

# An Introduction to Redundancy Legislation and Procedures

Business Information Factsheet  
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## Introduction

Any employer may face a situation where they need to make redundancies. If an employer finds themselves in this situation, it is important that they follow the correct procedures to ensure that they comply with the law.

This factsheet gives an overview of an employee's legal rights, as well as the procedures that employers should be following throughout the redundancy process.

All the information in this factsheet applies to England, Scotland and Wales only. Different laws govern redundancy procedures in Northern Ireland. Go to [http://forms.redundancyni.gov.uk/rps/general/employer\\_informaton.htm](http://forms.redundancyni.gov.uk/rps/general/employer_informaton.htm) for further information.

## What is the meaning of 'redundancy'?

Redundancy is a situation in which an employee or group of employees lose their jobs because their employer no longer needs them to carry out the employment for which they have been contracted. Employers may need to make employees redundant when the organisation requires fewer employees to carry out work of a particular kind, or certain business requirements have ceased.

## In what situations can an employer make an employee redundant?

In order to make an employee redundant, an employer must have a fair reason to do so. They must have a need to reduce their workforce. This may happen because:

- The business is closing down entirely.
- A workplace is closing down.
- Fewer employees are (or are expected to be) needed for a particular type of work.
- Changes in conditions have resulted in the business requiring employees to perform new roles that are very different to the original roles employees were contracted to perform.

The procedures employers must follow before making an employee redundant must be objective and fair, and employees should be kept informed throughout the redundancy process; otherwise, a dismissal due to redundancy could be deemed unfair. In addition to this, as with any type of dismissal, the redundancy procedure has to be reasonable.

An employer should try to avoid making redundancies where possible by, for example, introducing shorter working hours, natural wastage (not replacing staff who leave voluntarily), a

recruitment freeze, stopping or reducing overtime, or offering voluntary retirement (subject to age discrimination regulations).

## What legal rights do employees have?

Employees have the following legal rights regarding redundancy:

- To be told and consulted in advance in order to discuss any alternatives to redundancy.
- To be given reasons for the redundancies.
- If more than one person is affected by the reasons for the redundancies, to be selected for redundancy according to an objective, fair and consistent process and to know the basis of the selection system.
- To be offered alternative employment wherever possible.
- To try out a suitable alternative offer of employment for four weeks without losing their right to a redundancy payment.
- To take reasonable paid time off to look for alternative work or to arrange training.
- A minimum period of notice equivalent to a week for every year of employment, up to a maximum of 12 weeks.
- Statutory redundancy pay after two years' service.

## Consultation

Individual consultation is necessary for all redundancy situations. Employers should speak to every employee who is facing redundancy and discuss with them the reasons why redundancies are being made, and any potential alternatives to redundancy. Employers must also speak to employees who are not themselves facing redundancy but may be affected by the redundancies, for example employees whose workload will change.

Where fewer than 20 employees are to be made redundant, there is no fixed procedure to follow, but the consultation must still involve a genuine consideration of employees' concerns and suggestions.

If more than 20 people are being made redundant over a period of 90 days or less, a collective consultation with trade unions is required (or, where there is no recognised trade union, with elected employee representatives), in addition to the consultation of employees individually.

Employers must notify the Redundancy Payments Service (RPS, [www.gov.uk/redundancy-payments-helpline](http://www.gov.uk/redundancy-payments-helpline)) before a collective consultation starts. The deadline by which notification must be submitted depends on the number of proposed redundancies.

For redundancies involving 20-99 people, the consultation period must start at least 30 days before any decision to dismiss due to redundancy is made (45 days for 100 or more employees). For redundancies involving fewer than 20 people, there is no minimum consultation period.

The law requires a meaningful consultation; this means that employers need to consider ways of avoiding redundancies or minimising their effect and trying to reach agreement with employees. An employer must not simply inform employees that they are going to be made redundant. This

will not constitute sufficient consultation and could leave an employer vulnerable to claims of unfair dismissal.

If 20 or more employees are to be made redundant, employers must, at the start of the consultation, provide employees or their trade union representatives with written details of:

- The reasons for the redundancies.
- The numbers and categories of employees involved.
- The numbers of employees in these categories employed at the workplace.
- The redundancy selection process.
- How the redundancy or redundancies will be carried out.
- How any redundancy payments will be calculated.

## **Fair reasons and objective criteria for redundancy selection**

Employers must be very careful to ensure that the criteria they use for redundancy selection are fair and objective. If selection criteria can be judged as unfair, then an employee may be entitled to lodge a claim for unfair dismissal. Some of the selection criteria that have been established by the courts as being objective include:

- Asking for volunteers.
- Attendance records.
- Disciplinary records.
- Skills, competencies and qualifications.
- Work experience.
- Last in, first out (employees with the shortest length of service are selected first).
- Performance records.

An employer can make redundancies without following a redundancy selection process if the job in question no longer exists. This would occur if the whole company was closing down or everyone in a particular office was being made redundant because the office was closing down.

## **Right to time off for job hunting or to arrange training**

An employee who is given notice of dismissal because of redundancy is entitled to a reasonable amount of time off with pay during working hours to look for another job or to make arrangements for training or future employment. The law does not specify exactly what 'reasonable' means, but it will depend on the individual circumstances of both the employer and employee. An employer must be able to show that the time off they have provided to the employee for job hunting is reasonable in the circumstances to ensure that the dismissal is fair and lawful.

## Who qualifies for redundancy payments?

All employees have an entitlement to redundancy pay once they have been employed for two years or more. They must, however, be an employee working under a contract of employment. Workers or employees who have been working for less than two years may not necessarily be entitled to redundancy pay. Self-employed people, apprentices, or members of a partnership do not qualify, although company directors may qualify if they work under a contract of employment. Redundant employees who refuse suitable alternative employment (this will depend on the terms relating to hours, location and pay) are also excluded from payment of redundancy pay.

## How are redundancy payments calculated?

Redundancy pay is calculated as follows:

- Half a week's pay for each complete year of continuous service worked up to the age of 22.
- One week's pay per complete year of service worked after the employee's 22nd birthday.
- One and a half weeks' pay per complete year of service worked after the employee's 41st birthday.

The maximum week's pay is capped at £489. The maximum number of years' service is capped at 20 years. The term 'a week's pay' will amount to the figure stipulated in the contract of employment.

There is a maximum statutory redundancy payment of £14,670, although individual employers may offer higher payments in their contracts of employment. Employers can also opt to provide redundancy pay to employees with less than two years' service.

If a business has severe cash flow problems and statutory redundancy payments cannot be made without putting its future at serious risk, the RPS can pay employees from the National Insurance Fund. If the business is insolvent, the RPS makes the payment and recovers the money from the assets of the business.

## What notice must be given to employees before they are made redundant?

If an employer intends to make an employee redundant, they should provide the employee with a minimum period of notice equivalent to a week for every year of employment, up to a maximum of 12 weeks. However, an employee's contract of employment may include more generous terms, which must be honoured.

## Is it redundancy or unfair dismissal?

Redundancy is potentially a fair reason for dismissal, but it will be regarded as unfair dismissal under the following circumstances:

- If any of the above procedures, such as proper consultation, are not followed or, for example, if there is a failure to take adequate steps to consider whether suitable alternative employment within the organisation is available.

- If there has been unfair selection for redundancy, particularly if the criteria were not objectively justifiable or were applied inconsistently.

There are many reasons for redundancy that are automatically unfair, including selection based upon:

- Trade union membership (or non-membership).
- Part-time status.
- Pregnancy or maternity/paternity-related reasons.
- Sex, sexual orientation or marital status.
- Disability, race or religion.

If an employer makes someone redundant unfairly, then they will be liable to a claim of unfair dismissal.

## **What are the implications for redundancy when a business is transferred?**

Under the Transfer of Undertakings (Protection of Employment) Regulations 2014 (known as TUPE), employee rights are protected when all or part of a business is bought or sold. The TUPE Regulations have been amended in 2014 and several changes have come into force which employers need to be aware of. However, this is a complex issue and employers should take professional advice from the solicitor engaged in the sale or purchase of a business before taking any action under TUPE.

In accordance with TUPE, the existing terms and conditions of the contracts of employees are protected and will transfer automatically to the new employer. Usually, therefore, employees just keep working for the new employer under the same terms of employment. Their length of service with the organisation is continued as if they have always worked for their new employer.

If employees do not want to work for the new business owner, they must let their existing employer know that they object to the transfer. They will then be treated as having resigned and will have no right to unfair dismissal or a redundancy payment.

If employees are dismissed in connection with the transfer, this is automatically unfair unless there is an economic, technical or organisational (ETO) reason entailing changes in the workforce. In this case, redundancy may be fair.

In any event, it is the employer's duty to consult with the employees or their representatives about the transfer. They must be told:

- When and why a transfer of the business is happening.
- What the impact on employees will be.
- Whether any measures such as reorganisation will be taken and how they will affect the employees.

Employers will also need to obtain information from the new business owner about their plans for the future, and pass this information to employees.

See BIF 217, A Guide to the Transfer of Undertakings (Protection of Employment) Regulations 2006, for further information.

## What happens if a business becomes insolvent?

In the event of a business becoming insolvent, BEIS will administer redundancy pay direct to employees. However, the amount paid by BEIS will be only the statutory minimum redundancy pay and there will be no extra payments that might have been offered in the employee's contract of employment. BEIS will seek to recover this money from the assets of the business or the administrators, liquidator or trustee. Employees may claim against the employer for any extra redundancy money that was agreed in the contract of employment.

## Hints and tips

- When selecting staff for redundancy, employers will need to ensure that all employee disciplinary, attendance and performance records are up to date.
- Redundancy is a complex area of employment law, so employers should take professional advice from an employment solicitor before taking any action.

## Further information

BIF 217 A Guide to the Transfer of Undertakings (Protection of Employment) Regulations 2006

## Legal publications

'Redundancy handling' (including 'Handling large-scale (collective) redundancies' and 'Handling small-scale redundancies')

Acas

Website: [www.acas.org.uk/index.aspx?articleid=747](http://www.acas.org.uk/index.aspx?articleid=747)

## Useful contacts

Redundancy payments helpline

Tel: 0330 331 0020

Website: [www.gov.uk/redundancy-payments-helpline](http://www.gov.uk/redundancy-payments-helpline)

Acas (Advisory, Conciliation and Arbitration Service) is an organisation that offers practical, independent and impartial help to employers, employees and their representatives by providing information and advice, preventing or resolving disputes, and settling complaints about employees' rights without the need for an employment tribunal hearing.

Tel: 0845 747 4747

Website: [www.acas.org.uk](http://www.acas.org.uk)

The Chartered Institute of Personnel and Development (CIPD) is the professional body for those involved in personnel, training and development.

Tel: (020) 8612 6200

Website: [www.cipd.co.uk](http://www.cipd.co.uk)

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