

European and British employment legislation has been significantly strengthened in recent years in favour of the employee.

It is vital then that an employer has a robust set of HR procedures. **abacus** can assist their clients with ACAS approved HR policies and procedures.

In this particular factsheet we focus on redundancy. An employee's employment can be terminated at any time but unless the redundancy is fair an Employment Tribunal may find the employer guilty of unfair dismissal.

We set out below the main principles involved concerning the redundancy of employees. We have written this factsheet in an accessible and understandable way but some of the issues may be very complicated and we strongly recommend before commence any redundancy program you speak to your local **abacus** accountant who will help and advise you.

## What is redundancy?

Under the Employment Rights Act 1996, redundancy arises when employees are dismissed because:

- the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was so employed or
- the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed or
- the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish or
- the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish.

In other words, the business reasons for redundancy do not relate to an individual but to a position(s) within the business.

Consultation - legal requirements

Employers who propose to dismiss as redundant 20 or more employees at one establishment have a statutory duty to consult representatives of any recognised independent trade union, or if no trade union is recognised, other elected representatives of the affected employees.

## Consultation should begin in good time and must begin:

- at least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less
- at least 90 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

Employers also have a statutory duty to notify the Department for Business, Innovation & Skills (BIS) if they propose to make 20 or more workers redundant at one establishment over a period of 90 days or less.

If an employer fails to consult, a Tribunal has discretion to make a protective award of up to 90 days pay.

It is good practice in all organisations however, regardless of size and number of employees to be dismissed, for employers to consult with employees or their elected representatives at an early enough stage to allow discussion as to whether the proposed redundancies are necessary at all. Then they should ensure that individuals are made aware of the contents of any agreed procedures and of the opportunities available for consultation and for making representations. It must be remembered that redundancy is a form of dismissal and although it is not a requirement to follow a disciplinary and dismissal procedure which satisfies the requirements of the ACAS Code of Practice, namely to include a letter setting out the reasons for the potential redundancy, a meeting and an appeal process, it is best practice to do so.

## Disclosure of information

Employers have a statutory duty to disclose in writing to the appropriate representatives the following information so they can play a constructive part in the consultation process:

- the reasons for the proposals
- the number and descriptions of employees it is proposed to dismiss as redundant
- the total number of employees of any such description employed at the office in question
- the way in which employees will be selected for redundancy
- how the dismissals will be carried out and over what timescale
- the method of calculating the amount of redundancy payments (other than statutory redundancy pay) to be made.

To ensure that employees are not unfairly selected for redundancy, the selection criteria should be objective, fair and consistent. They should be agreed with employee representatives and an appeals procedure should be established.

Examples of such criteria include attendance and live disciplinary records, experience and capability. The chosen criteria should be measurable and consistently applied. Non-compulsory selection criteria include voluntary redundancy and early retirement, although it is sensible to agree management's right to decide whether or not such an application is accepted or not.

Employers should also consider whether employees likely to be affected by redundancy could be offered suitable alternative work within the organisation or any associate company.

Employees who are under notice of redundancy and have been continuously employed for more than two years, qualify for a reasonable amount of paid time off to look for another job or to arrange training.

## Unfair selection for redundancy

An employee will be deemed to have been unfairly selected for redundancy for the following reasons:

- participation in trade union activities
- carrying out duties as an employee representative for purposes of consultation on redundancies
- taking part in an election of an employee representative
- taking action on health and safety grounds as a designated or recognised health and safety representative
- asserting a statutory employment right
- by reasons of discrimination
- maternity-related grounds.

## The right to a redundancy payment

Employees who have at least two years' continuous service qualify for a redundancy payment.

The entitlement is as follows:

For each complete year of service	No. of weeks pay
until the age of 21	half a week's pay
between the ages of 22 and 40 inclusive	one week's pay
over the age of 41	one and a half week's pay

*Note:*

- A week's pay is that to which the employee is entitled under his or her terms of contract as at the date the employer gives minimum notice to the employee.
- Length of service is capped at 20 years
- Weekly pay is capped at £464
- The maximum amount of statutory redundancy pay is £13,920, (i.e. 20 years x 1.5 weeks x £464).

Employers may, of course, pay in excess of the statutory minimum.

The employee is also entitled to a period of notice or payment in lieu of notice by statute and their contract of employment.

## How **abacus** can help

**abacus** will be more than happy to provide you with assistance in preparing for a redundancy program to ensure you do not fall foul of current legislation or supply you with any additional information required.

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