

HOW TO GUIDE

Redundancy



April 2018

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1. Legal Background

Redundancy is a potentially fair reason for dismissal.

According to section 139 of The Employment Rights Act 1996 an employee is dismissed by reason of redundancy if;

- the employer has ceased to carry on the business for the purpose of which the employee was employed or
- the employer has ceased 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 have ceased or diminished

In other words, the Redundancy definition covers three main areas:

- Closure of the business as a whole
- Closure of a particular workplace
- A diminished need for employees to carry out work, meaning that there are employees who are surplus to requirements

Note that where a person's job is carved up and its different components are absorbed by other employees, this is classed as a redundancy situation.

Note also the potential importance of a geographical element in redundancy. Redundancy occurs where there is a change in requirements for employees in the place where the employee is employed. Organisations with multiple sites should consider redundancies at each site. There is no requirement to put employees with similar jobs but at different sites into one selection pool – see point 5 below for more on selection pools.

2. The Old Statutory Disciplinary and Dismissal Procedures

Note that the Statutory Disciplinary and Dismissal Procedures, which used to apply to redundancies, have now been abolished. The new ACAS Code of Practice that replaces them does not apply to redundancies.



3. Collective Redundancies

This How to Guide covers individual redundancies. Where there are to be 20 or more redundancies within a 90 day period at one location special rules apply. Failure to follow those rules may result in a protective award, which can be up to 90 days' gross pay per affected employee. For further information see our 'How to Guide – Collective Redundancy Consultation'.

4. Payments

Employees with more than two years' service are entitled to Statutory Redundancy payments. The maximum week's pay currently taken into account is £508.00 per week. The calculation includes an age related element, which continues to be lawful despite the passing of age discrimination legislation in October 2006. The calculation is as follows:

- Half a week's pay for each complete year of service between the ages of 18 and 22.
- One week's pay for each complete year of service between the ages of 22 and 41.
- One and a half's week pay for each complete year of service at the age of 41 or more.

Many employers also pay enhanced terms when carrying out redundancies. There are many different formulae for doing this. For example, employers might apply the statutory framework as set out above, but use actual pay rather than apply the statutory cap of £508.00.

Notice period must also be taken into account when effecting redundancies. The employer has the choice of either asking the employee to work out the notice, in which case the employee would be paid in the normal way and would then receive statutory redundancy at the end or the employer can pay in lieu of notice. Redundancy Payments are generally speaking tax free up to £30,000.

From 06 April 2018 the tax rules changed and all pay in lieu of notice will need to be subject to PAYE deductions, regardless of the terms of the employment contract.

5. Redundancy Process

Although redundancy is a fair reason for dismissal, the redundancy process has to be handled correctly otherwise unfair dismissals may result. There are three main areas that an employer needs to consider to ensure that the redundancy is fair. These are:

- Consultation
- Selection
- Consideration of alternatives



Consultation

There are no strict rules about how consultation is conducted. In most situations consultation will be done through meetings, but there is no strict legal requirement that consultation is conducted by meeting, and this can be done in writing or more commonly a combination of writing and meetings. The employer has to go into the consultation exercise with a genuinely open mind, listening to what the employee has to say, and taking into account the employee's representations and suggestions before making a final decision. **Letter 1** should be sent to the employee prior to the first consultation meeting.

Letter 1

"Dear [Name]

Please attend a meeting [location, date, time]. The purpose of this meeting is to conduct consultation with you about the possibility of redundancy. At this meeting we will discuss the reasons for the proposed redundancy, the process we will follow, the timescale and the payments that you would be entitled to receive in the event of redundancy. We will also listen to any comments or suggestions that you may have.

I fully appreciate that the recent announcement of redundancies is an unsettling and difficult time for everyone, but I would ask you to continue to work normally and to give support to your colleagues.

Yours sincerely,

A Manager"

Top Tip: Redundancy selection meetings can be difficult if the employee is determined to challenge his/her score, armed with, for example, complimentary emails from customers to prove how good they are. In this situation you need calmly to take account of what is said, give a commitment to consider the employee's submissions, and then give a response in writing (Letter 3). It is best not to get in to a live debate at the meeting as feelings will be running high and employees seldom agree with your assessment of their performance.

Selection

First you need to decide on the appropriate pool of employees. Employees whose jobs are "interchangeable" should go into the pool. Often this can be across more than one department and remember that pools are not limited to those doing identical jobs. The temptation can be to have a restricted pool, but failure to address the pool issue correctly can render all redundancies unfair. Generally speaking, the wider the pool, the safer ground you are on.

Fair and objective criteria then need to be applied to the pool. There was a time when last in first out (LIFO) was the standard criteria, but this is no longer the case as LIFO is age related and therefore likely to be age discrimination if it is the sole criterion used. Employers need to put together a skills matrix encompassing topics such as qualifications, standards of performance, knowledge of products/services, flexibility, disciplinary record, and attendance record. Employees are then scored, with the lowest scorer(s) being selected for redundancy.

Top Tip: Where possible have more than one person conducting the scoring which puts you in a position to resist an accusation of bias on the part of a single scorer.

After the scoring exercise, **Letter 2** below needs to be written to the selected employees. You should give the employee his/her breakdown of scores, and the total (but not necessarily a detailed breakdown) of other employees in the pool, on an anonymous basis.

Letter 2

"Dear [Name]

Please attend a meeting [date[at least a week away]/ time/locations]. You have the right to be accompanied by a fellow employee or trade union representative. Please advise me if you do wish to be accompanied and, if so by whom.

I must advise you that following the scoring exercise you have been provisionally selected for redundancy. The purpose of this meeting is to discuss your scores, and to listen to any representations that you may have.

I enclose the detailed breakdown of the scores that you achieved, and the total scores on an anonymous basis achieved by the other employees in your selection pool. [I also enclose a list of alternative vacancies within the company that you may apply for, in the event of your redundancy being confirmed].

Yours sincerely,

A Manager"

Note that the process above is a minimum, so try to undertake more consultation if you can. It is advisable to meet with the employee on at least one further occasion.

Consideration of Alternatives

This is the third element of the procedure in effecting a fair redundancy. Of course, if there is an overall downsizing occurring, there may well not be any alternative positions available. If there are some vacancies available avoid assuming that employees are not interested in less well paid positions.



They may well not be, but let the employee make that decision. If you are part of a group of employers, circulate the group vacancy list.

Top Tip: Handling companions. Use the word “companion” and not the word “representative”. This is not just a semantic difference – a representative can speak for the employee but a companion cannot answer questions on behalf of the employee and has a more passive role.

Following the final consultation meeting, **Letter 3** is sent to the employee:

Letter 3

“Dear [Name]

Thank you for attending the consultation meeting. I have carefully considered what you [and your companion] said. In particular I have taken into account your suggestion that [give example] but although you make a valid point, this has not had the effect of increasing your score.

I therefore confirm that your employment will terminate for the reason of redundancy on [date]. You are entitled to £XXX by way of redundancy payment, and £YYY by way of payment in lieu of notice. You will also be paid for any accrued but untaken holiday as at [date].

You have the right of appeal against this decision and if you do wish to appeal please let me have your appeal in writing within 5 days of the date of this letter.

Yours sincerely,

A Manager”

Top Tip: Consider voluntary redundancy as an alternative to going through the full process. You will need to offer enhanced payments. To avoid losing key staff, make it clear that you reserve the right to decline applications for voluntary redundancy.

Appeals - An employee strictly speaking has no right to appeal against your decision, but it is highly recommended that you allow them to do so. The appeal should be made to a more senior level of management.

Top Tip: Appeal meetings can be tricky, if the employee succeeds in increasing the score. This could have a knock on effect in that if this employee is no longer selected, someone else is. And that person has already been told that they are not selected. To minimise this problem, write **Letter 4** to employees who have scored highly enough not to be selected.

Letter 4

“Dear [Name]

I am pleased to confirm that following the outcome of the redundancy selection process, you have not been selected for redundancy. This is subject to the outcome of any ongoing appeals.

Yours sincerely,

A Manager”

Top Tip: Always have a settlement agreement signed if offering enhanced payments, whether as a result of voluntary or compulsory redundancy.

