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Redundancy: an introduction

Learn how to use redundancy as a last resort when all alternative approaches have been considered

Introduction

Redundancy should be a last resort. It can be one of the most distressing events an employee can experience. It requires sensitive handling by the employer to ensure fair treatment of redundant employees as well as the productivity and morale of the remaining workforce. Redundancy legislation and case law is complex, and employers must understand their obligations, including employees' rights and the correct procedures to follow.

This factsheet suggests alternative approaches employers can consider and provides guidance on managing redundancy when it's unavoidable. It looks at the steps in the redundancy process, such as identifying the pool for selection, seeking volunteers, selection for redundancy, consulting employees, appeals and dismissals, offering suitable alternative employment and redundancy payments. The factsheet also looks at supporting employees experiencing redundancy as well as the 'survivors'.

What is redundancy?

Redundancy is a special form of dismissal which happens when an employer needs to reduce the size of its workforce. In the UK, an employee is dismissed for redundancy if:

- The employer has ceased, or intends to cease, continuing the business, or
- The requirements for employees to perform work of a specific type, or to conduct it at the location in which they are employed, has ceased or diminished, or are expected to do so.

If there's a genuine redundancy, employers that follow the correct procedure will, by law, have to make redundancy, and notice period payments.

UK employers who misunderstand the law or don't follow the correct procedure may be liable for unfair dismissal claims or protective awards. Redundancy legislation is complex and is covered by statute and case law, with both determining employers' obligations and employees' rights. CIPD members can find out much more in our [Redundancy law Q&As](#)

Our quarterly [Labour Market Outlook surveys](#), produced in partnership with The Adecco Group UK & Ireland, are one of the most authoritative employment indicators in the UK. They include forward-looking labour market data and analysis on employers' redundancy intentions.

Our [Brexit hub](#) has more on what the implications of leaving the EU might be for UK employment law.

Redundancy in the time of coronavirus

Despite government intervention to try to avoid redundancies as a result of COVID-19, around [one in three UK employers expect to cut jobs](#) in the third quarter of 2020. The situation is unprecedented but employers who decide there is no alternative to redundancies still must follow normal fair redundancy procedures.

The availability of the Coronavirus job retention scheme and other government support packages adds another layer to the normal redundancy process. Employers must always show they tried to avoid redundancies. Proceeding without considering [alternatives](#) may encourage employees with over two years' service to present unfair dismissal claims.

Following normal fair procedures means using the organisation's own procedure (if any) and all the stages referred to in this factsheet starting with initial planning. Other critical stages include considering alternatives, meaningful individual and collective consultation, selection pools and scoring, appeals, redundancy and notice period payments plus counselling and support.

Employers who have already furloughed staff can still start the redundancy process, once other alternatives have been exhausted. There are logistical challenges in following ordinary principles if employees are not at work, especially regarding communication and consultation. The stages can be undertaken remotely (for example digital election of employee representatives) but this will require careful and innovative planning. All employees affected must have the equipment and skills to participate in a digital process.

There are pre-existing rules where employers can defend inadequate compliance with the minimum 30 or 45-day collective consultation periods if 'special circumstances' apply. These circumstances are hard to establish, and coronavirus alone does not excuse employers' failure to engage in collective consultation. Employers are exposed to

increased compensation including up to 90 days' pay for each employee if this consultation is inadequate.

Other coronavirus redundancy issues include:

- Requests to re-employ and furlough employees who were already made redundant or stopped working for the employer between 28 February and 19 March 2020. Effectively rescinding these coronavirus related redundancies may be permissible if the employer agrees.
- The inter-relationship between collective consultation and furlough including whether appointment of employee representatives could count as work and jeopardise recovery of the furlough payment.

For more detail on the complexities that apply as a result of the pandemic, see our [Coronavirus \(COVID-19\): redundancy guide](#).

Managing redundancy

Redundancy can be a very challenging and upsetting situation for affected employees and the wider workforce. Announcing redundancies affects staff morale, motivation and productivity. Employers need to handle the redundancy situation as sensitively as possible to reduce the negative impact.

Every employer should consider having a formal redundancy procedure. In many organisations a formal agreement may exist between management and trade union or employee representatives.

Exact procedures will vary according to the timescale and size of the redundancy programme, but organisations should follow these stages as a minimum:

- Planning.
- Identifying the pool for selection.
- Seeking volunteers.
- Consulting employees.
- Selection for redundancy.
- Appeals and dismissals.
- Suitable alternative employment.
- Redundancy payment.
- Counselling and support.

Planning

Organisations should always attempt to avoid redundancies and consider alternative

approaches, such as:

- Natural wastage.
- Recruitment freezes.
- Stopping or reducing overtime.
- Offering early retirement to volunteers (subject to complying with age discrimination law).
- Retraining or redeployment.
- Offering existing employees sabbaticals and secondments.
- Pay freezes.
- Short-time working.
- Other 'alternatives to redundancy' schemes where employees do not work for their employer for a specified period and are free to seek new work whilst receiving an allowance.

However, employers may not be able to adopt these without breaking their employees' contracts, so they need to take care when considering alternative approaches.

If the redundancy involves more than 20 employees, the employer must inform the Redundancy Payments Service acting on behalf of the Department for Business, Energy & Industrial Strategy (BEIS).

Identifying the pool for selection

The group from which employees will be selected for redundancy (the selection pool) must be carefully identified. It will usually consist of at least one of:

- Those who undertake a similar type of work.
- Those who work in a particular department.
- Those who work at a relevant location.
- Those whose work has ceased or been reduced, or is expected to do so.

In many redundancy situations, the employer may identify a range of selection pools. If an employer fails to consult and consider a selection pool correctly, the dismissals will be legally unfair.

Seeking volunteers

After a careful planning stage, offering a voluntary redundancy package and seeking volunteers may avoid compulsory redundancies.

Consulting employees

As well as individual consultation, if 20 or more employees at one establishment are to be

made redundant, collective consultations with recognised trade unions or elected representatives must start within minimum time scales. For dismissals of 100 or more employees, this is at least 45 days before the notification of redundancies. For dismissals of 20-99 employees, it's at least 30 days before the notification of redundancies.

Collective consultation must be completed before notices of dismissal are issued. If there are no recognised trade unions or employee representatives, the employer must facilitate an election, by the employees, of representatives for the consultation. The law requires 'meaningful' consultation – it's not enough only to inform employees of a decision that has already been made. For example employees are entitled to be consulted on the proposed selection process and scoring system. If employers fail to collectively consult the maximum extra compensation payable is 90 days' pay per employee, known as a protective award.

At the start of the consultation process the employer is legally obliged to give the following information to the representatives:

- The reason for the redundancy dismissals.
- The number of proposed redundancies and their job types.
- The total number of employees affected.
- The proposed methods of selection.
- The procedure to be followed in dealing with the redundancies.
- The method of calculating redundancy payment.

Employers are also required to consult individual employees and give them reasonable warning of impending redundancy. Although there's no minimum statutory timescale when fewer than 20 employees are made redundant, the individual consultation must be meaningful and may also be covered by contractual terms or policies. An employee is entitled to be accompanied at all individual consultation meetings by a trade union representative or colleague.

Selection for redundancy

When the consultation is finished, the employer may need to choose individuals from within the selection pool if there are not enough volunteers for redundancy. These choices must be based on objective criteria such as:

- Length of service (only as one of a number of criteria).
- Attendance records.
- Disciplinary records.
- Skills, competencies and qualifications.
- Work experience.
- Performance records.

'Last in, first out' (LIFO) is a risky selection method as those with less service are likely to be younger so this could result in potential age discrimination claims. Case law shows that LIFO may still be relevant as part of a wider range of selection criteria, but it mustn't be used as the sole method, and the employer must be able to justify its use. It can also be an unsatisfactory way of keeping the most competent employees.

Employment tribunals look favourably on selection procedures based on a points system which scores each employee against relevant criteria. Employers must take great care in the choice and application of the criteria to avoid discrimination. For example, selecting part-timers could be discriminatory if a high proportion of women are affected.

Scoring should, if possible, be carried out independently by at least two managers who know all employees in the selection pool. Marks from the two assessors should then be added together to give a total score for each employee.

Appeals and dismissals

The employer should give written notice to those selected for redundancy that they are 'at risk' of redundancy and invite them to individual meetings. At least one further consultation meeting should be held, with the actual number of meetings depending on what the employee has to say. The employer must consider any points that the employee puts forward.

Once the individual consultation is complete, the employer must decide whether the employee is to be made redundant and give a written redundancy notice. This will be either the statutory minimum notice or the contractual notice, whichever is the greater. The employer must also explain the redundancy payment calculation.

Employees should be allowed to appeal against the redundancy decision.

It's automatically unfair to make an employee redundant for a number of reasons, including:

- Trade union membership (or non-membership).
- Part-time status.
- Pregnancy- or maternity-related reasons.

The law currently gives women made redundant while on maternity leave the right to be offered a suitable alternative role in advance of their colleagues. A Bill to extend this protection for six months beyond maternity leave was not passed in the last Parliamentary session. It may be reintroduced.

In addition, making someone redundant because of their age, sex, sexual orientation, marital status, disability, race or religion or any other protected characteristic is unlawful

under the Equality Act 2010.

CIPD members can see more in our [Unfair dismissal law Q&As](#).

Suitable alternative employment

Employers must consider offering suitable alternative work to redundant employees. If employees unreasonably refuse suitable alternative work they may lose their entitlement to a statutory redundancy payment. Employees can have a four-week trial period in a new role. If the employer and employee then agree that the role is not a suitable alternative, the employee reverts to being redundant.

The law requires employees who have at least two years' service to be given paid time off to look for work during the final notice period.

The costs of redundancy and redundancy payments

There are various direct and indirect costs to employers associated with redundancy. Direct costs include contractual or statutory redundancy payments: dismissed employees with two or more years' service are entitled to a minimum statutory redundancy payment based on a formula similar to the basic award for unfair dismissal. Current levels of statutory payments are on our [Statutory rates](#) page and also on the [GOV.UK website](#).

Although there's a maximum statutory redundancy payment, our surveys find many employers pay more than the law requires.

The potential indirect costs of redundancy include management time, higher labour turnover and lost output resulting from the reduced morale and engagement of 'survivor' employees.

Counselling and support

Giving notice is a difficult task and managers should be trained to handle redundancies with sympathy and clarity. Employees may need support to accept reality and mount an effective job search. A well-designed redundancy programme should enable employees to refresh their interview skills, redraft CVs and reply effectively to job advertisements.

Where possible, outplacement advice should be offered to leaving employees to maintain their morale and help them find alternative employment.

Survivor support

In any redundancy situation, the employer's immediate priority should be the fair and sensitive treatment of those employees who are losing their jobs. Once this has been achieved, the organisation's ongoing effectiveness is largely dependent on the morale of the survivors.

A demoralised workforce, anxious about job security and critical of how the organisation handled their colleagues' redundancies is not likely to feel committed and engaged. Senior managers' primary objectives in looking after the workforce should be to:

- Give all staff a full explanation of the situation, including the redundancy procedure being used.
- Explain the need for the changes.
- Handle redundancies in a responsible, fair and effective way.
- Give an overview of any further reorganisation and/or changes in working arrangements.
- Provide a forward-looking, positive attitude for the future and show survivors the value of their role in that future.
- Carry out individual discussions with remaining key workers, where necessary, to reassure them of their importance and employment prospects.
- Ensure that managers have, or develop, the necessary personal skills and attitude to operate effectively during periods of traumatic change.

Useful contacts and further reading

Contacts

[Acas - Manage staff redundancies](#)

[GOV.UK - Making staff redundant](#)

[GOV.UK - Calculate your employee's statutory redundancy pay](#)

Books and reports

INCOMES DATA SERVICES. (2016) *Redundancy*. 2nd ed. Employment law handbook. London: Thomson Reuters.

OWEN, N. and PECK, S. (2013) *Redundancy law : a guide to using the law for union reps*. LRD Booklets. London: Labour Research Department.

Journal articles

COY, J. (2017) Choosing the right employees for redundancy pools. *People Management* (online). 6 December.

EVANS, S. (2018) How to use sabbaticals to avoid redundancy. *People Management* (online). 17 August.

KINDER A. (2014) Supporting redundancy survivors. *Occupational Health*. Vol 66, No 2, February. p21.

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