

ESSENTIAL GUIDE TO REDUNDANCY

Definition

Redundancy is when you dismiss an employee because you no longer need anyone to do that job. This might be because the business is:

- changing what it does; this may be in response to changing market conditions
- doing things in a different way, eg using new machinery
- changing location or closing down

For a redundancy to be genuine, you must demonstrate that the employee's job will no longer exist.

Redundancies can be compulsory or non-compulsory (Voluntary).

Redundancy consultation

Less than 20 redundancies planned: there are no set rules to follow, but it's good practice to fully consult employees and their representatives. An employment tribunal could decide that you've dismissed your staff unfairly if you don't.

More than 20 redundancies planned: The right to be collectively consulted applies when an employer proposes to make 20 or more employees redundant at one establishment over a period of 90 days or less. Employers need to take advice over the criteria for defining an establishment (recent case law - Woolworths etc).

Individual Consultation: in all cases, employers should also consult individual employees, as a Tribunal may find it unfair if employers only consult unions and not individuals.

Employers are required to consult with the 'appropriate representatives' of any of the employees who may be affected (directly or indirectly) by the proposed dismissals or by any measures taken in connection with those dismissals. Consultation is made with a view to reaching agreement on issues such as:

- ways of avoiding dismissals
- reducing the number of employee to be dismissed
- factors which mitigate the need for redundancies , for example, reducing overtime, shorter working week, recruitment restrictions, reduction of agency workers
- selection criteria

Consultation doesn't have to end in agreement, but it must be carried out with a view to reaching it.

This duty applies even when the employees to be made redundant are volunteers. Failure to comply with the consultation requirements could lead to a claim for compensation, known as a protective award.

Consultation should begin in good time and must begin:

- at least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less
- at least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

At the start of the process, employers must provide the following clear information about the proposed redundancies?

- reasons for the proposed redundancies
- numbers and descriptions of employees affected
- proposed method of selecting the employees who may be dismissed
- proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which the dismissals are to take effect
- how redundancy payments, other than the legal minimum, will be calculated.

Focus on the future: it's important to remember that redundancy is meant to help you get your business back on track. You'll need to plan how the business will operate when redundant staff leave and communicate your vision for the future of the business to the staff who will be staying.

Official Notification (More than 20 redundancies)

Companies must notify the Redundancy Payments Service (RPS) by filling in form HR1. Instructions on where to send it are on the form. The deadline for notifying RPS depends on the number of proposed redundancies.

Number of proposed redundancies When notification to RPS must be given

20 to 99	30 days before the first redundancy
100 or more	45 days before the first redundancy

You can be fined up to £5,000 if you don't notify RPS.

Selection criteria

The criteria must be consistently applied and be objective, fair and consistent. Basing any selection on skills or qualification will help to keep a balanced workforce appropriate to the organisation's future needs. Examples of criteria are:

- skills or experience.
- standard of work performance.
- aptitude for work.
- attendance record disciplinary record

You can select employees based on their length of service ('last in, first out') but only if you can justify it. It could be indirect discrimination if it affects one group of people more than another. Don't rely on length of service as your only selection criteria - this is likely to be age discrimination.

The following factors are regarded as unfair selection criteria and you must not select an employee for redundancy based on any of them:

- pregnancy, including all reasons relating to maternity
- family, including parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants
- acting as an employee representative
- acting as a trade union representative
- joining or not joining a trade union
- being a part-time or fixed-term employee
- age, disability, gender reassignment, marriage and civil partnership, religion or belief, sex and sexual orientation
- pay and working hours, including the Working Time Regulations, annual leave and the National Minimum Wage

Selection Pools

Employers should consider the groups or pools of individuals who undertake similar work or duties as a selection pool. Consider the actual duties carried out by the employees, as in some cases a range of selection pools may be available. Employers must be able to show they acted reasonably in choosing the appropriate pool. They should consider whether other groups of employees perform similar work, who should also be included in the pool for redundancy. An employee's inclusion should be consistent with the work they do.

Individual Consultation

Individual consultation should follow the same format as the advice above for Collective consultations. It is best practice to include a minimum of 2 meetings to ensure the employee has sufficient time to offer alternative ideas and mitigations and for the employer to consider these.

There is no statutory requirement to allow an employee to be accompanied but it is often regarded as good practice to do so. It can help to increase staff confidence in your handling of the process.

You may share the outcome of the individual's selection criteria but it is not usual to share other people's scores. However, where there is concern over the scoring, it may be appropriate to anonymise your employees' scores and subsequently share them - but only if it's absolutely necessary and can be made genuinely anonymous.

Appeals

Employers should also establish an appeals procedure as part of the process.

Redundancy payments

If you have no contractually-enhanced redundancy pay arrangements, all your employees with at least two years' continuous employment get a statutory redundancy pay entitlement of:

- 0.5 week's pay for each full year of service while they were under 22
- 1 week's pay for each full year of service while they were 22 or older, but under 41
- 1.5 week's pay for each full year of service while they were 41 or older.

Employees can only count a maximum of 20 years' service and the 'weekly pay' is subject to an upper limit, currently £475 a week.

If you have cash-flow problems so serious that making the redundancy payment would put the future of your business at serious risk, the RPS can arrange to pay the employee direct from the National Insurance Fund. If you are insolvent, the RPS makes the payment and the debt is recovered from the assets of your business.

Redundancy notice

Employees who are selected for redundancy must be given a notice period before their employment ends. The statutory notice periods are:

- at least one week's notice if the employee has been employed between one month and two years
- one weeks notice for each year of employment between two years and 12 years
- 12 weeks notice for someone who has been employed for 12 or more years.

Pay in lieu of notice

If you have included a payment in lieu of notice clause in the employment contract, you can end your staff's employment with no notice. This lets you make a payment to cover the notice period they would have worked. These payments must have tax and National Insurance deducted.

When you make payments in lieu of notice, you still have to pay staff the basic pay they would have got during the notice period, including any pension, private health care insurance or other contributions.

A redundant employee also has the right to a written statement setting out the amount of redundancy payment and how you worked it out.

Tax

Employees who've been made redundant only pay tax on payments over £30,000. They don't pay any National Insurance.

Help

If you have to make redundancies, Jobcentre Plus can give you and your employees support and advice through its Rapid Response Service. Support could include:

- helping people facing redundancy to write CVs and find jobs
- providing general information about benefits
- helping people to find the right training and learn new skills
- helping with costs like travel to work expenses

Jobcentre Plus may also provide on-site support for large scale redundancies.