



## **COLLECTIVE REDUNDANCIES IN GREAT BRITAIN**

### **1. What is a genuine redundancy situation?**

Redundancy is one of the five potentially fair reasons for dismissal in the UK, but only if a genuine redundancy situation exists. This will be the case in either of the following situations:

- the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him, or to carry on that business in the place where the employee was employed; or
- the requirements of the business for employees to carry out work of a particular kind, generally or in the place where the employee was employed, have ceased or diminished or are expected to cease or diminish.

The above situations may include the closure of a department or office, an internal reorganisation or an efficiency review which results in downsizing the business or a need for a reduced output and therefore fewer employees due to economic circumstances.

Once a genuine redundancy situation has been identified, a strict procedure will need to be followed in order to identify the employee(s) who will be affected.

### **2. Procedure**

There are two main reasons why an employer needs to follow a full and fair procedure in making any redundancies. The first is to comply with the legal requirement to consult collectively in cases of 20 or more redundancies and the second is to avoid the redundancy dismissals being unfair. Where less than 20 redundancies are planned at one establishment, individual consultations will still need to be carried out. Please see our Guide on individual redundancies.

#### *Collective Consultation*

Where 20 or more redundancies are planned at one establishment within any 90 day period, the employer is required to consult with trade union or elected employee representatives for a minimum of 30 days. If there are 100 or more redundancies within any 90 day period, the minimum consultation period is 90 days. Where there are no elected employee representatives, then it is technically necessary for the employer to go through an election process before proceeding with the redundancy exercise.

#### *Election of employee representatives*

The employer must follow strict procedures in this respect to:

- Ensure that the election is fair;
- Determine the number of representatives to be elected, having regard to the numbers of employees affected and the classes of these employees;

- Decide whether the representatives can be appointed to speak for all staff, or merely particular classes of employees;
- Determine in advance the term of office of the representatives and ensure that this is long enough to allow them to complete the consultation process;
- Ensure that the candidates are drawn from the pool of affected employees;
- Ensure that no affected employee is unreasonably excluded from standing for election;
- Ensure that all affected employees are entitled to vote;
- Ensure that, as far as possible, voting is secret and that all votes are accurately counted.

If the employer fails to comply with the Regulations on consultation with trade unions or employee representatives, a complaint can be presented to the Employment Tribunal for “protective awards” and the Tribunal can award damages of up to 90 days’ pay per employee in this regard. Such claims can be brought by any of the affected employees, employee representatives and trade unions.

If the employer has given the affected employees a proper chance to elect representatives but they have failed to do so within a reasonable time, then the employer must disclose the necessary information directly to the affected employees.

The information which must be disclosed includes:

- The reason for the proposed redundancies;
- The number and descriptions of employees whom it is proposed to dismiss by way of redundancy;
- The total number of employees of any such description employed by the employer at the establishment in question;
- The proposed method of selecting the employees who may be dismissed;
- The proposed method of carrying out the dismissals with regard to any agreed procedure, including the period over which the dismissals are to take effect; and
- The proposed method of calculating the amount of any redundancy payments otherwise than in compliance with a statutory obligation.

Consultation should be undertaken with a view to reaching agreement with regards to ways of avoiding any or some dismissals, reducing the number of dismissals and mitigating the consequences of the dismissals, for example by allowing reasonable time off to find another job and outplacement arrangements.

***(Note also the obligation to notify the Department for Business Innovation and skills (BIS) [www.bis.gov.uk](http://www.bis.gov.uk) on a designated form 30 days before the redundancies take effect, where there are 20 or more employees, and 90 days where there are 100 or more employees. Failure to do so can result in liability on summary conviction to a fine of up to £5,000).***

#### *Fair Dismissal*

Separately and additionally to the above collective consultation requirements (if they apply) is the employer’s obligation to consult with employees individually as part of a proper procedure, in order for a redundancy dismissal to be fair.

Circumstances and requirements differ, but a suggested rough guide to employers concerned to establish a fair procedure is as follows:-

- Identify the number of employees to be made redundant and the types of job/function which need to be reduced;
- Identify whether a set of customary arrangements exists in relation to selection criteria and if there is not one, establish a set of fair and objective criteria for the particular redundancies (if there are trade union or employee representatives, seek to agree this criteria with them);
- Identify the relevant “pool” from which the redundant employees/jobs need to be chosen. This must not be too restrictive and may, for example, include a whole department if the jobs are relatively easily transferable. There may be a situation where a line manager may be willing to take a significant pay and status cut in order to remain employed;
- Arrange a presentation to all the affected employees explaining that redundancies may be necessary, the reasons for that and the time scale and likely numbers involved. Any other information that you have at that stage should also be disclosed but remember that the point is that at this stage no firm decisions should have been taken;
- Invite volunteers for redundancy, to reduce compulsory redundancies as far as possible;
- Consider what, if any, alternative jobs are available within the department/company/wider organisation. It may be necessary to consider a change in location or duties, or even re-training;
- Convene individual consultation meetings with all affected employees who have been identified (i.e., all the employees in the relevant pools), to explain the situation in more detail and discuss:
  - (i) the selection criteria;
  - (ii) whether they would be interested in any alternative positions which may be available; and (if applicable)
  - (iii) any request for voluntary redundancy;
- Apply the selection criteria to all affected employees objectively and fairly – a favoured method by the Tribunals is to draw up a matrix listing the criteria in which individual and total scores can be entered for each employee. Each employee’s score can then be compared with the others to decide who should be made redundant and if there are only a limited number of alternative positions, who should be offered the alternative positions. Objective criteria are factors which are not based on somebody’s opinion. Examples include length of service, absence levels (although care should be taken here in relation to possible disability discrimination claims and also mitigating circumstances, such as a serious car accident or lengthy illness), skills and qualifications, disciplinary record and experience. Performance can also be a relevant factor but should be based on past appraisals or, if none exist, on the opinion of say three people senior to the individual rather than only one;
- Arrange further individual consultation meetings to discuss the selection criteria scores, further discuss any alternative employment and take into account any final issues raised by the employees;
- Assuming that the situation in relation to scoring and alternative employment has not been altered by the employees’ view or objections, make the final decision as

- to who is redundant and who is to be offered alternative employment according to the criteria and circumstances; and
- Finally, inform the affected employees of their redundancy, their entitlement to notice and statutory (if they have 2 years' service or more) or contractual redundancy payments and offer them the right of appeal against the redundancy decision and/or their selection criteria score.

### **3. Compensation**

As well as a potential protective award for breach of the collective consultation obligations, failure to follow a fair and reasonable redundancy procedure (or dismissal on the basis of redundancy when there is not a genuine redundancy situation) may result in an unfair dismissal claim for employees with 1 (or more) year's service. The potential award for such claim consists of two parts:

- The first, a basic award, is calculated in the same way as a statutory redundancy payment i.e. 1 week's salary (up to a maximum of £400) x number of complete years' service under the age of 41 plus 1.5 x 1 week's salary x number of complete years' service at the age of 41 and over, up to a potential maximum of £12,000 (maximum 20 years' of service). If the Tribunal decides that this was a genuine redundancy situation and the statutory redundancy payment has already been made, the basic award will not be awarded.
- The more significant part of the award is the compensatory payment which chiefly comprises actual and potential future loss of earnings (including benefits) and is up to a maximum of £68,400.

*It is always advisable to seek specific employment law advice as early as possible when a redundancy situation has arisen (preferably before any firm decisions have been made, or at least implemented, as this will generally in itself trigger the procedure). Should you need advice, we can guide you through the process from start to finish with as much or as little assistance as you need and can also provide drafts of any necessary documentation and letters to employees.*

***For further information and advice please contact:***

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