

Checklist for Redundancies

For use only if fewer than 20 employees will be made redundant.

Redundancy is one of the potentially fair reasons for dismissal. However, the redundancy may be unfair if a proper and fair procedure is not carried out. When considering dismissal for redundancy the following steps should be followed:

What is Redundancy?

1. Ensure that a genuine redundancy situation exists. It only exists where:
 - the employer has ceased, or intends to cease to carry on the business in which the employee was employed, or to carry on that business where that employee was employed; **or**
 - the requirements of the employer for employees to carry out work of a particular kind, or for employees to carry out that work in that place, have ceased or diminished or are expected to cease or diminish.

Consultation

2. If you do not consult your employees prior to making redundancies, the dismissal will be unfair:
 - consultation must take place at a formative stage;
 - you must give employees adequate information and adequate time in which to respond; **and**
 - give conscientious consideration to any responses your employees give.
3. Give as much warning as possible of the impending redundancies. If union representation is recognised at your work place, or if work place representatives have been previously elected, consult and agree upon a fair and objective redundancy procedure. Consider electing employee representatives if you are proposing to make a number of redundancies.
4. Consider convening a meeting of staff whose jobs are at risk to inform them of the fact and the business reasons for this. Follow this up by writing to the individual employees to confirm that their job is at risk of redundancy and the reasons for this. In the letter, invite the employee to a further consultation meeting where you will explore together the existence of suitable alternative jobs within the organisation or other measures which may be taken to avoid redundancy. Inform the employee of any proposed pool for selection, selection criteria and manner of selection (see below). Inform the employee of the right to be accompanied to this meeting by a work colleague or trade union official.
5. It is essential that a fair and objective selection process is agreed and applied. Consider:
 - the selection of the pool of employees from which redundancies will be made;
 - the selection criteria to be applied to them; **and**
 - the manner in which the selection criteria will be applied.

The Pool for Selection

6. It may appear that redundancies are needed in one department when in actual fact less skilled or surplus employees from other departments could be made redundant instead. Consider employees:
 - who are doing the same or similar work as the group from which it is first considered that redundancies will be made;
 - whose skills are interchangeable from one department to another (N.B. employees who are carrying out similar types of work on different sites should be considered as one pool, not two);
 - who work on different shifts but who essentially are carrying out the same work.
7. Consider asking for voluntary redundancies and explain the voluntary package on offer. If you do, then attach a condition that you reserve the right to refuse redundancy in case a key member of staff asks to leave.
8. Before accepting any voluntary redundancy or paying any voluntary package to an employee, you should consider asking the employee to sign a Compromise Agreement which complies with section 203 of the Employment Rights Act 1996. Barlow Robbins will be happy to prepare this Compromise Agreement for you to ensure it is valid and binding on the employee. If there is no valid Compromise Agreement, the employee will still be able to bring a claim to the Employment Tribunal, notwithstanding the fact that you have paid a voluntary redundancy package.

Selection Criteria

9. Criteria must be objective and capable of specific measurement. Consider: attendance records, efficiency, length of service, disciplinary records, qualifications, speed of production, skills and knowledge, job task flexibility, last in first out.
10. You must be careful to avoid criteria which may offend the laws on sex, race, age, disability and other areas of discrimination or may be automatically unfair (e.g. part time work, flexibility on hours of work, absenteeism through long term ill health, pregnancy or maternity grounds, whistleblowing, health and safety issues.)

Manner of Selection

11. Consider what weight should be given to each criterion and how they will be scored. Some criteria will be more important to you than others. The scores must be applied in a fair and objective manner.
12. Once the pool for redundancy has been identified prepare figures for redundancy packages for each candidate in the pool and provisionally mark each candidate against the criteria.

First Round Meetings

13. When you have carried out the above preparations:
 - meet each candidate separately to explain the situation and advise them of the criteria to be used in selection. Discuss their individual score to ensure that no mistakes have been made. Explain the redundancy package. Do not discuss scores/ packages of other candidates;

- the candidates should not be told that they are going to be made redundant. They should be told that the situation in the company is that redundancies may have to be made and that they have been initially identified as potential candidates;
- give them the opportunity to state any initial views or opinions or suggestions for avoiding the redundancy;
- discuss the existence of any alternative roles elsewhere in the organisation;
- at the end of the meeting advise them that a second individual meeting may be arranged if they are selected and that if they have any queries or ideas in the meantime they should contact a named member of management;
- remember the aim is for active consultation with a view to avoiding the redundancies, therefore consider their suggestions to reduce pay/alter hours etc seriously.

14. At the end of the first round of meetings, collate the information and make selection for redundancies. Arrange second meetings for those selected for redundancy. As for the first round, this should be done in writing. Again, they are entitled to attend with a work colleague or trade union official.

Second Round Meetings

15. At the second meeting, the views and opinions of the employee regarding the situation should again be sought. Listening to the employee's views is very important, they may suggest something you had not considered and in any event listening significantly reduces the stress and anger on the part of the employees, and may reduce the threat of later Tribunal proceedings. Following the conclusion of the second meeting advise the employee of the decision taken in writing. You must also notify him/her of the right to appeal against the decision if he/she is not satisfied with it. If such an appeal is lodged, you must invite the employee in writing to attend an appeal meeting and advise him/her of the right to be accompanied.

16. Throughout the process, the employer must consider whether there is suitable alternative employment that may be available for the employees:

- check for and notify employees of any vacancies that arise whether or not the employer considers it to be suitable. Consider more junior roles that the employee would be able to carry out or roles which the employee could carry out with a certain amount of training. Do not reject a role simply because you consider the employee is unlikely to want to do it;
- note that the obligation is not to offer the employee the alternative employment, merely to inform them of its existence;
- where the employer is part of a group, the obligation is to notify alternative employment within the group, not just the company;
- large organisations should keep records of how they checked for alternative employment and their notification process.
- If a suitable alternative job is offered, to start within 4 weeks after the end of the old job, the employee will lose the right to a redundancy payment if he/she unreasonably refuses that job offer.
- If a suitable alternative job is accepted, the first 4 weeks of the new position will be a trial period. The employee is entitled to give notice that he/she does not wish to continue in the job at any time during the trial period, and is able to claim a redundancy payment as long as the refusal of the new job is not unreasonable.

17. You should also consider “bumping” redundancies i.e. dismissing an employee in a non-redundant position to make way for an otherwise redundant employee. You would still need to apply a selection criterion to the decision. Bumping might be appropriate if, for example, the otherwise redundant employee has a period of long service and the “bumped” employee has only a very short period of service. The “bumped” employee would be considered to be redundant as his dismissal resulted, albeit indirectly, from a redundancy situation.
18. If short notice has to be given to any employee, then a payment in lieu of notice should be made in addition to the redundancy payment. Otherwise full notice should be given and paid. An employee under notice of dismissal for redundancy is entitled to a limited amount of time off work to seek new employment or make arrangements for retraining.

Be aware that separate considerations apply to women in the pool for redundancy who are pregnant or on maternity leave. Take legal advice immediately.

This checklist is provided for your general information only and does not seek to set out the employment legislation in this area in detail. If you have any queries or wish to discuss specific circumstances, please do not hesitate to contact one of our employment team who will be happy to assist.

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