

The rights and responsibilities involved when it comes to Redundancy

Introduction

For redundancy to be fair there must be a genuine need for redundancy and the employer must follow a fair process in carrying it out. Where there are many employees involved, trade unions and employees should be consulted properly.

Before beginning any redundancy (and during the consultation process), an employer should think about whether it can avoid making redundancies or reduce the number of redundancies. Employers also need to carefully think about how the employees will be chosen for redundancy. If they don't, they may face claims of unfair dismissal.

The way that staff are chosen should be fair and follow an agreed selection process if the organisation has one. If there isn't an agreed process in place, the employer must make sure there is no discrimination, that staff are chosen fairly, and in a way that can be checked.

Q. What is redundancy?

A. Redundancy is a specific form of dismissal that happens when an employer needs to reduce the size of its workforce, so certain jobs or roles are no longer required.

In Northern Ireland, an employee is dismissed for redundancy in law when:

- The employer has ceased, or intends to cease, carrying on the business, completely or at that location, 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 the legal definition is met redundancy can also include the termination of a fixed term contract. The basic test is whether the employer requires fewer (or indeed no) employees to do a particular type of work.

There are two different types of redundancy - individual redundancy, and collective redundancy. The employer has different legal obligations, depending on what type of redundancy is being considered.

Q. What alternatives can an employer consider to avoid redundancy?

A. Employers should always try to avoid making redundancies or reduce the number of them and consider alternative approaches before deciding on compulsory redundancy as a final option. If there are no alternatives, then the employer should document this, and it should be discussed in an open and transparent manner with the workforce and their representatives.

Some examples of alternatives, which may help the business through a difficult time, could be:

- Seek volunteers for redundancy.
- Seek expressions of interest in early retirement.
- A recruitment freeze or natural wastage i.e. simply not replacing staff who leave.
- Stopping or reducing overtime.
- Re-training or redeployment of staff to a busier area of the business.
- Cease or reduce the reliance on agency staff and contractors.
- Temporarily lay-off employees or reduce their hours.
- Allowing unpaid career breaks or sabbaticals for a fixed period of time.

Some of the above examples may not apply to every business, however all possible alternatives should be examined as even a combination of small savings here and there cumulatively could reduce the number of redundancies which is a key part of the process. Many of these measures would be temporary, with a view to returning to normal working practices once business picks up again.

Employers may not be able to adopt some of these without potentially breaching their employees' contracts, so they need to take care when considering alternative approaches and when necessary seek agreement with employees.

Q. Can I ask staff to volunteer for redundancy?

A. Yes, you can ask employees to put themselves forward for voluntary redundancy during a redundancy process. Employees can also volunteer for redundancy without being asked. It is your decision over whether you will accept the volunteers, and you should follow a fair and transparent selection process and take account of the needs of your business when doing this. Redundancies made on a voluntary basis may mean you do not have to consider compulsory redundancies; however, you may need to do both depending on the numbers of redundancies you need to make. When making

voluntary redundancies, you should follow the same procedures as for compulsory ones.

Q. What is consultation?

A. Consultation is a very important part of any fair redundancy process. There should be clear communication (genuine, meaningful and in good time). It should be a two-way process.

Employers making fewer than 20 employees redundant are legally required to have meaningful consultation with each employee. Employers are not legally required to collectively consult with their employees in small-scale redundancy situations. However, it may be useful to do so as a first step then follow up with the individual consultation meeting.

Unlike larger-scale redundancies, there is no fixed period of consultation required. It needs to be enough to be meaningful to the particular situation. For more information on handling redundancies in a small business see [here](#).

Employers who plan to make 20 or more employees redundant over a period of 90 days or less must consult representatives of any recognised independent trade union. If there is no recognised trade union, they must consult other elected representatives of the affected employees.

Consultation should begin in good time and be completed before any redundancy notices are issued.

Consultation must begin:

- At least 30 days before the first person is made redundant, if 20 to 99 employees are to be made redundant at one place over a period of 90 days or less; or
- At least 90 days before the first person is made redundant, if 100 or more employees are to be made redundant at one place over a period of 90 days or less

Employers must ensure that they do not forget to consult employees who are on maternity leave or long-term sick leave.

Q. What rights do employees have if their employer does not consult?

A. There may be special reasons why an employer finds it hard to consult in the way the law says it should and a judge may look at those reasons. Nevertheless, employers must still try their best to consult properly. When they don't do it properly, the trade union or employee representatives could complain to an industrial tribunal.

The complaint must be either before the last redundancy is made or within three months after the last one is made. In some circumstances, the industrial tribunal can allow a longer period for a complaint to be made.

An officer from the Labour Relations Agency (through Early Conciliation) may help reach a solution, before the case goes to an industrial tribunal. If a settlement is not reached and the tribunal finds in favour of the union, a 'protective award' may be made to the employees concerned.

Q. What is a Protective Award?

A. Failure by an employer to comply with collective consultation requirements could lead to a claim being made for compensation to an industrial tribunal by the representatives of the employees facing redundancy, known as a protective award. This means that employers must pay their employees their normal week's pay for a period of time called the 'protected period'. The industrial tribunal will decide on the length of time, depending on what is fair and thinking about the employer's failure to meet their responsibilities, but it can be up to 90 days when 20 or more people are to be made redundant. The protected period begins either on the date on which the first of the redundancies is made or on the date of the industrial tribunal award, whichever comes first.

Q. How do employers identify who is at risk of redundancy and what is a "selection pool"?

A. An initial key part of the planning and preparation stage in any redundancy process is identifying which employees in the business will be "at risk" of redundancy – this is known as the "selection pool" or "pool". Where a number of different roles are at risk of redundancy, you may need to have more than one selection pool.

There are no fixed rules about how a pool should be constructed, it will be dependent on the circumstances that have given rise to redundancy in the first place, so employers need to consider the type of work that is ceasing or diminishing and which employees carry it out.

There is also no legal requirement that a pool should be limited to employees doing the same or similar work, even though this may often be the case in practice. In certain circumstances, it may be appropriate for an employer to consider including employees in the pool who are not doing the kind of work that is in decline, if their role could be performed by other employees who are doing such work. In addition, larger businesses carrying out business wide redundancies are likely to have multiple selection pools.

Employers should consult with employees and their representatives to consider the pool or pools of 'at risk' employees, and the redundancy selection criteria to be used. If agreement can be reached, the employer will be in a stronger position to defend its decisions, if challenged by an employee. Of course, identifying the pool of at risk employees could also be quite simple, if the whole business or a particular location is closing down altogether, or where only one individual is carrying out a particular job role that is no longer required.

Once the "relevant pool" has been identified, there is a legal requirement that all employees within it should be notified they have been placed "at risk". This notification must also be sent to any pool employees on maternity leave or those employees absent due to sickness. Employees should be made aware that the initial identification of the "relevant pool" of those "at risk," of redundancy is provisional and that no definite decisions will be made until the consultation process is completed.

Q. How does an employer decide the selection process to be followed in a redundancy exercise?

A. An employer will need to decide the criteria to be used when dismissing as redundant some but not all of their employees. In the absence of a contractual redundancy selection procedure an employer must decide the appropriate selection process to be used.

Some employers opt to implement a scoring system that is designed to identify those to be dismissed for redundancy. The selection criteria utilised should be as 'objective' and 'measurable' as possible. This means it should be fair, be based on precisely defined facts that can be objectively measured and not be influenced by individual bias.

Without the use of fair selection criteria, employers run the risk of unfairly selecting employees for redundancy, and potential claims going to an industrial tribunal.

Interview selection is another popular method of redundancy selection. By requiring employees at risk of redundancy, to apply for a limited number of new or existing jobs, employers can circumvent more traditional selection criteria.

Employers should agree the selection criteria with representatives. The pool of employees “at risk” of redundancy should be afforded an opportunity to comment upon, and respond to, the proposed criteria at their initial consultation meeting, before they are scored against them.

Q. In what circumstances does an employer need to use the Statutory Three-Step Dismissal Procedure?

A. In a situation where there are less than 20 employees being made redundant, employers in Northern Ireland are required by law to follow the statutory 3-step dismissal procedure. To find out more view [here](#).

Q. Should an employer consider other work the employees could do?

A. Employers should think about whether they can offer the employees different work. If different work is available within the employer's own organisation or with an ‘associated’ company, the employee should be given enough information to allow them to decide whether to take the offer or not. Employers should look for other roles throughout the whole company group if possible and appropriate.

Q. Has an employee the right to try suitable alternative work?

A. By law, an employee who is under notice of redundancy has a right to a trial period of four weeks in an alternative job, where the conditions of the new contract are different from their original contract. The trial period begins when the first contract has ended and it ends four weeks after the start date of the new contract.

The trial period will give the employee a chance to decide whether the new job is suitable without necessarily losing the right to a redundancy payment. The four-week trial period can be made longer, for example for retraining, by an agreement which is in writing, shows the date on which the trial period ends, and sets out the employee's terms and conditions after it ends.

If the employee works on after the end of the four-week period or the jointly agreed extended period, any redundancy entitlement will be lost because the employee will be seen to have accepted the new employment. Employers should tell the employee about this when they offer them the new job.

The employer should also use the trial period to decide if it is suitable for the employee. If the employer wants to end the new contract within the four weeks for a reason connected with the new job, the employee will have the right to a redundancy payment under the old contract. If the dismissal was for something not connected with the redundancy process, the employee may lose the right to a redundancy payment.

Q. Is an employee under notice of redundancy entitled to time off to look for new work, or for training?

A. Employees who are under notice of redundancy, and have been continuously employed for at least two years, qualify for a reasonable amount of time off to look for another job or to arrange training. The employer does not have to pay more than two-fifths of a week's pay; no matter how much time off they give the employee. Where possible, employers should give this support to all employees who are affected by redundancy. The time off, which is agreed, must be allowed before the notice period ends.

Q. Who can get a redundancy payment?

A. A redundancy payment is due only if the worker is an employee. Self-employed people, freelance agents or partners do not qualify for a redundancy payment. The employee must have at least two years' continuous service.

Q. What are the basic statutory payments?

A. For each complete year of service, up to 20 years of service, employees are entitled to:

- Half a week's pay for each year of service, if they are under the age of 22;
- One week's pay for each year of service, at age 22 but under the age of 41; or
- One and a half week's pay for each year of service at the age of 41 or over.

Q. What is a week's pay?

A. A week's pay is what the employee is entitled to under their terms of contract at the 'calculation date'. The 'calculation date' is the start date of the shortest notice period the law allows the employer to give the employee. If the pay varies (for example, piecework where the employee is paid for the amount of a product they

produce), the amount of the week's pay is averaged over the 12 weeks before the 'calculation date'.

There is a maximum limit on the amount of a week's pay that may be considered if the basic statutory rate is applied. This figure is reviewed every year, and is currently £594 (2022/2023). Employers may of course, pay more than the minimum allowed by law.

Q. What else is an employer required to do in a redundancy situation?

A. Employers must by law provide advance notification of redundancies to the Northern Ireland Statistics and Research Agency by completing an online [HR1 form](#), if they are proposing to make 20 or more employees redundant at one place, within a 90-day period. This information is collated and passed onto the Department for the Economy and the Department for Communities for information.

The information required is similar to that which the employer must disclose to representatives for consultation purposes. Additionally, the notification must state where and with whom such consultation commenced.

Failure to provide the requisite notice without good cause may result in prosecution and a fine.

Q. What other support should an employer consider?

A. Giving an employee notice of their redundancy is a difficult task and managers should be trained to handle redundancies sympathetically and with 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 complete job applications effectively.

Where possible, outplacement advice should be offered to employees facing redundancy, to assist them in finding alternative employment and maintain good morale.

Employers should also consider other support, such as financial advice, or counselling support.



How we can help

We provide an impartial and confidential employment relations service to those engaged in industry, commerce and the public services. Our services include the provision of advice on good employment practices and assistance with the development and implementation of employment policies and procedures. The Agency offers a wide range of training.

Website: www.lra.org.uk

Telephone: 03300 552 220 (Switchboard)

03300 555 300 (Workplace Information Service)

Email: info@lra.org.uk

Twitter: @LRA_Ireland