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## REDUNDANCY - EMPLOYER'S HELP GUIDE



In the current economic climate, we read about people being made redundant almost on a daily basis. It is an unfortunate consequence of the financial crisis we find ourselves in.

Redundancies are being made across the board from investment banks in the City of London to small retailers on the local high street.

It's a worrying time for everyone but as an employer, you need to follow certain procedures to ensure your employees are treated fairly.

This guide will help you to ensure your actions are compliant with current legislation.

### **Q. WHAT IS A REDUNDANCY SITUATION AND WHEN CAN I MAKE SOMEONE REDUNDANT?**

A. In the current economic climate, we read about people being made redundant almost on a daily basis. It is an unfortunate consequence of the financial crisis we find ourselves in.

Redundancies have been made at investment banks in the City of London to the estate agents on the high street.

People are not spending money as credit is harder to come by and this has had an effect on people's finances and lifestyle.

With people spending less, businesses are suffering. Woolworths, once a stalwart of the high street is no more. Jobs were lost as each store was systematically closed.

This is the obvious and probably most striking redundancy scenario. A total workplace closure.

A second redundancy scenario would be where an employer decides to close one or more of several sites in which it employs people. A real life example of this would be Marks and Spencer closing down some of its Simply Food outlets, in an effort to remain commercially viable and reduce its overall costs.

Again, we have a redundancy scenario driven by financial circumstances that have forced the employer's hand.

A third redundancy situation would be where the demand for a particular product or service had diminished to such an extent that those who supply that product or service are no longer needed for that purpose.

Such a scenario is relevant to many estate agents up and down the county as there is – for the time being - a diminished requirement for their employees to undertake their jobs as the property market is in a downward spiral.

These three scenarios have been captured by the law in the statutory definition of redundancy.

Section 139 of the Employment Rights Act 1996 says:

*An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:*

- (a) the fact that his employer has ceased or intends to cease
  - (i) to carry on the business for the purpose of which the employee was employed by him, or*
  - (ii) to carry on that business in the place where the employee was so employed, or**
- (b) the fact that the requirements of that business
  - (i) for employees to carry out work of a particular kind, or*
  - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer**

*has ceased or diminished or are expected to cease or diminish.*

In short, this can be defined as:

- \* a business closure
- \* a workplace closure
- \* a diminished requirement of the business for employees to undertake work of a particular kind

To help assist with the definition, which can be somewhat confusing, the Employment Appeal Tribunal has formulated a three stage test to assist in determining whether a dismissal was a redundancy dismissal.

The test has the following questions:

1. Was the employee dismissed?
2. Had the requirements of the business for employees to carry out work of a particular kind ceased or diminished or are expected to cease or diminish?
3. Was the dismissal of the employee caused wholly or mainly by the state of affairs in 2 (above)?

If the answer to all three questions above is yes, then we have a redundancy dismissal.

## **Q. HOW DO I GO ABOUT MAKING AN EMPLOYEE REDUNDANT?**

A. If you envisage making less than 20 employees redundant there is no minimum statutory time limit to your consultation period.

This means you can set your own agenda and prepare your own timeline.

Once you have crossed the first hurdle of whether you have a redundancy situation, you will then need to implement the procedure.

In order for a dismissal to be judged fair, it must be both substantively and procedurally fair.

In a redundancy dismissal, substantively fair would mean a genuine redundancy situation and a fair and objective selection criteria.

A procedurally fair dismissal would involve meaningful consultation and following a fair and reasonable dismissal procedure.

If the redundancy does involve the issue of selection, say 3 out of 6 employees on the shop floor, then one would have to have a fair and objective selection criteria which would have to be applied across the pool of employees that have been selected for redundancy (in this instance staff on the shop floor).

One should try to use criteria that can be measured such as attendance record, absence days, sales records, timekeeping and salary.

However, when making this type of redundancy one may tend to consider the future needs of the business. This may lead to certain subjective elements creeping in to a selection criteria such as transferable skills or qualifications.

Looking at the future needs of the business is a valid consideration but one should try to keep the selection criteria as simple and objective as possible.

When consulting with the employees, try not to make the process a one way procedure.

If an employee puts forward a suggestion in consultation such as a job share or going part time, as an employer, you should investigate and undertake a feasibility exercise. If you do not and you just dismiss the suggestion, any pursuant dismissal might be both procedurally and substantively unfair.

Once the redundancy pool has been decided, the selection criteria applied and the consultation complete, you as the employer will then have to make a decision. Redundancy or Not?

If you decide on redundancy, you must serve notice of the redundancy on your employee[s].

Such a procedure must be consistent with the Statutory Discipline and Disciplinary Procedures which remain valid until April of this year.



It is recommended that you write to the employee and inviting them to a potential dismissal meeting. In the letter you should mention the reasons for the potential dismissal meeting as being redundancy.

At the meeting you can underline the reasons for the decision i.e. the employee was within the pool, the selection criteria was applied and the employee was provisionally selected and the consultation did not lead to any alternatives.

You should give your employee a final say in the matter at this meeting.

Should the decision remain to dismiss for reasons of redundancy, you should serve notice of dismissal for such reasons on your employee.

You will need to clarify in the notice whether you want your employees to work their notice period or whether you will pay them in lieu. You should check your employee's contract of employment before reaching this decision.

Finally you should allow your employee the right to appeal the decision to dismiss for reasons of redundancy. This is a legal right of every employee that is dismissed from employment for whatever reason.

A failure to follow this dismissal procedure will result in the dismissal being automatically unfair and will also lead to an increase in compensation of between 10% and 50% on a finding of unfair dismissal.

### **Q. WHAT ABOUT ALTERNATIVES TO REDUNDANCY?**

A. It is always prudent to consider whether redundancies can be avoided from the start. Possible options for consideration may include suspending recruitment, reducing overtime, reducing agency workers and not renewing contractors' contracts.

Furthermore you could consider the possibility of laying off employees or putting them on short time working. Such options will, however, be subject to your employee's contracts of employment.

### **Q. HOW MUCH ARE THE REDUNDANCY SETTLEMENTS?**

A. If redundancy does arise, the next question is how much redundancy should be paid?

Some employers have contractual redundancy provisions. However, most employers use the statutory scheme.



The redundancy payment is calculated on the basis of the employee's age, length of service and gross weekly pay.

The weekly pay is capped at £350.00 and there is a ceiling of 20 years service in the calculation.

You can use the following link to calculate the redundancy payment owed:  
<http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html>

### **Q. WHAT IS INCLUDED IN A COMPROMISE AGREEMENT?**

A. Your firm may want to enter into compromise agreements with redundant staff. This legally binding agreement sets out the terms and conditions relating to the termination of employment and once signed will prevent the employee bringing tribunal claims in future, except for personal injuries or pension issues.

The compromise agreement will state the full breakdown of the payments the employee will receive and the extent to which the sums will be paid free of tax. Employees will have to give tax indemnity to you within the agreement. This is entirely usual.

The compromise agreement will also provide for confidentiality both in terms of your trade secrets and business affairs and also of the terms of the agreement. You may also wish to include clauses preventing employees from making derogatory statements about the company or its management.

Employees may also wish to include conditions such as requesting that you provide a reference. There is no legal obligation on the employer to do this but if you do then the reference must be accurate and fair.

Compromise agreements can be beneficial to both sides as long as you are fully aware of what you are agreeing to.

Compromise agreements can be written in very complex language and can refer to sections of Acts and Regulations which you may never have heard of. Because of this and because it is important that you understand the effect of the agreement, it is a legal requirement that you and your employees get professional advice on what the agreement means.

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## CONTACT US



For further information, please contact our Employment Solicitor, Asghar, who will be pleased to offer specialist advice on your situation.

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