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Navigating redundancies



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As of December 2020, approximately 10 million UK employees were furloughed, across 1.2 million different employers. Even as the UK economy ramps up in 2021, it is highly likely that many organisations will find it necessary to restructure or reorganise their operations. This guide is designed to be a useful aide memoire for managers, albeit it is not a substitute for employers taking legal advice on any specific issues. LAW clients should contact their legal or HR advisor to take appropriate advice upon their own particular circumstances.

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Redundancies

Did you know...

You can make a pregnant employee/ employee who is on Maternity leave redundant. However, they do have extra protection and you need to be mindful of potential discrimination risks, therefore you'd be wise to get advice in such circumstances.



A dismissal on the grounds of redundancy is a potentially fair reason for dismissal. However, the dismissal itself (and the procedures leading up to it) must be fair and reasonable in all the circumstances.

What is redundancy?

A redundancy is where there is no longer a requirement for work of a particular kind. It is not to be confused with performance issues since it is the role that is redundant, not the employee.

Redundancy is normally due to:

- The actual or intended closure of a business;
- The actual or intended closure of a business at a particular workplace;
- A reduction in the need for employees to carry out work of a particular kind.

The Procedure

An employer must be able to demonstrate that the procedure has been fair and reasonable in the circumstances.

The circumstances will obviously vary in each case but in all cases, it is essential to ensure that:

- Employees have been given as much advanced warning as is practicable;
- The employees concerned have been consulted individually;
- The selection for redundancy has been made against a set of fair and objective criteria;
- Alternative employment has been offered if possible.

Selection

Where there is more than one employee carrying out work of a particular kind that has either diminished or reduced, it's essential to demonstrate that employees have been selected for redundancy on a fair basis. For example, there may be 5 employees carrying out admin work but only a requirement for 3 moving forward. All 5 will need to be placed in a 'selection' pool and selection criteria used to decide which 3 will be placed at risk of redundancy.

If there is no record of fair selection, this will lead to a risk of an unfair dismissal claim.

This means keeping a good paper record showing the criteria used for selecting an employee. A point scoring method is commonly used. Criteria may include performance, capability, conduct, attendance (excluding pregnancy, parental, paternity and, in some circumstances, disability related absences) skills and timekeeping.

The information must be capable of independent verification e.g. attendance records, disciplinary records, appraisal records etc. Criteria based on opinion are unlikely to be considered as fair and objective.

The criteria must not be discriminatory. For example, performance indicators must take into account part-time employees who may not produce the same volume of work as full-timers.

The selection criteria should be shared with all employees who are at risk of redundancy, preferably at the first consultation meeting.

Consultation

Regardless of the number of redundancies to be made, each employee at risk of redundancy must be consulted individually. At the consultation meetings the reasons for the redundancy should be discussed, possibilities for alternative work should be considered, and suggestions on how to avoid the redundancies completely must be explored. Each individual must be made aware of why they have been selected for redundancy.

An example consultation schedule:

- Place the employee 'at risk' of redundancy. This means meeting with the employee to inform them that the position is at risk of redundancy;
- The employee should be made aware that no final decision has been made and they will be consulted with at the earliest opportunity to seek views and ideas. Explain the reason for the redundancy situation. Confirm that they can make suggestions on alternatives to redundancy;
- Write to the employee confirming they are at risk and inviting them to the first consultation meeting;
- At the next meeting (the first consultation meeting), the employee needs to be given the opportunity to ask any questions and make suggestions about how the role could be preserved. Any alternative vacancy should also be discussed;
- At the next meeting (the second consultation meeting), give feedback on any suggestions proposed and answer any questions that the employee has about any alternative role.

Did you know...

Where it is proposed that 20 or more employees be made redundant within 90 days or less, there is a statutory obligation to consult with representatives of the employees and notify the Department for Business, Energy and Industrial Strategy. This is known as collective consultation.

Certain minimum time periods apply depending on the scale of the redundancies proposed. Where 100 or more redundancies are proposed, consultation must begin at least 45 days before the first dismissal takes effect. For less than 100 redundancies, the consultation period is 30 days.



Note that the number of consultation meetings is not fixed. It may be necessary to have more if there are questions from the employee or ongoing discussions about alternatives to redundancy.

Alternatives

It is important to consider all potential alternatives to redundancy. It may be possible to reduce or avoid redundancies by reducing overtime, altering shift patterns, instigating short-time working or layoffs, offering alternative employment, or inviting volunteers. It is very common for these options to be discussed during the consultation stage. Any of these options can be agreed upon right up until notice of dismissal expires so it's crucial not to rule them out too early.

Alternative Employment

A Tribunal will consider whether there were any vacancies within the business or an associated business during the entire process. This includes during the notice period. If there are vacancies, the employee should be made aware of, and how to apply for them. It is important not to rule out vacancies for which the employee may require some training, or those that are very different in terms of status, pay or tasks from their existing role.

If an employee unreasonably refuses an offer of suitable alternative employment they will lose their entitlement to statutory redundancy pay. However, the offer must be suitable and the employee's refusal unreasonable for this to apply.

Note that an employee on maternity leave must be offered suitable alternative employment in preference to other employees where there are a limited number of vacancies available.

In the event that an employee is redundant from their existing role but opts to accept an alternative role within the business, they have the right to a 4-week trial period in their new role. During the trial period, the employee can decide against continuing with the role, and can request a redundancy payment instead.

The Dismissal

If consultation has been completed and there are no outstanding points, the next stage is to carry out the dismissal.

Invite the employee to a meeting at least 24 hours beforehand. Ensure that the invite letter advises the employee of the right to be accompanied by a work colleague or trade union representative, warns that the potential outcome of the meeting is termination of their employment, and provide any relevant paperwork (this can include redundancy payment and notice details).



During the meeting the reasons for the redundancy situation, the selection criteria, and consultation discussions should be summarized. The employee can use this opportunity to ask questions about any of these issues, as well as their notice period and redundancy.

Payment Entitlement

The employee will be entitled to notice as per the contract (this must be a minimum of 1 week for each completed year of service at normal weekly earnings). The employee will also be entitled to holiday pay accrued up to the end of the notice period. If the employee is required to work the notice period, they will be entitled to reasonable time off with pay to attend for interviews or to help secure another position. If the employee has more than 2 years' service they are entitled to a statutory redundancy payment.

The employee should be advised of the right to appeal the decision and they should be sent a letter confirming the details of the dismissal and right of appeal.

At all the meetings, full minutes must be taken for records – a third person should normally be present to do this. The time and dates arranged should be confirmed in writing.

Redundancy Pay

An employee is entitled to a statutory redundancy payment if they have been employed continuously for 2 years.

A statutory redundancy payment is calculated with reference to age, length of service, and the statutory weekly maximum.

It is based on a sliding scale dependant on each completed year of service and age:

- Up to the age of 21, an employee will receive half a week's pay per year of service;
- From the age of 22 up to 40, they will receive one week's pay per year of service;
- From the age of 41 and over, an employee will receive one and a half week's pay for each year of service.

The statutory limit for weekly pay is capped by the Government and normally increases each year on 5th April.



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