

A SHORT GUIDE TO REDUNDANCY

To be a genuine “redundancy” an employee’s dismissal must be due to a business or workplace closure or a reduced requirement for employees. If one of these reasons does not apply, then the resultant dismissal cannot be a genuine redundancy dismissal. If it is not a genuine redundancy dismissal, then it is likely that it will be an unfair dismissal instead.

A redundant employee is entitled to:

- The greater of contractual and statutory minimum notice or a payment in lieu. Statutory minimum notice is 1 weeks notice for each year of continuous service up to a maximum of 12 weeks notice after 12 years service and,
- Where an employee has more than 2 years service, a statutory redundancy payment calculated according to their age, length of service and a multiple of a ‘weeks pay’. A weeks pay is currently capped at £350 and the maximum statutory redundancy payment is capped at £10,500.

Any employee with a year’s continuous service has the right to not be unfairly dismissed. Whilst redundancy is a potentially fair reason for dismissal, whether it is fair to dismiss for redundancy in any given case, depends upon the facts. Employers need to be aware that even if an employee is paid and accepts a redundancy payment they are not precluded from bringing an unfair dismissal claim.

Where an employer is contemplating making 20 or more employees redundant from one establishment within a 90-day period, the employer is obliged to inform and consult with employee representatives and notify the Secretary of State at least 30 days before the first dismissal takes place. Failure to inform and consult correctly can lead to each employee being entitled to 13 weeks gross pay. A week’s pay is not capped for these purposes and is based upon an actual week’s pay.

Where less than 20 redundancies are proposed, the matter is complicated by the fact that the law is currently in a transitional period.

In relation to redundancies occurring prior to 5 April 2009, the statutory disciplinary and dismissal procedure apply and failure to follow them renders a redundancy dismissal automatically unfair (resulting in a potential uplift in compensation).

Since 6 April 2009, the procedures an employer must follow for redundancy have reverted to the rules and guidelines laid down by various cases. These involve:

- If relevant, identifying the pool of employees from which the redundancies will be made;
- Applying an objective selection criteria and identifying those employees at risk;
- Warning the relevant employees they are at risk of redundancy;
- Inviting them to meetings to discuss it and ways in which the redundancy might be avoided e.g part time working, ban on overtime etc;
- If they are selected for redundancy giving them the right of appeal; and
- Considering whether or not there is any other suitable alternative employment for them.

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From The Legal 500 2009

From an employer's perspective it is important to realise that the only way an employee can potentially waive their right to bring an unfair dismissal claim following a redundancy situation, is if they sign a binding compromise agreement. If an employer makes an ex gratia payment, without securing a compromise agreement, then the employee can pocket the payment and still potentially bring a claim. The rules surrounding what is necessary to have an effective and binding compromise agreement are complex and often employees are called upon to sign agreements which on a strict legal interpretation are technically defective. This means that even a prudent employer may still be at risk, if they have not updated their precedents recently.

This article offers general guidance, it reflects the law as at October 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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