

Labour and Employment Client Service Group

From Bryan Cave, London

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Downsizing in the UK

Introduction

When a company reorganises its business, it may need to dismiss employees by making them redundant. This briefing provides an introduction to UK redundancy legislation and practice.

Redundancies

In order for a redundancy to be lawful and to ensure that an employee is fairly dismissed under UK law, the dismissal must be due to the employer genuinely needing fewer staff at a particular UK location.

Special rules apply if the employer is considering downsizing because of a transfer of all or part of the employer's business (including a business sale, outsourcing, and/or intra-group reorganisation).

Once the employer has a legitimate reason for downsizing, the main focus in the UK is on the procedure by which any redundancies are determined and made.

There are two types of redundancy procedure in the UK: an *individual* redundancy procedure and a *collective* redundancy procedure. The law and the procedure differs slightly between the two.

Individual redundancy procedure

Unless a collective redundancy procedure applies (see below), UK employers normally follow the procedure set out below:

1. Inform all affected employees of the potential redundancy scenario.
2. Determine redundancy selection criteria using objective measures.
3. Consult with employees in a series of one-to-one meetings, as early as possible, about the redundancy (including the selection criteria, how they have been applied to staff, and identifying any staff who are "at risk"). Take into account any feedback from staff.
4. Consider any reasonable alternative employment within the business for any "at risk" staff.

5. The employee must be invited to a formal pre-dismissal meeting to discuss the situation (the letter inviting the employee and the meeting should follow certain formalities).
6. Consider any appeal from the ultimate decision (during which time the redundancy decision can remain operative).

A failure to consult properly, even if there is a good reason to downsize, can result in compensation being awarded for unfair dismissal (current maximum compensation normally circa £70,000), provided the employee meets the normal requirements to bring a claim (including sufficient length of service).

Collective redundancies

If an employer contemplates making 20+ staff redundant from the same UK establishment within any rolling 90-day period, an additional *collective* redundancy procedure will apply, summarised below:

1. The employer must inform and consult staff representatives (who will automatically be any recognised trade union representatives or, if none, they need to be elected).
2. The employer must consult with the staff representatives about the redundancy proposals “in good time” before any final decisions are taken. There is a minimum timeframe for consultation of 30 days (for 20-99 proposed redundancies) or 90 days (for 100+ proposed redundancies).
3. There is also a statutory requirement to notify the Government where the employer is proposing to make collective redundancies (failure to do so is a criminal offence).

In addition to collective consultation the employer must still consult with affected individuals on a one-to-one basis (as set out above under individual redundancy procedures).

A failure to follow this collective procedure can lead to a financial penalty against the employer in addition to any right an affected employee may have to bring an unfair dismissal claim. The penalty is determined by an Employment Tribunal and is normally 90 days’ remuneration per affected employee.

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