Individual and Collective Redundancies – Your Rights

1. WHAT IS REDUNDANCY?

Redundancy is a form of dismissal from your job. A dismissal from your job will be considered a redundancy if (i) it is due to the business closing for the purposes for which you were employed, (ii) if the business shuts down the place where you are employed or (iii) there is a reduction in the requirement for employees.

If you're being made redundant, you might be eligible for certain things including:

1. Redundancy pay;
2. A notice period;
3. For your employer to consult with you prior to making you redundant;
4. The option to move into a different job;
5. Time off to find a new job.

2. CAN YOUR EMPLOYER MAKE YOU REDUNDANT AND ARE THEY DOING IT FAIRLY?

Your employer can only make you redundant if your role is genuinely redundant, and the decision should be based on your role rather than your personal characteristics. Your employer must select you for redundancy based on agreed and objective criteria. This may include performance or conduct.

Your employer cannot select you for redundancy for any of the following reasons:

- If the decision constitutes discrimination on the basis of race, sex, disability or any of the other protected characteristics contained in the Equality Act 2010.
- Because you took, or sought to take, family related leave – for example parental, paternity or adoption leave
- Your role as an employee or trade union representative
- Your membership of a trade union
- Because you have a part-time or fixed-term contract
- Because you have made a protected disclosure.
- Because you have asserted one of a number of statutory or employment rights, such as the right to the National Minimum Wage.
- For taking part in lawful industrial action that lasts for 12 weeks or less
- Because you have been required to undergo jury service

If you are made redundant due to any of these reasons then it is not a fair redundancy.

You also have the right to not be indirectly discriminated against. Indirect discrimination can be harder to identify. Broadly speaking it can occur where there is a policy, practice or criterion that places certain employees with a protected characteristic (such as race, disability, or age) at a substantial disadvantage. An example of this would be deciding redundancy based on length of service, which would disadvantage a young employee, or deciding based on absence records, which would place people with a disability at a disadvantage.

You have the right to not be unfairly dismissed if you have been employed for two years or more at the time your dismissal takes effect. In order for a dismissal to be fair the employer must have a fair reason and use a fair procedure. Redundancy is potentially a fair reason for dismissal if there is a genuine redundancy situation.

If the employer needs to decide which of a group of employees should be made redundant, it should choose those for redundancy based on a fair set of criteria,that employees are aware of.

3. INDIVIDUAL REDUNDANCY – YOUR RIGHTS AND YOUR EMPLOYER'S OBLIGATIONS

Individual redundancy process applies when fewer than 20 people are being made redundant within a 90-day period. If 20 or more people are being made redundant please refer to the collective consultation section below.

Individual redundancies

1. Check your employer's redundancy policy (if they have a written policy in place). It should explain: how they selected people for redundancy, how long the consultation will take, what meetings you can go to and when and how you can appeal if you're chosen for redundancy.

2. Has your employer provided you with suitable notice? All employees have the right to be given a notice period before your employment ends. The notice period may be set out in your contract, it cannot be less than the statutory minimum of:
    a. at least one week's notice if employed between one month and 2 years
    b. one week's notice for each year if employed between 2 and 12 years
    c. 12 weeks' notice if employed for 12 years or more

Under your contract, your employer may have the right to make a payment in lieu of your notice period instead of requiring you to serve your notice period.

3. If you will have been working continuously at the company for more than 2 years by the end of your notice period, then you are allowed a reasonable amount of time off to look for another job or to attend training to help you find another job.

4. Your employer should hold a consultation with you to discuss why you are being made redundant and if there are any alternative options. It should be noted:
    a. Your employer should have considered if it can avoid making compulsory redundancies e.g. have they suspended recruitment, reduced the amount of overtime, and not renewed contractors' contracts.
    b. Your employer should have considered if offer you an alternative role at the company. You have a right to a 4 week trial period for any alternative employment which they offer you. Please note this is compulsory if you are either on maternity leave or shared parental leave when they make you redundant or if you have been working for them for at least 2 years by the time your job ends.

You can request that another employee accompany you to any redundancy consultation, should you want this. Whilst this is not a legal requirement, it is considered best practice amongst HR professionals.

4. COLLECTIVE CONSULTATION – YOUR RIGHTS AND YOUR EMPLOYER'S OBLIGATIONS

Where your employer is proposing to make 20 or more people redundant at your place of work within a 90-day period (or less), this will give rise to a collective consultation.

Your employer has a duty to consult with the appropriate representatives of any employees who are being affected by the proposed redundancies. This includes measures taken in connection with the dismissals.

When should the collective consultation begin?

Your employer has a duty to begin collective consultation 'in good time'.

There are two time periods depending on how many employees it is proposed should be made redundant:

- 20 – 99 employees – at least 30 days before the first dismissal takes place
- 99 or more employees – at least 45 days before the first dismissal takes place

Who should your employer consult with?

Your employer has a duty to consult with appropriate representatives of the employees affected by the dismissals.

You could still be an affected employee even if you or your team are not being considered for redundancy. For example, if you belong to a team that will have to take on extra functions or staff as a result of the redundancy, you could be considered as being affected because your work patterns, responsibilities and hours may change.

Appropriate representatives will usually be one of two options:

- If your employer recognises a trade union then they will have to consult with representatives from the trade union. This is usually a trade union official.
- If your employer does not recognise a trade union, then they will have to directly consult with elected representatives.

If your workplace already has representatives who have been elected for a variety of purposes, and one of those purposes is consultation, then your employer may choose to consult with them instead.

If you are on a fixed term contract that expires on an agreed date within the 90 day period, then you will be excluded from your employer's obligation to collective consult.

Consultation bodies set up before the need for consultation

If you are an employee in an organisation that has at least 50 employees, then you can request that your employer sets up sets up 'information and consultation machinery'. This can include representative bodies or staff forums who will consult with the employer about strategic business decisions that may give rise to collective redundancies.

With the economy projected to suffer severe downturn in 2020 due to the impact of the coronavirus crisis, this may be a good idea for your workplace so that you can be prepared for any potential collective consultation situation.

Elected representatives – how does it work?

Your employer will largely determine how the election process is to run. However, there are legal rules that govern this process. In summary:

- Your employer must make sure the election is fair and must make reasonably practicable arrangements to ensure this. Many employees are working from home or not working at all during the current lockdown conditions. Your employer must make sure that any virtual or electronic election process is fair by considering the best way to contact you and allow you to vote either electronically or otherwise.

- Your employer will determine how many representatives are to be elected and for long they will be elected representatives. This must be sufficient enough to ensure the consultation process is completed properly.
- If you are an affected employee then you have the right to stand for election and vote in the election.
- The employer must ensure secrecy in the voting.

If you feel that you are being unfairly excluded from participating in the voting process, or if your employer is failing to take reasonably practicable arrangements to ensure that you can participate, then you must take this up with your employer and employee representatives.

Note that consultation cannot start until the employee representatives have been elected.

Where you are an employee representative

If you are elected as an employee representative, then your employer must provide you with the following written information before formal consultation begins:

- The total number and description of proposed redundancies.
- The proposed selection method.
- The proposed procedure and time limits for carrying out the redundancies.
- If there is any way to avoid the redundancies.
- The reason for the proposed redundancies.
- How to keep the numbers of redundant employees to a minimum.
- The calculation of any enhanced redundancy payments.
- How to limit the effects for employees involved.

This information should be sufficiently clear and provided to you after the election process is completed. Your employer does not have to provide this information to you all at once.

During the consultation phase, your employer should consult with you on your proposals to avoiding the dismissals, reducing the amount of employees to be dismissed and mitigating the consequences of the dismissals.

Your employer must consult with a view to reaching agreement on these proposals. It is not enough for them to simply listen to your views and then go ahead with the planned redundancies. This does not mean that they are obliged to agree with your proposals.

What you can do if your employer fails to consult properly

Complaints are made to an employment tribunal (please see below). The types of complaints that can be made are set out by law.

As an individual you can bring a complaint of failure to arrange an election / failure to comply with the rules.

Claims that your employer failed to inform and consult other appropriate representatives can be brought by the representatives in question.

You can only bring a complaint of failure to inform and consult where no other employee representatives have been elected and you are not covered by either a recognised trade union or a standing body of employee representatives.

In the case of failure to consult a recognised trade union, this claim can only be made by the trade union.

What the Tribunal can do in light of a successful claim

If your claim is successful, the court can order a "protective award" to be given to certain employees for a protective period. This is basically an award of money that can cover any employee whom the employer:

- Has dismissed as redundant;
- Proposed to dismiss as redundant;
- Has not properly consulted in accordance with the law.

You will only be able to benefit from a protective award if your elected representatives, who were elected to consult over proposed redundancies that included yours, have brought the claim. In the case of an absence of any appropriate representatives, it must be you who brings the claim.

5. REDUNDANCY PAY

Statutory redundancy payment: this applies to both individual and collective redundancies.

1. You are only entitled to statutory redundancy pay if you have been continuously employed at the company for at least two years.

2. The amount of statutory redundancy pay is calculated based on age, length of service and pay. As of May 2020, the rates of statutory redundancy pay are as follows:
    a. half a week's gross pay for each full year you were under 22 years of age
    b. one week's gross pay for each full year you were 22 or older, but under 41
    c. one and a half week's gross pay for each full year you were 41 or older

    Please note:

    The length of service is capped at 20 years.

    If you were made redundant on or after 6 April 2020, your weekly pay is capped at £538 and the maximum statutory redundancy pay you can get is £16,140. If you were made redundant before 6 April 2020, these amounts will be lower.

3. If your employer offers to keep you on or offers you suitable alternative work which you refuse without good reason then you will not be entitled to statutory redundancy pay.

4. If your employer refuses to make a redundancy payment or is insolvent then you may apply to the Secretary of State for a redundancy payment out of the National Insurance Fund.

Contractual redundancy payment

1. In addition to statutory redundancy payment you may be entitled to contractual redundancy pay. You will be entitled to contractual redundancy if:
    a. It is written into your employment contract;
    b. Your employer has provided you with a verbal or written statement committing them to pay contractual redundancy; or
    c. A set of redundancy terms are applied as standard to the particular trade or industry you work in.

6. APPEALING A REDUNDANCY DECISION AND BRINGING A CLAIM AT THE EMPLOYMENT TRIBUNAL

If you believe you should not have been dismissed for redundancy you can appeal to your employer regarding their decision. You should first check to see if your employer has a redundancy appeals process and follow it in the case that they do. If they do not, you should write to your employer and explain why you think the redundancy is unfair.

Prior to bringing a claim at the Employment Tribunal you must tell "ACAS". ACAS is an advisory, conciliation and arbitration service who will help you try and reach an agreement with your employer before you make a claim at the employment tribunal. This process is called "early conciliation". If early conciliation does not lead to an agreement, you can still use a conciliation process after you have made a claim.

The benefit of early conciliation is that it is confidential, free, and quicker and easier than bringing a claim at the Employment Tribunal. It is also a legal requirement. You cannot bring a claim in the Employment Tribunal until you have notified ACAS via the Early Conciliation procedure. If you fail to do so, your claim will be rejected, and you may not be able to bring your claim within the 3-month time limit laid down by law.

You do not need to contact ACAS if:

1. You are part of a group of people making a claim
2. Your claim is for unfair dismissal and you are seeking interim relief (limited to very few, specific circumstances, such as dismissals for health and safety reasons);
3. If your employer has already contacted ACAS
4. You work for the Security Service, Secret Intelligence Service or the Government Communication Headquarters.

You must contact ACAS within 3 months of the date of dismissal. In some cases, using ACAS will extend the date for when you need to bring a claim at the Employment Tribunal.

You may be able to bring a claim at the Employment Tribunal if you think that you have been unfairly dismissed. A claim must be bought within 3 months from the date of dismissal and the maximum award that can be given is capped at £86,444.

It should be noted that bringing a claim at the Employment Tribunal can often be time consuming. Currently it is taking around a year for claims to be heard. However, there are no court fees to pay and it is usually the case that you do not have to pay the other side's costs if your claim is unsuccessful.

7. REDUNDANCY AND THE CORONAVIRUS JOB RETENTION SCHEME

If you were made redundant after 28 February 2020, you can write to your employer and request to be rehired and then furloughed. This is allowed under the Coronavirus Job Retention Scheme. If your employer refuses to re-hire you and use the Scheme you should request their reasoning in writing.

You can still be made redundant whilst you are furloughed. Likewise, if you refuse to be furloughed your employer may make you redundant instead.

If you are made redundant they must calculate your redundancy pay using the amount you earnt before you were furloughed.

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