of service as follows:-

- half a week's pay for each year worked up to the age of 22;
- a week's pay for each year worked between the ages 22 and 41;
- a week and a half's pay for each year worked above the age of 41.

The statutory limit for a week's pay is currently capped at £400 and the length of service is limited to a maximum of 20 years.

A ready reckoner for calculating the number of weeks pay due can be found at:-

<http://www.direct.gov.uk/redundancy.dsb>

Following the repeal of the statutory dismissal/disciplinary and grievance procedures there are no statutory procedures relevant to redundancy dismissals.

## Top 10 Tips

1. Always consider alternatives to redundancy such as salary cuts/job shares/reduction in hours worked.
2. Consult fully with affected employees and do not attempt to rush the process.
3. Ensure that the business decision is presented as a proposal rather than a done deal in the first instance.
4. Consider carefully any suggestions made by employees and intimate any decision to employees commenting on any suggestions made.
5. Ensure that all vacancies are put to an employee whose employment is at risk of redundancy.
6. If you are using criteria to select employees for redundancy from a pool of employees then consider allowing a right of review of the score achieved (i.e. separate from the statutory right to appeal any subsequent dismissal).
7. Consider 'bumping' – i.e. making the holder of a more junior role redundant with the more senior employee whose role is redundant taking on the more junior role at a reduced salary.
8. Allow a reasonable period of time for the employee to appeal before their redundancy is effective.
9. Consider providing assistance to employees who are to be made redundant by way of providing outplacement counselling or even just offering assistance in preparing CVs/drafting covering letters/agreeing references.
10. Be sensitive to the situation – redundancy is a traumatic experience for most affected employees. It is a stressful time and tact and understanding are vital.

For more information please contact our experienced employment law solicitors in Edinburgh, Glasgow and London.

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