Redundancy: Employee's Rights

A redundancy situation occurs when a business needs to reduce its workforce, and as such certain roles are no longer required. Redundancy is different from being fired, and it comes with its own set of rights for the employee and obligations upon the employer.

The Coronavirus pandemic has made a significant impact on businesses, with some having to close down completely due to the lockdown restrictions imposed by the Government. As a result, some employers will have suffered a drop in profits, and may be looking to make staff redundant, in an effort to cut costs and stay afloat.

In light of this, it is important that both employers and employees are aware that employees have a number of rights in a redundancy situation. Employees should note that employers are obligated to follow a fair procedure when deciding to make employees redundant. Failure to recognise these rights and to follow the correct procedure could lead to unfair dismissal claims from former employees, which could be very costly for employers depending on how many staff are being made redundant.

The key rights of an employee in a redundancy situation are as follows:

Not to be unfairly dismissed

Employees have the right not to be unfairly dismissed.

For employers to ensure that they are dismissing employees in a way that is fair, they must ensure they do two things:

- follow a fair procedure (adhering to the ACAS Code of Practice) and act reasonably in effecting the dismissal; and
- offer the employee suitable alternative employment where possible.

Employers and employees alike should note that this right extends only to employees who have two years' service or more.

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Not to be selected for redundancy solely on certain grounds

If an employee is selected for redundancy based solely on a certain characteristic or circumstances, then it will be automatically deemed unfair.

Selecting employees solely due to the following will be deemed unfair:

- Age or gender
- Pregnancy
- Whether the employee is a whistleblower
- Whether the employee is a member of a trade union
- If the employee has requested holiday or maternity leave

Employers may decide to make someone redundant based on their length of service or disciplinary records.

Where an employer proposes to make 20 or more redundancies, the right to be collectively consulted

Where an employer plans to make 20 or more employees redundant within a 90-day period, the employer must ensure that they consult with the relevant representatives (i.e. trade unions).

The employer must also notify the Department for Business, Energy and Industrial Strategy (BEIS) of the proposed redundancies.

Time off to look for work or arrange training

All employees with a minimum of two years' service have the right to time off from their current job either to look for new employment or to arrange training for future employment.

The request for time off must be reasonable, and the employee may make a complaint to an Employment Tribunal if the employer unreasonably denies the request.

The right to contractual notice

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An employee in a redundancy situation has the right to be given adequate notice before their dismissal. The amount of notice required will be dictated either by the employment contract or by the statutory minimum amount of notice.

In accordance with s.86 of the Employment Rights Act 1996, the statutory minimum notice periods depend on the length of service, and are as follows:

- one week for an employee who has served less than two years;
- one week for each continuous year of service, for employees who have served between two and twelve years; and
- twelve weeks for employees who have served twelve years or more

If the employment contract provides for it, the employer may offer the employee pay in lieu of notice. This means that the employee would receive a lump sum equivalent to the pay they would have received over the relevant notice period.

If the employee is on furlough leave, the notice pay must be calculated using the employees' normal pay, and not reduced furlough pay.

Right to a redundancy payment

This right extends only to staff who have been employed for a minimum of two years.

The amount payable to the employee is calculated according to their age, length of service and salary.

When calculating the statutory redundancy payment for employees on furlough, employers should note that the employee's full salary should be used, not the reduced furlough weekly pay.

An employee may also be entitled to receive enhanced redundancy pay if their contract of employment specifically provides for this.

If an employer refuses to pay any sums due resulting from the redundancy or is unable to do so due to insolvency, the employee may apply to the National Insurance Fund for unpaid payments.

Employers who are currently considering making redundancies should be careful to follow a fair procedure, and ensure that the above rights are recognised during the process.

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For further information about redundancy or any other employment related matters, please contact our employment solicitors. Get in touch by emailing online.enquiries@la-law.com or if your query is urgent, please call 01202 786135.

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