

# Redundancy Reminder

**Nobody likes thinking about redundancies. The reality, however, is that many employers across the UK will have to cut staff to ensure they survive the current economic downturn.**

This article provides the basis outline of the redundancy process – and provides a few practical tips and pointers

## **Is there a redundancy situation?**

When considering redundancies, the first thing you should do is determine whether a redundancy situation actually exists or will exist.

If you make someone redundancy (or you think you have) but the Tribunal find that there wasn't in fact a redundancy situation, the dismissal could be unfair.

Also, even if the tribunal find that there was a redundancy situation they could still go on to find that the real reason for dismissal is something else e.g. poor performance. Again the dismissal could be unfair.

It is important, therefore, to consider:

- Is this a redundancy situation?
- Will redundancy be accepted as the reason for dismissal?

## **Redundancy policy?**

The next step will be to establish whether there is any form of redundancy policy and whether it is binding. If there is and it is – it might tie your hands as regards selection criteria etc.

Redundancy policies are a bad idea – if you don't have one, don't introduce one/

## **Are there any alternatives to redundancy?**

Consider whether there might be any alternatives to making compulsory redundancies. Common alternatives include:

- Restricting recruitment
- Reducing or stopping overtime
- Trying to agree reductions in hours or pay

## **What about voluntary redundancy?**

### **Do you need to invite volunteers for redundancy before you start the process?**

Unless you are bound by a redundancy policy – No.

Very often, inviting volunteers is a bad idea. You tend to get volunteers who you do not want to lose.

You can turn down volunteers – provided your invitation for volunteers is properly worded. But, if you turn down volunteers in a department and then go on to select other employees in that department, they can argue that the selection process is inherently unfair since you were never going to select the volunteers because you had previously rejected their applications for voluntary redundancy.

In addition, it delays the whole process. In redundancy situations delay is dangerous.

The longer the process goes on without everyone knowing who is in the frame and who isn't, the more scope there is for employees not in the frame to become unsettled and start looking for other jobs.

What if someone volunteers to go once the process has started? You would probably let them go (if it will reduce the number of compulsory redundancies) but, if it is someone you do not want to lose, you might be able (discreetly) to persuade them to stay. It is easier to manage individual volunteers at this point than if you make a general request for volunteers before the process starts.

### **The pool**

The next step is to decide the pool of employees from which you will select those employees to be made redundant. In other words, those employees who work in particular departments or who are doing particular jobs – and from which the redundancies have to be made.

Even if you have, say, 3 people in a department and you want to make those 3 jobs redundant it does not necessarily follow that those 3 people would be the people selected for redundancy. There might be other employees doing similar jobs, or with similar skills, in other departments, who should be included in the pool.

But – it is possible to keep people out of a pool – e.g. if they have key skills you cannot afford to lose, or connections with key customers or they are a settled team and you do not want to break it up. Sometimes, you will not need a pool at all if the person you are making redundant is in a unique position and there is no real interchangeability of duties or skills with other staff.

### **Selection Criteria**

Once you have your pool – or pools – organised, you then need to work out what selection criteria you want to use. Common selection criteria include:

- ❖ Skills
- ❖ Qualifications
- ❖ Performance appraisal grades
- ❖ Disciplinary warnings
- ❖ Absences (not including maternity related or disability related)
- ❖ Lateness

To use length of service can be considered to be discriminatory on the grounds of age.

In the absence of evidence that you have chosen the selection criteria to 'fix' the result (God forbid!), tribunals normally accept your choice of criteria – unless they are obviously unfair. But, when choosing selection criteria and doing the scoring, be careful.

Two examples:

- 1) Discrimination** – ensure your selection criteria do not breach any of the discrimination legislation. Don't directly select for any discriminatory reason and think about any indirectly discriminatory effects.

**2) Pregnancy and Maternity** – You risk claims for sex discrimination and automatic unfair dismissal if you select a woman who is pregnant or on maternity leave.

In addition, and bizarrely, if you make redundant a woman on maternity leave you are obliged to give her first refusal on any available suitable alternative employment.

For these reasons – and however unfair it may be – many employers try to leave women who are pregnant or on maternity leave out of the pool for selection.

**Applying the selection criteria – doing the scoring**

The next step is to do the marking. Think carefully about who should do the marking – normally 2 or more manager's

Carry out a mock scoring exercise – if you get the 'wrong' result – think again about your selection criteria.

**Consultations**

As a general rule, consultations should be for a minimum of a week or two – unless the employee wants to short cut it. Do not set down a rigid time frame.

Contrary to popular belief there is no need to consult with everyone in the pool, just those selected.

Consultations should start with a brief meeting with the employees provisionally selected to provide them with an initial letter.

In the initial letter explain how the provisional decision has been arrived at and, if there is a pool, enclose a copy of their score sheet.

If you wish, this letter could include details of an enhanced redundancy payment in the event that he is made redundant, in addition to his basic entitlements – provided he signs up to a Compromise Agreement.

This is a very good way of short cutting the process and avoiding claims. Most employees accept the offer at an early stage, provided it is reasonable.

**Alternative Employment**

You are obliged to look for and offer any available vacancies within their skills and capabilities.

You should offer a job of lesser status and/or pay and any jobs at other sites or with associated companies.

**Trial Periods**

Where you offer suitable alternative employment and the employee accepts he has a four-week statutory trial period in that new job.

**Termination**



Consultations will end with the employee either signing a Compromise Agreement or being dismissed (with the right to an appeal) with or without an offer of alternative employment.

Even if the employee accepts an alternative job with you he can still bring a claim of unfair dismissal arising from the termination of his previous job.

**And finally .....**

The key to successful redundancy exercises (in terms of avoiding/defeating claims and maintaining morale) is planning. Make sure that the whole process is choreographed before you speak to the first employee. Involve your HR consultant at an early stage – believe it or not that will actually save you money in the long run.

*Additional procedures will need to be followed if you are making 20 or more redundancies.*

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