



## **INDIVIDUAL REDUNDANCY CONSULTATION IN ENGLAND**

In today's economic climate, businesses may need to consider reducing the workforce in order to cut costs. If **proposing to dismiss as redundant less than 20 employees**, the business will be making individual redundancies.

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

Redundancy is one of the five potentially fair reasons for dismissal in England & Wales, 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 to be followed**

Circumstances and requirements differ, but a suggested rough guide to employers concerned to establish a fair procedure when proposing to dismiss as redundant *less than 20* employees at one establishment 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 redundancy 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. Requirements of reasonableness**

Even if an employer complies with the redundancy procedure, the dismissal of an employee may still be unfair on grounds of unreasonableness.

- Each step and action must be taken without unreasonable delay.

- The timing and location of meetings must be reasonable.
- Meetings must be conducted in such a way that both employer and employee are given the opportunity to explain their case.
- Where the meeting is an appeal meeting, the employer should, so far as is reasonably practicable, be represented by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).

#### **4. Selection pool**

If an employer dismisses an employee without first considering the question of a pool, the dismissal is likely to be unfair. If an employer genuinely and reasonably applies its mind to the issue of pools, it will be difficult for an employee (or a tribunal) to challenge its choice of pool.

When considering a pool, an employer should have regard to two questions:

- Which particular kind of work is disappearing; and
- which employees do the particular kind of work which is disappearing?

If there is a clear correlation between the kind of work disappearing and the group of employees doing that work, then the pool is likely to be easy to identify. Other factors likely to be relevant are:

- The extent to which employees are doing similar work;
- the extent to which employees' jobs are interchangeable; and
- whether the selection pool was agreed with the union or employee representatives.

#### **5. Statutory Redundancy Pay**

An employee may be entitled to Statutory Redundancy Pay ('SRP') if s/he has been employed for at least 2 complete years prior to the dismissal. The SRP is calculated by reference to an employee's weekly pay, age and length of service as follows:

- ½ week's pay for each year worked under the age of 22;
- 1 week's pay for each year worked from the age of 22 to the age of 41;
- 1 ½ week's pay for each year worked from the age of 42.

A week's pay is capped at £400 whilst the maximum number of years worked which can be taken into account is 20.

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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