



## **Advice - Boots store closures and mergers and changes to terms and conditions**

Arising from the introduction of a new pharmacy operating model by Boots, some stores have had pharmacies removed, some closed and in January 2022 there is an initiative to reduce pharmacy opening hours. Boots state that they are seeking to minimise redundancies but if there is a substantial change to your contract, you may have a right to claim redundancy. Each case will need to be judged on its own merit and so there is no generic advice. However, the following provides you with advice on the law and your rights so that you are able to assess your individual position.

### **RESTRUCTURE**

Before the employer considers making redundancies, they should develop a plan and a timeline. They should look at the organisational chart to identify all of the key roles and accountabilities in order to identify the structure.

The company's proposals should be put in writing and include the reasons for the restructure, who is at risk and why.

This will involve a change in working structures. If a business reorganisation results in a redundancy situation, then the employer is required to follow a redundancy process (see below).

If there is a reorganisation of a business that involves simply reshuffling the workforce, this may not create a redundancy situation if the business requires just as much work of a particular kind in question and just as many employees to do it, even if individual jobs disappear as a result.

The employer should meet the affected employees (or their union) and discuss the changes, how redundancies could be avoided and change their proposals if the employee and/or the union has a credible alternative.

Where the purpose of a reorganisation is to reduce the size of the workforce overall as a reflection of the diminished business need for particular kinds of work, this will constitute redundancy.

### **Suitable Alternative Employment**

An employee will lose their right to a redundancy payment if they refuse suitable alternative employment, resigns, or gives notice during a trial period (see below) if:

- it was identical to the old job, or suitable for the employee
- the refusal of the offer or resignation during the trial was unreasonable

A role may not be a suitable alternative if for personal reasons the new role is unreasonable, for example:

- Job content and status



- Pay and benefits
- Hours
- Workplace

The suitability of the role is also linked to the reasonableness of the refusal and this will be assessed discretely in relation to individual offers.

### **Trial period**

You have the right to a 4-week trial period in an alternative role. This should start after you've worked your notice period and your existing contract has ended. This avoids any confusion or disputes if the trial does not work out.

It is advisable to get the dates for the trial period in writing. If you need longer to train for a job, obtain the employer's agreement in writing with a clear end date.

If your employer offers you more than one job, you can try each for 4 weeks.

### **Turning down the job**

If you think the job is not suitable, you need to tell your employer in writing. If you do not, you could lose your right to redundancy pay.

You need to have a good reason why, for example:

- the job is on lower pay
- health issues stop you from doing the job
- travel issues or the length of the journey
- it would cause disruption to your family life

Your contract could say you have to work anywhere your employer asks you to (a 'mobility clause'). This might mean that turning down a job because of its location could risk your right to redundancy pay, but it will depend on the reasonableness of this clause and the circumstances.

### **If your employer does not agree**

If your employer does not accept your reasons for turning down the job, they could refuse to pay your redundancy pay. You should try and reach agreement by talking with them informally first. If this is unreasonable you may have recourse to the Employment Tribunal.

### **Changing your terms and conditions**

If, as a result of the changes and restructure, your contract fundamentally changes or they attempt to impose a variation of your contract without your consent, they will potentially be in breach of contract. Although, you will need to establish if there is a right to unilaterally vary it.

A term of a contract may be changed if the contract specifically says so. However, the courts will not always enforce such a term. In one case the court stated that employers need to use clear language in a contract to be able to unilaterally vary it. This case also suggested that the courts may not uphold such a term where the result would be harsh and unreasonable.



In another case, the court upheld a claim for constructive dismissal, despite the existence of an express mobility clause in the contract, because he was being asked to move in six days with no consideration for his personal circumstances.

### **Non-contractual terms**

These are not legally binding and can be varied without breaching your contract. In one case, the tribunal decided that an established custom of enhanced redundancy payments was sufficient to indicate an intention by the employer to be contractually bound to such payments.

### **Changes that are not authorised by the contract**

Where a variation is not authorised by the contract, the employer can still bring it about in one of the following ways:

- express agreement between the parties
- implied agreement through the conduct of employee
- union agreement which is binding on the employee
- termination of the existing contract and re-employment under a new contract

### **Express agreement**

These are agreed between the parties.

### **Implied agreement**

This will usually arise if the employer purports to unilaterally vary the contract by imposing new terms and conditions and the employee is seen to accept this by their behaviour e.g., by working under the new terms for a long period without protest.

Generally, courts are reluctant to find that employees have consented to a variation of contract in the absence of an express agreement. This is particularly so in cases where the changes do not happen with immediate effect (e.g., changes to sick pay).

### **Collective agreements**

As long as a collective agreement is incorporated into individual contracts, employees will be bound by any change negotiated as a result. Employees need not be a union member or even be aware of the collective agreement to be bound by it.

### **What if your employer terminates your contract?**

If an employer wants to change a term and cannot get your agreement, they will sometimes terminate the existing contract and offer a new one with the variation. If you are dismissed for refusing to accept the new contract, this will not always be unfair. It will depend on all the circumstances.

If the employer can show a good business reason for the changes, may be able to show that the dismissal was for *some other substantial reason* ("SOSR") and was therefore potentially fair.

The tribunal will also consider whether the employer behaved reasonably in bringing in the new contract e.g., by consulting with the employees and unions. A dismissal is more likely to be unfair if the employer just imposes the change without consultation.



## What can you do?

If the employer imposes a new term or dismisses you for refusing to accept the change, an employee may respond in the following ways:

- stay and work 'under protest' and bring a claim for unlawful deductions or breach of contract
- in the case of a fundamental breach of contract, resign and claim constructive dismissal
- if the employer has introduced a new contract which fundamentally changes the job, the employee can continue to work under the new contract and claim unfair dismissal in relation to the old one
- refuse to work the new terms if, for instance, they involve different duties or hours this may result in dismissal which may or may not be unfair depending on the circumstances.

## Redundancy process

Redundancy occurs where:

- the employer's business, or part of the business, has ceased to operate; and/or
- the employer's business has moved to a different place; and/or
- the business's need for work of a particular type to be done has ceased or diminished.

In redundancy situations, it is the role, not the person who is made redundant.

Genuine redundancy situations include:

- a downturn of business, a new line of work which requires a different skill set, or a new process being introduced.
- the employee's job no longer exists because the work is being done by other employees.
- they have ceased trading or has become insolvent.
- the business moves to another location.
- it is transferred to a different employer (TUPE is likely to apply here)

If there is a genuine redundancy situation, your employer must follow a redundancy process. A failure to do so will result in a potentially unfair dismissal.

Situations where redundancy does not apply:

- saying someone is "redundant" in favour of following a performance process.
- using redundancy to remove someone from the company.
- a redundancy is not genuine, if other employees have been engaged or they intend to do so.
- one person is made redundant where there are a number of people doing the same role.
- for discriminatory reasons, e.g., disability or sex.
- or if there is an ulterior motive.

## The Redundancy Process



- A true redundancy situation will require all relevant employees who are likely to be affected to be identified.
- The team of manager should be identified to undertake the process and should be familiar with the work, skills and qualifications of those in the “pool for consultation”.
- Selection Criteria should be drawn up, together with a identifying the pool of affected employees carrying out similar work, the criteria should be transparent and objective
- A Selection Process will involve inviting each employee to an individual meeting to discuss whether or not they have been identified as “at risk” of redundancy. This will be confirmed by letter, but you are only at risk at this stage
- You will then be consulted based on the criteria and your individual score and there should be a number of consultation meetings and if you are selected, you will also be given the right to appeal
- your employer should consider whether there is any suitable alternative role for you, if you are made redundant from your role
- There is also the option of “bumping” someone in a lesser role, that person is then made redundant instead.
- If you are selected, you will be informed of your redundancy pay together with other termination payments and arrangements.

### **Consultation**

Boots must consult all employees who are at risk of redundancy as soon as possible, informing them of the situation and discussing with them any alternatives to redundancy.

### **Collective redundancy**

This will happen if an employer is proposing to make 20 or more employees redundant at “one establishment” (which now means an office, shop or store etc) within 90 days.

Boots is required to consult with the PDA Union in good time:

- 30 days before the first dismissal if there are 20-99 proposed redundancies, and
- 45 days if 100 or more redundancies are proposed

Individual consultation should also take place and no dismissals should take effect until consultation is complete and the minimum notice above has been given.

The obligation to consult is also in respect of all affected employees, even if not everyone is put at risk. This is because the proposals will result in changes to the wider workforce including allocation and volume of work.

The union could argue on behalf of affected employees that they are prepared to work shorter hours, take a salary cut or forgo bonuses in an attempt to avoid the proposed redundancies being made. Other ways may include voluntary redundancies, staff retraining, early retirement, a recruitment freeze, and cutting back on agency or other temporary workers and contractors.

### **Protective Award**

The remedy for breach of the collective consultation rules is a “protective award” of up to 90 days’ pay for each affected employee, which is an effective and penalising remedy against the employer. The claim must be brought by the recognised trade union or employee



representatives if they are in place, otherwise the claim can be brought by each individual affected employee. A claim must be presented to an Employment Tribunal within the period of three months less one day of the date on which the last of the dismissals takes effect.

### **Redundancy Pay**

Ordinarily, if you have been employed with your present employer for a minimum of 2 years, you are entitled to a minimum statutory redundancy payment if you are made redundant. However, the current Boots redundancy terms are more generous than the statutory redundancy terms, and any redundancy payment made to employees is inclusive of the statutory entitlement.

In order to qualify for a redundancy payment, the Boots employee must have at least one year's continuous service. Redundancy pay is then calculated using age and length of service, and calculated using your gross salary (i.e. salary prior to any salary sacrifice arrangements). All other final payments, such as payment for accrued untaken holiday and any bonus, are subject to normal statutory deductions.

The Boots 'Ready Reckoner' is used as a guide for showing the number of weeks' redundancy pay an employee is entitled to receive under the current terms of the Boots policy, and can be found on the Boots intranet.

*For further information on your own situation, call the PDA on 0121 694 7000 and ask to speak to one of our employment advisors.*