

get it right on... Handling Redundancy

What does redundancy mean?

The Employment Protection (Consolidation) Act defines redundancy as happening in one of the following instances:

- Where the employer has ceased, or intends to cease the business that employs the employee
- Where the employer is closing down the workplace where the employee has been employed
- Where the need for the work that the employee does has reduced, disappeared, or is expected to
- Where the need for the numbers of employees to carry out its work has reduced or disappeared.

Basic rights of employees facing redundancy

Employees with a minimum of one year's service are entitled to:

- **reasonable periods of time off** with pay to look for other work during the redundancy notice period. It is good practice to extend this right to all staff. Fixed term employees are entitled to be informed of permanent positions in the organisation as and when they arise
- **be offered suitable alternative posts** if available within the organisation. An employee who accepts such an offer is entitled to a 4 week 'trial period' in the new post. However, an employee will lose her/his right to a redundancy payment if s/he unreasonably refuses an offer of a suitable alternative post or unreasonably terminates the new post during the trial period.

Redundancy policy and procedure

Good employers should plan in advance how they will handle having to make staff redundant if funding cuts occur. There are basically three ways to handle redundancies:

- An ad hoc and informal arrangement varying with each situation
- A formal policy agreed with trade unions (if required)
- A formal agreement on procedure negotiated with the unions and workforce.

While it might sound tempting to opt for the informal arrangements, it is strongly advised that a formal policy and procedure is adopted. This will reduce your likelihood of being exposed to unfair dismissal claims and will demonstrate to staff that you take your employment responsibilities seriously.

A redundancy policy should cover the following areas:

- Commitment to early consultation
- Commitment to minimising or avoiding compulsory redundancies
- Details of support for employees to find retraining or alternative employment
- Details of the process to develop the criteria and procedures for selection

The accompanying redundancy procedure should include:

- A statement of the policy
- Details of consultation arrangements with Unions (note: this is not required where it is proposed to make fewer than 20 staff redundant but highly recommended)
- Measures for minimising or avoiding compulsory redundancies:
 - natural wastage
 - retraining and/or assistance with relocation to another agency
 - restrictions on recruitment
 - reductions in hours
 - seeking applicants for early retirement/voluntary redundancy
 - non-renewal of temporary or fixed term contracts
- Severance terms – in practice it must be the statutory minimum redundancy notice and payments for staff who qualify for these – see below
- Hardship and appeals procedure

The principles informing the procedure

- The employer should balance the skills and experience of the workforce with the organisation's future needs
- The employer should consult on any change or departure from the procedure and notify workforce immediately it is agreed
- The employer should negotiate changes to individual contracts separately with each employee (eg. if offering her/him a suitable alternative post)
- The employer should comply with the following disclosure requirements
 - reasons for proposals
 - numbers of staff and descriptions of posts affected
 - criteria for selection
 - method of implementation
 - method of calculation of redundancy pay
- The employer should clarify whether employees may leave during the redundancy period or postpone notice period without losing entitlement to redundancy pay
- The employer should allow employees time off to look for other work or training and provision of counselling and advice

- The employer should recognise employees' union representatives' rights of access to union members.

Guidance on consultation

When consulting with staff about who should be considered at risk of redundancy and about the selection criteria which should apply, have an open mind, hear employees views and discuss particular implications with individual employees and give reasonable time for staff to consider the proposals and put forward alternatives.

Redundancy notice

All employees are entitled to a statutory minimum redundancy notice of between 1 and 12 weeks. You may decide to give longer periods of notice than the statutory minimum but you cannot give shorter periods.

Redundancy payments

Staff who have completed 2 years or more continuous employment are entitled to statutory redundancy payments. These are calculated with reference to a week's pay (up to a maximum) and cannot exceed 30 times the maximum. These maximum figures usually increase each year. The week's pay is multiplied by two factors: age and length of service (up to a maximum of 20 years).

These rates are:

- For employees aged 18-21 (one half week's pay for each completed year of service)
- For employees aged 22-40 (one week's pay for each completed year of service)
- For employees aged 41-64 (one and a half week's pay for each completed year of service)

You may decide to give more generous payments in your redundancy policy, but you cannot provide for less generous than the statutory amounts. Statutory redundancy payments are paid free of income tax and National Insurance contributions.

Financial planning and redundancies

All organisations should plan for redundancy by building in minimum redundancy payments to their funding applications – especially for projects likely to extend beyond two years. Where an organisation has ongoing 'core' funding, it should estimate its current liability to make statutory minimum redundancy payments and create a contingency reserve to cover them. This obviously needs to be reviewed regularly as employees gain longer service.

Selection

Automatically unfair selections will arise if the reason for selection is because an employee has asserted a statutory employment right or is pregnant or on maternity leave. Voluntary redundancies or early retirements must always be considered first. If additional redundancies are required, the employer can fairly proceed to apply the compulsory redundancy criteria which are:

Last in – first out (LIFO)

The rules are clear and very simple to apply but this system does not consider the skills, experience and qualifications of staff and the future needs of the organisation. Generally, this system is best avoided, especially where the employer has recently recruited new staff to fulfil equal opportunities requirements.

Future Needs

This system uses the skills, qualifications and other aptitudes needed by the organisation to meet future needs of the organisation as the criteria. It is particularly relevant in a small organisation with professionally qualified staff. However, it is often difficult to assess this objectively and can lead to extensive employees' de-motivation.

Present Capability

This system focuses on the employees' current work performance, adaptability and aptitude and is generally based on the evidence of current and existing appraisals. While it is undoubtedly of relevance and has been accessed quickly and easily, it does not really take into consideration the organisation's future needs.

Conduct

Organisations can also choose to adopt a conduct-based system, looking at evidence from attendance, timekeeping, sickness and disciplinary records. Again, while this is easy to access, it is vital that employer records are accurate, consistent and contain enough information to explain absences. Problems may arise around disability discrimination claims if sickness or timekeeping has been affected by a condition.