

REDUNDANCY

Sometimes a business is not doing well or has to reorganise to meet the needs of its customers or clients. Other times, due to mergers and acquisitions, it is necessary to change the profile of the workforce to meet new commercial challenges. In each of these cases, the role you were employed to do could become redundant.

Relationship between redundancy and dismissal

For a dismissal to be fair it must be for a lawful reason, one of which is redundancy. Redundancy can arise in two situations.

The first is when an employer has stopped carrying on the business for the purposes of which the employees were employed, or have stopped carrying on that business in the place where they were employed. The second is where the requirements of the employer's business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they were employed, has stopped or diminished or is expected to stop or diminish.

When a business stops trading, it is common that some of the workforce will be made redundant but redundancy can also occur when there is outsourcing, mergers or other restructuring/reorganisation of a business.

If you have been employed for two years your employer is obliged to follow a fair procedure as briefly outlined below.

Ensuring dismissal by redundancy is fair

Redundancies are subject to a range of requirements and failure to observe them could give rise to claims for unfair dismissal. The redundancy process should generally include:

- identifying a reasonable 'pool for selection' i.e. the group of employees from which the employees selected for redundancy will be chosen.
- adopting objective selection criteria and applying them fairly to the employees within this pool.
- warning and consulting employees about the potential redundancy situation.
- seeking a view from the union (if there is one).
- informing and consulting employee representatives in cases of collective redundancy.
- considering alternative employment for those employees whose roles are redundant.
- giving reasonable paid time off to look for work and training for future employment.
- calculation of redundancy pay.

In addition, if your employer is making individual employees redundant they must follow a fair and reasonable procedure. The following are key parts of an appropriate redundancy process:

Consider the whole pool of employees

The whole pool of employees who are at risk of redundancy should be considered. Your employer should carefully consider the role that is targeted, rather than the person in that role, and work out which employees should be in the pool and are therefore at risk of redundancy.

Consideration should be given to all those whose roles overlap or are interchangeable – i.e. assess the team unless the role affected is ‘standalone’. For example, if the need for widgets has disappeared, it will be wrong to include in the pool those making sausages, although it may be right to include administrators who work with both widget and sausage makers. *Note: there are only very rare occasions where a role is entirely standalone. There is nearly always overlap and interdependence of roles.*

Consultation

There must be consultation with all those affected by redundancy dismissals. Although it is essential to consult with those who are likely to be dismissed, consultation must also include those who may not be dismissed but who may be affected by the dismissals. Generally it will be a good idea for your employer to include all relevant staff in the consultation, even if some of the employees are not eligible for redundancy pay.

If your employer is proposing to dismiss 100 or more employees for redundancy from one establishment within 90 days or less, consultation must begin at least 45 days (previously 90 days) before the first dismissal takes place.

If your employer is proposing to dismiss between 20 and 99 employees for redundancy at one establishment within 90 days or less, consultation must begin at least 30 days before the first dismissal takes place.

If there are less than 20 employees being made redundant, as will frequently be the case with small employers, the process adopted needs to be reasonable. There is no statutory guidance for what is defined as ‘reasonable’ but it would be what may be reasonable taking account of all the circumstances such as the size of the business and the reason for the redundancies. Acas has a guide for redundancies in a small business which you may like to see [here](#).

Consultation must be an open and clear dialogue between you and your employer so you can properly be heard and the employer takes fully into consideration the issues, ideas and suggestions of all employees. The purpose of the consultation is to seek to avoid redundancies or mitigate the impact of them.

Alternative sources of employment

Alternative employment must be actively considered by both parties during the course of consultation. Your employer should not assume that faced with the prospect of redundancy you may not be prepared to take a different job at a reduced salary. It’s usually safest to make all employees who are at risk aware of all vacancies.

If an alternative role falls within the definition of ‘suitable alternative employment’ it must be offered to you. If there are more candidates than roles available, there should be criteria used for selection of those most suitable. Whether a role is defined as ‘suitable alternative employment’ depends on:

- how similar the work is to your current job
- the terms of the job being offered
- the skills, abilities and circumstances in relation to the job
- the pay (including benefits), status, hours and location

Refusing an offer

You will lose your right to statutory redundancy pay if you unreasonably turn down suitable alternative employment. You can make a claim to an employment tribunal where you do not believe the alternative role is within the definition of ‘suitable alternative employment’ or indeed there is a ‘suitable alternative role’ which is not offered when you are the only candidate.

Trial periods

You have the right to a four-week trial period for any other employment offered i.e. any other employment which is different to your current employment and does not qualify as suitable alternative employment as defined above.

The four-week period could be extended if training is needed. Any extension must be agreed in writing before the trial period starts.

However, if the alternative employment isn’t suitable, you should notify your employer within the four-week period. This won’t affect your employment rights,

including the right to statutory redundancy pay. Failure to notify your employer will mean your right to statutory redundancy pay is lost.

Objective criteria

In seeking to select people for redundancy dismissal, employers must establish objective criteria upon the basis of which selection will be made. It is essential that the criteria be objective in order to ensure all employees are on a level playing field and individual and subjective views of employees and their capabilities are removed from the process. The criteria should be included in the consultation and may be changed as a result of consultation with the employees.

The criteria must then be applied reasonably and objectively, preferably by persons who are distanced from those affected, in order to ensure that personalities and subjective opinions do not influence the decision. If all these principles are objectively, reasonably and robustly applied, the results are likely to be fair.

Where these principles for selection have been applied and redundancy follows it is essential to ensure the actual dismissals follow a fair procedure and you are notified of the outcome within a reasonable time.

Does the redundancy process apply to an employee on maternity leave?

An employee on maternity leave is entitled to be consulted as part of a redundancy process in the same way as employees who are not on maternity leave. They should be involved to the same extent as

employees in the workplace.

Those on maternity leave are treated preferentially where the role falls within the definition of 'suitable alternative employment' (see above). If you are on maternity leave and you are subject to consultation for redundancy, and there is a suitable alternative role available, you should be given that role in preference to any other colleague who may also qualify.

Generally, you are not required to apply for that role or to attend an interview for it.

Redundancy pay

Employees with two years' continuous service are entitled to a statutory redundancy payment compensation for long service, in addition to notice pay (which may be worked) and accrued holiday pay. The amount of this payment will depend on the age of the employee, the length of their continuous service and the statutory weekly wage amount. The maximum for a week's pay is £643 from 6 April 2023.

The maximum total amount of statutory redundancy pay is £19,290. Where the dismissal falls before this date, the old rates will apply. You may also be entitled to enhanced redundancy payments under your employment contract or the organisation's policies and procedures. See [here](#) for an online redundancy payment calculator to check your entitlement.

In the event your employer is insolvent it may be possible to apply for redundancy payment from a government insolvency service. See [here](#) for further details.

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