

# Redundancy



## When can a redundancy situation arise?

A redundancy situation can arise in one of the three following circumstances:

- A business closure; or
- A workplace closure; or
- A reduction in workforce/less employees required to perform work of a particular kind.

## Redundancy and unfair dismissal

Redundancy is one of the five potentially fair reasons for dismissal. However, a redundancy dismissal is likely to be unfair unless the business:

- identifies an appropriate pool of employees for selection for redundancy;
- consults with the individuals in the redundancy selection pool;
- fairly applies objective selection criteria to the employees in the redundancy selection pool; and
- considers suitable alternative employment where appropriate (subject to a trial period if necessary).

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.

## Alternatives to redundancy

The business should give consideration to whether it can avoid making compulsory redundancies or reduce the number of compulsory redundancies. For example, by:

- suspending or restricting recruitment;
- reducing or removing overtime opportunities;
- not renewing contractors' contracts; or
- ceasing or reducing the use of agency workers.

If these steps are not possible or insufficient, the business could also consider:

- inviting potentially redundant employees to apply for suitable alternative vacancies;
- inviting employees to volunteer for redundancy; or
- temporarily laying off employees or reducing their hours (NB. A statutory regime applies here).

## Suitable alternative employment and trial periods

A redundancy dismissal may be procedurally unfair if the business fails to make a reasonable search for suitable alternative employment.

There is no obligation for a business to create alternative employment where none already exists, but it must carry out a thorough search for alternative employment (including with any associated employers). The search must continue throughout the notice period until the date the dismissal takes effect and it is good practice to document the search.

If any of the terms and conditions of the alternative 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. A successful trial means the employment will continue and there has been no dismissal (and no redundancy payment is due). An unsuccessful trial means the employee is dismissed by reason of redundancy, as at the date their original contract ended, and they are entitled to their redundancy pay.

## Redundancy payments

Employees with at least two years' continuous employment with the business at the point they are made redundant will be entitled to a statutory redundancy payment, calculated by reference to the employee's age, length of service and gross weekly pay (subject to a statutory cap).

Some employees may also be entitled to an enhanced

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contractual redundancy payment, if their contract of employment or other documents provide for it.

## Collective redundancies

If a business is proposing to make 20 or more employees at one establishment redundant over a period of 90 days or less, the business must:

- inform and consult appropriate employee representatives; and
- notify the Department for Business, Innovation and Skills (BIS).

An Employment Tribunal can award up to 90 days' gross pay for each employee if the business has not consulted adequately and in accordance with the minimum time periods set down in legislation. It is important to note that for this purpose, there is no statutory cap on a day's pay.

Consultation should begin when the dismissals are 'proposed'. The business can also be fined for failing to notify BIS, which is a criminal offence.

The business should also ensure that it follows a fair procedure during the redundancy process (including consulting with employees properly) to minimise the possibility of claims for unfair dismissal.

## We're here to help...

This note gives a general overview of some key considerations. Care should be taken in undertaking redundancies as additional considerations can arise, for example where a union is recognised by the employer or there is a risk of discrimination in relation to the selection criteria.

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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