

## Redundancy Guide

### Overview

*Composite Legal Expenses Insurance provides advice to thousands of businesses and individuals each year through its legal advice helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.*

*Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool. The guide gives a general overview of some of the laws that relate to redundancy and the procedures that should be considered.*

*The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.*

*If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.*

*The guide refers to a number of template letters that can also be found on our website. These letters can be amended to suit individual circumstances.*

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# REDUNDANCY

## Dealing with Redundancies

Dealing with a redundancy situation can be a daunting task both for employers and employees.

Employers need to ensure that a genuine redundancy exists and follow the correct procedures in a fair and consistent manner.

Employees have a number of rights and it is important that all parties understand what these rights are.

### What does “redundancy” mean?

A redundancy situation can arise in the following circumstances:

- 1) Where there is a closure of a business for which the employee was employed.
- 2) Where there is a closure of business at the place where the employee was employed to work.
- 3) Where there is a reduced requirement for employees to carry out work of a particular kind.

It is always important to remember that it is the ‘job’, not the person, that is redundant.

Interestingly, if there is any reduction in the employee’s hours of work, then dismissal for that reason can be a redundancy.

### Planning a redundancy

Before doing anything else, management should put a plan in writing to document the business case for considering a redundancy. This will be important if the redundancy situation is ever questioned in the future, as it will give a tribunal an insight into why the business felt the need to make a job redundant.

The business should be able to clearly identify why a redundancy is necessary. It may be that some of the following apply or there may be other reasons:

- Completion of a contract
- Lower demand for services or products
- Transfer of work somewhere else or the loss of work to a competitor
- An introduction of new technology
- Changes in work methods

Given the nature of a redundancy situation and the potential hardship that can be caused, a tribunal will always expect to see evidence that the business looked at alternatives to avoid the need for a redundancy situation to arise, dismissal for redundancy should be seen as a last resort.

### What is the ‘job’ in question?

Identifying employees and selecting them appropriately for redundancy is an important part of the redundancy process.

Once the business has established a potential redundancy exits, it will need to consider which employees will fall within the ‘pool’.

This can be a difficult task for an employer. It can be hard to get the right balance between having a ‘pool’ too wide or a ‘pool’ too narrow. It’s possible that two employees could pursue two different arguments about the same selection.

There is no clear rule of law that tells an employer how to define the 'pool'. Again planning is important and a paper trail explaining why management felt it was the best way to define the job in question for the interests of the business.

It can also be useful to agree the 'pool' with employees and/or their representatives at an early stage in the consultation process.

If there is only one employee doing the 'job' in question, then it is possible to have a 'pool' of just one employee.

## Consultation

If 20 or more redundancies are being proposed in a 90-day period, then collective consultation obligations will arise.

An employer proposing to dismiss as redundant between 20 and 99 employees must notify the Department for Business, Innovation and Skills 30 days before the first dismissal takes effect. If 100 or more employees are to be dismissed the period is 45 days.

For more information in relation to collective consultation see the ACAS guide '*Handling large scale redundancies*': <http://www.acas.org.uk/media/pdf/c/p/Handling-large-scale-collective-redundancies-advisory-booklet.pdf>

Where the redundancy situation involves less than 20 employees, consultation will need to take place in good time before any dismissals take effect. Importantly, the consultation should be long enough to be considered 'fair' and 'meaningful'.

A consultation will generally involve:

- Informing employees of the potential redundancy situation "*putting employees at risk*".
- Selection (where appropriate).
- Individual consultation.
- Looking for alternatives to avoid the redundancy, including suitable alternative employment.
- Confirming the decision, including giving notice and a breakdown of any redundancy payment.

See **Letter 17**

## Selection

Where selection is required, as you may have expected, there is no set way to pick which employees are to stay and which will be made redundant.

You can find a template selection matrix in the ACAS guide "*Handling large scale redundancies*" <http://www.acas.org.uk/media/pdf/c/p/Handling-large-scale-collective-redundancies-advisory-booklet.pdf>

We would suggest using this as a starting point and trying to ensure the selection matrix best suits the business needs to retain the most effective staff. Ideally the selection matrix should be objective, although sometimes an element of subjective judgement will be appropriate. Judges are aware that not everything is measurable or can be determined in a 'tick box' manner.

It may be possible to avoid a selection matrix in its entirety, especially in a business restructure. It has become more and more common for employers to define the "pool" and dismiss everyone

involved, employees will then be invited to apply for the new jobs that have been created in the restructured business.

It will always be important to agree the selection criteria with employees and/or unions at an early stage, before any scoring or selection takes place.

### **Individual Consultation**

*\*See Letters 18 & 19*

Individual consultation will generally involve informing the employees that they have been provisionally selected for redundancy, this will also include informing them of their rights and entitlements.

While informing employees is important, consultation should also be a genuine attempt to explain the reasons to the employees and also look at any ways the redundancy could be avoided. The employees should be given the opportunity to put forward suggestions as to how they feel the redundancy could be avoided.

It is very important that the consultation is meaningful and other options are genuinely considered in consultation with the employees.

You should consider the following guidance:

- 1) Consultation shouldn't be rushed. Any employees should be given the opportunity to be accompanied by a work colleague or a union representative.
- 2) The employee should be given an explanation as to why their role has been affected.
- 3) Don't give notice until the consultation has been properly concluded.
- 4) If a matrix has been used for selection, ensure the scores and the reasoning is fully explained to the employee in question.
- 5) Give the employees time to come back with their own views and ensure these views are properly and genuinely considered.
- 6) Consider the possibility of alternative work.
- 7) Hold a separate final meeting with the employees if no alternative solution can be found. Only at this stage should notice of dismissal be given.

*See Letter 21*

### **Alternative Employment**

The question of alternative employment will be important not only during the consultation but also once notice has been given.

If an offer of suitable alternative employment is unreasonably refused by an employee, they can lose their right to a redundancy payment.

An offer of suitable alternative employment can be made at any time before termination takes place (the end of a notice period) and the alternative role can start up to four weeks after the date of termination.

Seeking suitable alternative employment is part of a fair procedure and you should take reasonable steps to look for work within the organisation. It isn't appropriate to eliminate certain jobs on the assumption the employee in question would not be interested. When considering alternative

employment all things should be considered not only salary and conditions but also the level of skill required.

The question of an unreasonable refusal will be assessed by a tribunal from the point of view of the employee. For example, it may be more reasonable for someone who is unable to drive to refuse a role in an area with limited public transport than it would be for someone who could drive.

## Appeals

An opportunity to appeal against the decision should always be given when an employee is made redundant.

Employees should be given a reasonable amount of time to confirm if they wish to appeal. The employee should be asked to confirm their intention to appeal in writing and they should provide reasons as to why they attend to appeal.

A meeting should be arranged to hear the appeal and the chair should be someone independent who hasn't been involved in the redundancy process. Ideally this will be the most senior person within the organisation, this way there should be no bias or fear of repercussions if decisions are overturned.

As well as any individual points raised, ideally the appeal will involve a review of the entire process – was the procedure fair? was the selection appropriate and fair? was the consultation meaningful? and were alternatives considered appropriately?

Employees should be given the opportunity to be accompanied by a work colleague or a union representative.

## Employee Rights

Employees who are made redundant are entitled to:

- Redundancy payment

*Employees who have been employed for more than two years will be entitled to:*

*0.5 week's pay for each full year worked under the age of 22*

*1 week's pay for each full year worked between the age of 22 and 41*

*1.5 week's pay for each full year worked from 41 onwards*

*\*Pay is capped at £479 per week and length of service is capped at 20 years – the maximum amount of statutory redundancy pay is £14,370*

*You can calculate a redundancy payment at <https://www.gov.uk/calculate-your-redundancy-pay>*

- Contractual rights

*Employees will be entitled to any notice as provided by the contract subject to the statutory minimum (See our **Employment Guide**)*

*There may be contractual procedures that give employees the right to more comprehensive consultation processes – if this is the case it is important to follow these procedures.*

*There may be an entitlement in the contract to enhanced redundancy payments – if this is the case they will need to be paid in accordance with the contract.*

- Time off to look for alternative work

*Employees who have worked continuously for at least two years have the right to paid time off to look for alternative work. Paid time off is limited to 40% of a week's pay, however employees can have more time off if it is reasonable to look for alternative work.*