



Redundancy

Introduction

For various reasons, an employer may sometimes decide that it is necessary to reduce the roles within a business and therefore their staff numbers. This may occur when a business closes or the needs of the business change. Engaging in a redundancy process is to identify the roles (and therefore employees) which are no longer required for the business.

Redundancy is a form of dismissal and all employees who have more than 2 years continuous service when a decision is made to give notice of redundancy will have certain rights, including the right to be treated fairly and the right to receive a Statutory Redundancy Payment (SRP).

The decision that redundancies are necessary and the procedures which follow are likely to be very difficult for both the employer and the employees affected. It is important that an employer only embarks on a redundancy process after very careful consideration and having taken professional advice. This Guide will give an overview of the key elements of the process and provide some useful practical guidance.

Issues concerning redundancy can be complex. Whilst this information contains general guidance it is not a substitute for legal advice. Please call the helpline for further information. Some of the forms referred to in this guidance are available in the document centre.

Relationship between redundancy & dismissal

1. Evaluate and plan.
2. Make a redundancy plan.
3. Identify and inform employees at risk of redundancy.

4. Consult employee.
5. Decide on selection criteria and method for making selections.
6. Informing the employee of the decision to dismiss on redundancy grounds.
7. Considerations relating to notice.
8. Calculation of redundancy pay entitlement.
9. Hold appeal meeting and give outcome in writing if employee exercises their right of appeal.

1. Evaluation and Planning

During this stage the employer will need to consider whether it is necessary to cut costs or re-organise the staff in such a way that there is a risk of redundancies. The decision to proceed with a redundancy process should be preceded by efforts to avoid redundancy, if possible.

Before making employees redundant an employer may:-

- offer voluntary redundancy or early retirement
- agree to flexible working
- temporarily reduce working hours (with agreement)
- retrain employees to do other jobs in its business
- let go of temporary or contract workers
- limit or stop overtime
- not hire any new employees (recruitment freeze)
- check employment contracts for lay off or short time working rights
- stop working for a while (known as a 'temporary lay-off')
- work fewer hours (known as 'short-time' working).

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2. Make a redundancy plan

If attempts to avoid the need to make redundancies are unsuccessful, employers will need to make plans for the processes that will follow. A redundancy plan will help employers manage each stage of the redundancy process and may include the following:

- consult staff
- select staff for redundancy following selection criteria
- give staff notice
- work out redundancy pay
- support staff and plan for the future

3. Identifying and informing employees at risk of redundancy

Once those employees who are likely to be at risk of redundancy have been identified, there should be individual meetings with them to explain the reasons for this and the process that will follow. The purpose of this meeting is to inform affected employees:

- why it is necessary to make redundancies
- the number of employees and jobs that are at risk
- what measures will be considered to avoid compulsory redundancies
- If there is a pool of employees from which only some of the employees will be made redundant
- how the employer will select employees for redundancy
- time frames for the consultation period
- how redundancy pay is calculated.

4. Consulting employees

Consultation is when an employer meets at risk employees to explain workplace changes and get their feedback and input. Any plans must not be finalised at this stage and full consideration should be given to any suggestions an employee may have. The purpose is to try to avoid redundancies although it is accepted that in some cases this may not be possible.

Who must be consulted – identifying the pool of affected employees?

Planned changes should be discussed with each employee who could be affected. Sometimes it may be that only one particular role is redundant, in other situations there may be a number of employees who are at risk of redundancy. The group of employees who are identified as being at risk of redundancy are often referred to as the 'pool' of employees. If not every employee from within the pool will be made redundant, it will be necessary to decide on a fair method to select those that will be made redundant, which is dealt with below.

What should be considered in the consultation?

The consultation must include discussions regarding ways to avoid or limit the number of employees being dismissed. Ideally consultation meetings should be held in person. However, the meeting can take place over the phone if you both agree to it and there is a clear need, for example if someone works remotely.

How long must the consultation period last?

For small scale redundancies, where less than 20 employees are to be made redundant, the period of consultation should be reasonable. It can sometimes be a little as 1-2 weeks. Much depends upon the circumstances of the business and what is likely to be considered reasonable within the overall process.

For situations where there are to be more than 20 employees being made redundant, within a 90 day period, the consultation period is required by law to be 30 days. If there are more than 100 employees to be made redundant the consultation period must be at least 45 days. In these cases, there are more formal consultation requirements which are outside the scope of this guide.

Alternative employment

Alternative employment must be considered by the employer and employee during the consultation. If an alternative role is available and can be said to be suitable alternative employment (SAE) it must be offered to the employee, or the dismissal will likely be seen as unfair. If there is more than one person who may qualify for the role, the employer may need to engage in a selection process.

Conversely, If the employee is offered SAE and unreasonably rejects this offer, they will lose their right to SRP. For advice on when alternative employment may be considered SAE and when a rejection by an employee of SAE may be unreasonable, please contact the legal helpline.

5. Selection for redundancy

If redundancy will affect some but not all employees within a pool, it is likely to be necessary to carry out a selection process. To help make the decision of who should be selected out of a pool of employees carrying out similar work, a matrix of selection criteria should be compiled against which each individual employee will be scored.

The selection criteria should be based on objective considerations such as:

- standard of work
- skills, qualifications or experience
- attendance record (do not include absence relating to disability or maternity)
- disciplinary record

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An employer must not select employees in a way that could be considered discriminatory because of their:

- age
- disability
- gender reassignment
- marriage or civil partnership status
- pregnancy or maternity leave
- race, religion or belief
- sex or sexual orientation
- family related leave – for example parental, paternity or adoption leave
- role as an employee or trade union representative
- membership of a trade union
- part-time or fixed-term employee status
- pay and working hours, including the Working Time Regulations, annual leave and the National Minimum Wage

Where possible employers should circulate the proposed criteria for selection to those who may be affected and invite comment. The more open and collaborative your selection process is, the more your employees will trust that it's fair.

6. Informing the employee of the decision to dismiss on redundancy grounds

It is best practice for an employer to tell an employee face-to-face that they are going to be made redundant. This should then be confirmed in writing. The letter should include such things as:

- the employees notice period and leaving date;
- if the employee is required to work to the end of their notice period;
- how much statutory redundancy pay an employee is entitled to receive;
- how the redundancy pay is calculated;
- any other payments which are due (such as holiday pay);
- when and how an employee will be paid;
- how an employee can appeal.

7. Notice requirements

Employees are entitled to receive either contractual notice or statutory notice, whichever is greater. The statutory notice periods are:

The relevant notice period will start the day after the redundancy is verbally confirmed or if the employee is notified in writing by post or email when it would be reasonable for the employee to have received and read the outcome.

8. Calculating the Statutory Redundancy Payment

Redundancy pay is payable to those employees who have over two years employment and is calculated based on the following:

- earnings before tax (gross pay)
- the number of completed years of employment (up to a maximum of 20 years' service)
- the employee's age
- the statutory cap for a week's pay

If the employee is aged 22 or under.

The employer must pay half a week's pay for each full year worked.

If the employee is aged 22 to 41

The employer must pay:

- 1 week's pay for each full year worked after age 22
- half a week's pay for each full year worked before age 22

If the employee is aged 41 or over

The employer must pay:

- 1.5 week's pay for each full year worked after age 41
- 1 week's pay for each full year worked between ages 22 and 41
- half a week's pay for each year worked before age 22.

The employer must tell the employee in writing how their redundancy pay has been worked out. There is a redundancy pay calculator on the Government website available here.

Redundancy payments should be made no later than an employee's final pay day. This can be changed by agreement in writing. Failure to pay on time could result in an Employment Tribunal claim.

In the event that an employer is insolvent and cannot make the required redundancy payments, an employee can apply to the Insolvency Service for some payments. More information is available here.

9. The appeals process

There needs to be an appeal process for any employee who may feel they have been unfairly selected. The time limit for an appeal should be clearly stated in any correspondence and the employee should be invited to appeal in writing.

- During the appeal consideration should be given to the business case for redundancy, the process that was followed, the reasons for deciding to make the particular employee redundant and the reasons given by the employee for appealing this decision.

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- The outcome of the appeal should address all the above points and give clear reasons for the decision, which may be to uphold the decision to dismiss or to overturn the decision and re-instate the employee.

FAQ's

What does suitable alternative employment mean?

Whether alternative employment is deemed to be suitable will depend on how similar it is to the current role of the employee. For example, are the day-to-day tasks similar, is the pay and conditions the same or similar, are the hours the same and the level of seniority?

If such a role exists it must be offered to an employee who is currently performing a similar role. If they do not accept it, they will not be able to claim redundancy pay.

This can be a complex area and further guidance can be sought from the helpline.

Does an employer have to offer other roles to redundant employees?

It is part of a fair process to discuss what other roles may be available to an employee facing redundancy. However, an employer is not obliged to offer roles which do not fall within the definition of suitable alternative employment. If an employee does accept another role, they are entitled to a four week trial period. If the employee wishes to leave at the end of that (or any extended period) they will still be entitled to receive SRP provided they give notice within the four week trial period.

Do pregnant employees receive special treatment during the redundancy process?

Anyone being consulted for redundancy who is pregnant is entitled to be treated the same as any other employee. An employer must however take particular care to ensure that they are not unfairly selected for redundancy because of their pregnancy. That would be unlawful and may result in a claim for maternity discrimination.

A pregnant employee would still be entitled to receive full maternity pay if the redundancy takes effect after the 15th week before the baby is due.

Do employees on maternity leave receive special treatment during the redundancy process?

If an employee is at risk of being made redundant during their maternity leave, they must be offered any suitable alternative role (regulation 10 of the Maternity Leave Regulations 1999). This is because they may otherwise be disadvantaged in applying for and competing for roles. This also applies to anyone on adoption leave or shared parental leave.

Failure to offer a suitable alternative role in these circumstances could result in a claim for automatic unfair dismissal.

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