

# Redundancy – Suitable alternative employment



**Businesses that make redundancies have a duty to look for alternative employment for any potentially redundant employees. A dismissal is likely to be unfair if, at the time of the dismissal, the business did not consider whether any suitable alternative employment existed within its business.**

## Extent and duration of the search

A business is not obliged to create alternative employment for redundant employees where none exists. However, the business should make a thorough search for alternative employment (including with any associated employers) and keep records of that search. This will enable the business to show the steps it has taken if it has to produce evidence in defence of an unfair dismissal claim.

The business should continue to monitor whether any possible alternative employment is or becomes available until the date an employee's dismissal takes effect (i.e. during the notice period).

## Providing employees with sufficient information

In certain circumstances, selecting an employee for redundancy will be automatically unfair. For example, selecting an employee for a reason connected to pregnancy; because they refused to sign a working time opt-out agreement; or for reasons related to trade union membership or activities.

## Matching vacant roles with potentially redundant employees

If the business is dealing with more than one potentially redundant employee, ensure that all of them are made aware of any vacancies. When it comes to deciding which candidate should get the vacant role, the business does not need to take the same rigorous approach that is required in a redundancy exercise, where the selection of employees must be based on objective criteria. As long as the business acts fairly and reasonably, it can use a subjective view to appoint the candidate it considers to be the best for the role.

Any potentially redundant employees on maternity, adoption or shared parental leave should be offered suitable alternative vacancies first, as this is an automatic right.

Be aware of the risk of discrimination when considering whether there are any suitable vacancies and (if relevant) the process for deciding which potentially redundant employee should be offered each vacancy.

When the business has identified one or more possible alternative jobs, it will need to agree on the method for deciding which potentially redundant employees would be best suited for those roles.

The amount of administration and time required is likely to increase as the number of potentially redundant employees increases. This, and the fact that an offer must be made before the termination of an employee's existing employment, should be taken into account when the business is preparing any timetable for a redundancy exercise.

## Bringing vacancies to the attention of potentially redundant employees

A business will need to decide how to alert potentially redundant employees to the existence of possible alternative jobs. For example:

- for a small group of employees, the business may want to speak to them as a group or individually to advise them of the existence of any opportunities and what each involves; or
- for a larger number of potentially redundant employees, it may be more practical to draw their attention to established methods of communicating vacancies (for example, the business' intranet or notice boards).

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If the business uses internal methods of communication, ensure the information is provided separately to any affected employees without access to those methods of communication (for example, because they are on sick leave or maternity leave).

It may also be useful to write to each potentially redundant employee confirming the information the business has provided in any meetings and providing details of the vacant roles.

Discuss the possibility of all alternatives to redundancy with affected employees, including:

- possible alternative vacancies; and
- contractual changes (such as a move to part-time working).

In some cases, it will be appropriate to consider and discuss whether an affected employee should be given another employee's job with that employee being made redundant (this process is known as "bumping").

### Trial periods

If any of the terms and conditions of the new employment differ (wholly or in part) from the employee's existing terms, the alternative employment must be offered subject to a four week statutory trial. The purpose of this trial is for both employer and employee to assess the suitability of the alternative employment.

The trial period can only be extended for the purposes of retraining the employee in the alternative employment and any extension must be mutually agreed.

A successful trial period means there is no break in the employee's employment and no redundancy pay is due.

An unsuccessful trial period means the employee is dismissed by reason of redundancy, effective from the date their original contract ended (not the date trial period terminated).

### We're here to help...

This note gives a general overview of some key considerations in identifying suitable alternative employment and should be read in conjunction with our redundancy key facts hand-out. Care should be taken in undertaking redundancies as additional considerations can arise and the fairness and approach in each case will depend on the facts.

If you would like any further information about our specialist employment law and HR services, please contact a member of the team.

## KEY CONTACT



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Kevin is experienced in all aspects of employment law, both claimant and respondent, from drafting contracts and procedures, through to providing representation before tribunals in cases involving multiple claimants, and advising on dismissal and re-engagement procedures in relation to contract variations for 500 plus employees. He has worked across the public and private sectors, for high street practices, local authorities and RSLs. This diverse range of experience has given him a very good understanding of the different pressures and considerations that apply when providing advice to individuals, businesses and public bodies. Kevin is admired for his pragmatic approach to most problems, and for finding solutions which minimise both cost and risk to clients.

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