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Guide to Redundancy

A guide by Burton & Dyson



Introduction

When a business has to make people redundant, it is never a decision that is taken lightly and is a process that is likely to cause anxiety and stress to both employees and employers.

A legal framework exists to help make the process as fair and open as possible, to protect the rights of employees and to ensure they receive the severance payments to which they are entitled.

It is essential that employers and managers understand the law relating to redundancies or they may run the risk of future claims for unfair dismissal, resulting in potentially costly compensation payments.

This overview of redundancy issues sets out some of the key points involved but if you are affected by redundancy, we strongly recommend seeking more detailed guidance that takes into account the unique individual circumstances involved.

What is redundancy?

In declaring redundancies, an employer must demonstrate that one or more of the following circumstances exist:

- closure of the business
- closure of a site at which employees work
- no longer a requirement for work of a particular kind

Employer obligations

Once the employer has demonstrated that there is a genuine need for redundancies, they must comply with a number of other obligations.

These include making a fair and objective choice of employees for redundancy. You may use the traditional “last in, first out” system (which can fall foul of age and sex-discrimination rules) or a points-based system taking into account factors such as skills, qualification and aptitude; work performance; and attendance/disciplinary record. Whatever system you use, you should notify the employees involved.

If less than 20 employees are being made redundant, you must consult with those employees or the dismissals may be potentially unfair.

If 20 or more employees are being redundant in one place of work within a 90-day period, you must consult with workplace representatives.

These may be trade union representatives or, where no union is recognised, elected employee representatives. If there are no elected representatives, you must give the relevant information directly to each individual.

Consultation must start at least 30 days before the first redundancy where there are 20 to 99 proposed redundancies, and 90 days in advance where there are 100 or more proposed redundancies.



Employee rights

If you are intending to make an employee redundant, you must also consider whether there are other jobs they could do.

If such a job is available, you should offer it to the employee instead of making them redundant. If they do not wish to take the job, they may lose their right to redundancy pay.

If you have no alternative but to make an employee redundant, you must:

- send them a written statement, telling them why you are considering making them redundant
- hold a meeting with them to discuss the matter
- hold an appeal meeting with them, if they want to appeal against the decision to make them redundant

If you fail to follow these procedures, any dismissal will be automatically unfair. The same procedures apply to voluntary redundancies as to compulsory redundancies.

Notice periods

Different employers offer different terms, but as a minimum, employees are legally entitled to notice calculated on how many years they have worked for their employer.

If they have less than two years' service, they are entitled to a week's notice. If they have been employed for at least two years, they are entitled to a week per full year of employment, up to a maximum of 12 years.

Redundancy payments

Staff being made redundant will also be entitled to statutory redundancy pay, provided they have two years' service with the business.

Although your business may have more generous redundancy arrangements in place, there are statutory redundancy payment arrangements in place. The levels of payment differ according to age:

- employees aged between 18 and 21 will receive half a week's pay for each year of service
- employees up to and including the age of 41 receive a week's pay for each year of service
- employees aged 42 and over receive 1.5 weeks' pay for each year of service, up to a maximum of 20 years

The payment itself is capped at £350 (the figure changes each February in line with the Retail Prices Index) so, for example, an employee aged 35 with five years' service will receive £1,750. Redundancy payments of up to £30,000 are free of income tax and national insurance.

Redundancy payments should be made when the employee is dismissed or very soon after. If your company is insolvent, employees can apply for a direct payment from the Redundancy Payments Office.

If you and your employee disagree about lump sum payments, the employee can go to an employment tribunal to determine the outcome. If you cannot or will not pay a sum awarded at the tribunal, you can apply to the Redundancy Payments Office.

Once an employee has been given notice of redundancy, they have the right to paid time off to look for a new job, provided that, by the time their notice period ends, they have worked for you for at least two years.



Restructuring

Restructuring a business may form part of a redundancy programme or it may take place to help it to run more efficiently and cost-effectively.

Research shows that involving employees in the process makes reorganisations more likely to succeed so consulting with staff – even asking for suggestions in designing the reorganisation – is a wise move.

You may also need to take account of the Information and Consultation of Employees (ICE) Regulations, which can apply to businesses with 50 or more employees.

Under these regulations, and where you already have an information and consultation agreement in place, employees can request a change to the way you inform or consult them about major issues affecting the organisation.

If no agreement currently exists, employees can request that one is drawn up, subject to certain conditions.

Changes to terms and conditions of employment

As a result of restructuring, you may wish to change the terms and conditions contained in your employment contract with your employees.

However, you cannot do so without the agreement of your employees and changes should ideally be made by reaching a negotiated agreement, either with individual employees or through a collective agreement, with a trade union or staff association.

Collective agreements to employment contracts will also apply to employees who do not belong to the trade union or staff association.

In a restructuring, issues relevant to the terms and conditions could include:

- rates of pay
- working time (for example, longer or shorter hours, different days)
- employee duties and responsibilities
- location of place of work

If the restructuring changes employees' roles significantly, providing a new job description will set out for you and your staff what they will be expected to do, how they are expected to do it and who they should report to.

Mergers or acquisitions

Restructuring that involves a merger or acquisition can be particularly challenging. These transactions are often designed to increase business efficiency and reduce overheads, so they often involve redundancy or other staff changes.

Seeking expert legal advice on employee issues such as changes in employment contracts, pension provision and your obligations to employee rights is essential to ensure that you act in a legally compliant way.

In acquisitions, employers have particular information and consultation responsibilities and responsibilities to employee rights following the transaction. In most cases, where you are acquiring another business, you will not be able to change the transferred employees' terms and conditions to match those of your existing employees.



Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), you must inform and consult with representatives of affected employees – those employees who transfer to the new employer – about the sale.

If you have an information and consultation (I&C) agreement in place, you must inform and consult employees or their representatives on issues including changes to the workforce. This means that you may have to inform and consult when planning to buy or sell all or part of a business.

You do not have to inform and consult at the same time under both TUPE and your I&C agreement. You can choose to “opt out” of the agreement and consult under TUPE only. You can find more information in our separate guide to TUPE.

However you proceed with either redundancies or restructuring, being able to turn to a legal adviser experienced in these matters will provide real peace of mind that you are acting fairly and in a legally compliant way.

To find out more about how we can help you, please contact us:

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