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Redundancy

A Guide

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INTRODUCTION

The decision to make employees redundant is never one that is taken lightly. In a situation likely to cause anxiety and stress to both employees and employers, a legal framework exists to help make the process as fair and open as possible.

It is essential that employers and managers understand the law relating to redundancies or they may run the risk of future claims for unfair dismissal, resulting in potentially costly compensation payments.

This overview of redundancy issues sets out some of the key points involved but if your business is considering making redundancies, seeking more detailed legal advice is an essential step.

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EMPLOYER OBLIGATIONS

Employers may need to make redundancies because jobs no longer exist, for example because:

- new technology has made a job unnecessary
- they need to cut costs
- the employer needs to close the business.

Before starting the redundancy process, employers should consider and consult with employees on alternative options, such as reducing hours or job sharing, and consider the feasibility of these options from a business perspective.

If no suitable alternatives can be found and the employer has demonstrated that there is a genuine need for redundancies, they must comply with a number of other obligations.

These include making a fair and objective choice of employees for redundancy. The “last in, first out” system is a traditional approach, although its use may breach discrimination rules, for example if only young people are made redundant.

Some employers use a points-based system that takes into account factors such as skills, qualification and aptitude, work performance and attendance/disciplinary record. Whatever system is used, the employees should be informed.

Selecting staff for redundancy for any of the following reasons would be discriminatory and expose the employer to a claim for unfair dismissal:

- gender
- marital status
- sexual orientation
- race
- disability
- religion or belief
- age
- trade union membership or non-membership
- health and safety activities
- working pattern (e.g. part-time or fixed-term employees)
- maternity leave, birth or pregnancy
- paternity leave, parental or dependants leave
- whistleblowing
- taking part in lawful industrial action lasting 12 weeks or less
- taking action on health and safety grounds
- jury service
- trusteeship of a company pension scheme.

If the employer offers voluntary redundancy, they do not have to select people who apply. Voluntary redundancy cannot only be offered to employees whose age makes them eligible for early retirement, as this could represent age discrimination. However, a voluntary redundancy offer made to all employees could include an early retirement package for certain age groups.

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CONSULTATION

If fewer than 20 employees are being made redundant, it is good practice for employers to consult with the employees, i.e. on reasons for the redundancies and any alternatives to redundancy.

If 20 or more employees are being made redundant in one place of work within a 90-day period, you must consult with workplace representatives. This is called collective consultation.

These may be trade union representatives or, where no union is recognised, elected employee representatives.

Consultation must start at least 30 days before the first redundancy where there are 20 to 99 proposed redundancies and 45 days in advance where there are 100 or more proposed redundancies.

Where 20 or more employees are being made redundant, before the consultation starts the employer must notify the Insolvency Service Redundancy Payments Service by filling out form HR1. Failure to do so could result in prosecution and a fine of up to £5,000, for the company and/or an officer of the company, such as a director or company secretary.

EMPLOYEE RIGHTS

Employers intending to make an employee redundant should also consider whether there are other jobs they could do.

If such a job is available, it should be offered to the employee instead of making them redundant. If they do not wish to take the job, they may lose their right to redundancy pay.

If there is no alternative but to make an employee redundant, the employer must:

- send the employee a written statement, telling them why they are being considered for redundancy
- hold a meeting with them to discuss the matter
- hold an appeal meeting with them, if they want to appeal against the decision to make them redundant.

If you fail to follow these procedures, any dismissal will be automatically unfair. The same procedures apply to voluntary redundancies as to compulsory redundancies.

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NOTICE PERIODS

Different employers offer different terms, but as a minimum, employees are legally entitled to notice calculated on how many years they have worked for the employer. They are entitled to:

- at least one week's notice if they have been employed for between one month and two years
- one week's notice for each year if employed between two and 12 years
- 12 weeks' notice if employed for 12 years or more.

Employers can give more than the statutory minimum notice period but not less.

REDUNDANCY PAYMENTS

Staff being made redundant will also be entitled to statutory redundancy pay, provided they have two years' service with the business. Employers can offer more generous redundancy payments but must pay at least the statutory minimum.

The levels of statutory redundancy pay differ according to age:

- half a week's pay for each full year the employee was under 22
- one week's pay for each full year they were 22 or older but under 41
- one and a half week's pay for each full year they were 41 or older

Employees are not entitled to statutory redundancy pay if the employer has offered to keep them on or have been offered suitable alternative work that they refuse without a good reason.

The weekly pay figure itself is capped at £450 (2013 figure - the amount changes annually in line with the Retail Prices Index) so, for example, an employee aged 35 with five years' service will receive £1,900. Redundancy payments (including any severance pay) of up to £30,000 are free of income tax and national insurance.

Redundancy payments should be made when the employee is dismissed or very soon after. If the company making the redundancies is insolvent, employees can apply for a direct payment from the Redundancy Payments Office.

If an employer does not pay or says that an employee is not entitled to a payment, the employee has six months to request the payment from the employer or take the matter to an employment tribunal, or both. They must do so within six months of the date the employment ended.

Once an employee has been given notice of redundancy, they have the right to paid time off to look for a new job, provided that, by the time their notice period ends, they have worked for you for at least two years.

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REDUNDANCIES ARISING THROUGH MERGERS OR ACQUISITIONS

Mergers or acquisitions are often designed to increase business efficiency and reduce overheads, so they often involve redundancy or other staff changes.

In acquisitions, employers have particular information and consultation responsibilities and responsibilities to employee rights following the transaction. In most cases, where you are acquiring another business, you will not be able to change the transferred employees' terms and conditions to match those of your existing employees.

Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), you must inform and consult with representatives of affected employees – those employees who transfer to the new employer – about the sale.

If you have an information and consultation (I&C) agreement in place, you must inform and consult employees or their representatives on issues including changes to the workforce. This means that you may have to inform and consult when planning to buy or sell all or part of a business.

Employers do not have to inform and consult at the same time under both TUPE and an I&C agreement. They can choose to "opt out" of the agreement and consult under TUPE only.

The government is currently planning reforms designed to make TUPE easier to understand and business transfers less burdensome, with a view to introducing the changes in October 2013.

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To find out more about how we can help you, please contact us:

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Donna is a solicitor in the Employment team of Mackrell Turner Garrett's London office, where she advises both employers and employees on a full range of contentious and non-contentious issues.

Her experience includes drafting employment contracts and handbooks, advising on grievance and disciplinary procedures and preparatory work prior to employment tribunals, including advising on the advantages and disadvantages of settling cases. She has particular expertise in settlement agreements and managing social media in the workplace.

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