



PDA Redundancy and Restructuring Briefing

| representing **your** interests |

| defending **your** reputation |

REDUNDANCY

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

Your employer 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.

A business is required to consult with either a recognised trade union or elected employee representatives 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.

A trade union or employee representative 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

If you have been employed with your present employer for a minimum of 2 years, you are entitled to a minimum statutory redundancy payment from your employer.

Your employer may have a contractual redundancy scheme, or there is custom and practice of them providing enhanced payments.

The amount of a statutory redundancy payment is calculated using a formula based statutory redundancy pay is worked out as follows:

- 1½ week's pay for each complete year of employment when you were aged between 41-64 inclusive
- 1 week's pay for each complete year of employment when you were aged between 22-40 inclusive
- ½ week's pay for each complete year of employment when you were aged between 18-21 inclusive

Employment before the age of 18 is ignored when working out statutory redundancy pay.

Weekly pay

For statutory redundancy, the maximum limit is **£544** per week after 6 April 2021. A week's pay does not usually include overtime pay. Where earnings vary each week, an average of the 12-week period leading up to the redundancy will be used. If commission is paid regularly, this should be included in a week's pay.

The maximum statutory redundancy payment from 6 April 2021 is **£16,320**.

You can calculate your statutory redundancy payment by using the government calculator by going onto their website: www.gov.uk/calculate-your-redundancy-pay

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.

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 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 if:

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

A role may not be a suitable alternative if it has for personal reasons which make the new role 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.

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