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## REDUNDANCY 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 people facing the threat of redundancy should know that they have legal rights to ensure they are treated fairly and get the best possible severance deal from their employer.

If you are facing redundancy, this guide will help you to ensure your employer is following all the necessary procedures.

### **Q. WHAT IS THE REDUNDANCY PROCESS?**

A. To begin with, your employer should consult with you individually or, if there are to be a large number of redundancies, with your staff or union representatives as soon as possible. This should be at least 30 days before the first redundancy if there are between 20 and 99 jobs to go and at least 90 days in advance if the number is over 100.

You should be provided with written details about such things as the reasons for the redundancies, the numbers and categories of people involved and how the employees affected will be selected. The company can decide how the selection process will work but it must be fair and based on evidence rather than who the employer likes or dislikes.

If you are selected then your employer should consult with you individually and explain why. He must also consider whether there are any alternatives to redundancy. If the employer fails to do this then the redundancy may be considered unfair.

If you feel you have been selected unfairly then you can appeal and if necessary take your case to an employment tribunal.

### **Q. AM I ENTITLED TO A REDUNDANCY PAYMENT?**

A. This will very much depend on the contract of employment.

You can either be eligible for the statutory redundancy scheme or your employer may have its own contractual provisions.

Contractual redundancy schemes may vary but they are generally congruent with the principles behind the statutory redundancy scheme.

Where there is no provision in a contract of employment for redundancy payments, the statutory scheme will automatically be adopted.

A statutory redundancy payment will be payable to an employee with at least two years' service with no break in their employment.

The payment is for employees and does not cover contractors or those who are self employed.

To be eligible, the employee must have been dismissed for reasons of redundancy which are, broadly speaking, where a business closes down altogether, where there is a closure of one of several work sites, or relocation to a new site or where there is a diminished requirement of the business for employees to undertake work of a particular kind at a specific place.



The statutory redundancy payment is capped at £350.00 per week and is calculated on the basis of your age, length of service and gross weekly pay.

There is a further cap in that the maximum years' service that is accounted for is limited to 20 within the computation.

To ensure you have been given the correct redundancy payment, please use the link below:  
<http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html>

If the amount you have received is different from that calculated, please contact us.

### **Q. AM I PROTECTED FROM REDUNDANCY?**

A. Aside from a total closure of a business, an employee on maternity leave is entitled to be offered a suitable alternative vacancy before such a vacancy is offered to any other employee, thus offering limited protection from a potential redundancy situation.

Such protection is governed by the Maternity and Parental Leave Regulations.

Perhaps the next question to be asked is whether the alternative job offered is a suitable one or not?

The position will be suitable when the work is appropriate for the employee to do in the circumstances and that the capacity and place in which the employee is to be employed as well as the general terms and conditions of employment are no less favourable than those in the employee's old position.

Such regulations offer employees on maternity leave additional protection from redundancy but only in limited circumstances.

Even though on the face of it, this may appear to be positive discrimination, if the employer does not offer the employee a suitable alternative and such a position exists, the employee may claim automatic unfair dismissal as well as sex discrimination at an employment tribunal.

## **Q. ARE THERE ANY ALTERNATIVES TO REDUNDANCY?**

A. If you are looking for an alternative to redundancy in the instance of total business closure, the answer has to be no.

However, if the redundancy is brought about by a closure of one workplace amongst others or a diminishing requirement for an employee to undertake a particular job at a particular location, then there might be alternatives that you can seek to being made redundant.

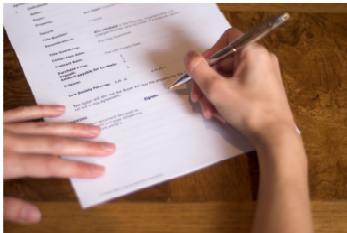
An employee could consider relocating. If a business has more than one site, it may be possible to negotiate a variation of contract with the employer so you could continue with your employment at another site.

Another possibility, also involving negotiation, would be to consider going part time or job sharing with another. This will, of course be at the employer's discretion, however, should you raise such an option in consultation, your employer is duty bound to consider them as the consultation should be meaningful.

As an employee you may agree to a trial period for an alternative position. If, however, your employer terminates or gives notice to terminate during a trial period as they might be of the opinion that you might be unsuitable for the role, you will be treated as having been dismissed for the reason of redundancy on the date when your original employment terminated.

## **Q. I'VE BEEN ASKED TO SIGN A COMPROMISE AGREEMENT. WHAT IS THIS?**

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 you are receiving and the extent to which the sums will be paid free of tax. You will have to give tax indemnity to your employer within the agreement. This is entirely usual.

The compromise agreement will also provide for confidentiality both in terms of your employer's trade secrets and business affairs and also of the terms of the agreement. Your employer may also include clauses preventing you from making derogatory statements about the company or its management.

As an employee, you may also wish to include conditions such as requesting that your employer provides a reference. There is no legal obligation on the employer to do this but if they 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 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.

Asghar Jeraj  
Employment Law Solicitor  
Tel: 020 8290 7386  
Email: [ajeraj@judge-priestley.co.uk](mailto:ajeraj@judge-priestley.co.uk)



Judge & Priestley LLP Solicitors  
Justin House  
6 West Street  
Bromley  
Kent  
BR1 1JN  
[www.judge-priestley.co.uk](http://www.judge-priestley.co.uk)

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