REDUNDANCY: WHAT IS IT, WHAT MUST THE EMPLOYER DO, WHEN MIGHT IT BE UNFAIR OR DISCRIMINATORY?

Redundancies are very common. They may arise out of a loss of work, relocation, financial issues or a reorganisation. Sometimes redundancy is used to get rid of unwanted employees. This is not easy to prove particularly if more than one person is made redundant.

Redundancy is a potentially fair reason to dismiss an employee, provided the process is fair, ie the employer acted reasonably and there is no discrimination. The employer must:

- Show there is a real redundancy situation,
- Warn and consult with employees and their representatives as early as possible,
- Consider which employees should be in the pool of employees at risk of redundancy,
- Identify appropriate selection criteria and apply those criteria fairly and objectively,
- Search for any suitable alternative employment and offer it to a redundant employee,
- Not discriminate during the process – on grounds of age, disability, pregnancy/maternity race, religion, sex, sexual orientation

WHAT IS A REDUNDANCY SITUATION?

There is a redundancy situation where the employer needs to reduce the number of employees in the business, eg because of changing needs, financial pressures, a reorganisation (eg to achieve greater efficiency) relocation. It can occur where the work goes or reduces or is likely to do so.

**Note:** An employer is entitled to manage its business as it thinks fit; it is not easy to challenge the existence of a redundancy situation unless there is good evidence to show it is not genuine, for example, if the employer is trying to replace older workers with younger ones.

DUTY TO CONSULT

The employer should give as much warning as possible of redundancies so employees can consider alternatives to redundancies.

Consultation, with adequate information, should happen before a decision has been made, so that the employee can comment in a meaningful way and the employer can take account of employees’ views. The employer does not have to agree to any proposals made by the employee.

Consultation should be with all affected staff, so not limited to those at risk. It includes information about any redundancy. The employer should:

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• Inform the employee about the situation and their plans,
• Explain the criteria for the selection process and how it will be applied to individuals,
• Discuss ways to avoid/minimise redundancies,
• Listen to concerns about the process.

There are fixed periods for consultation where 20 or more employees are to be made redundant and there must be collective consultation with the union or work representatives.

THE POOL AND SELECTION CRITERIA WHERE MORE THAN ONE EMPLOYEE TO BE MADE REDUNDANT

The pool is the group of staff at risk of redundancy. It may be just one person. The employer must consider who should be in the pool, ie which employees are doing similar work in the area where they will be redundancies. It may include employees at different grades or skill levels. It is difficult to challenge the employer’s choice of pool until it is clearly unreasonable.

COMMON SELECTION CRITERIA ARE:

• Performance,
• Skills, experience and qualifications,
• Absence and attendance (except disability or pregnancy-related absences)
• Disciplinary records,
• Length of service.

The selection criteria should be objective and measurable rather than subjective, vague or open to bias. For example, an employee’s appraisal may be taken into account, whether they reached their targets, their attendance records.

An employee should be given a chance to challenge the way the selection procedure was applied to them. The employer should provide sufficient information at the consultation stage about how they were scored.

SUITABLE ALTERNATIVE WORK

The employer should make reasonable efforts to see if there is any suitable alternative job for any employee who is made redundant. The search should continue until the end of the employee’s employment. If there is more than one employee for a job, the employer can interview candidates.

APPEAL

The employer should offer an appeal. The employee should appeal if they want to challenge whether there was a redundancy situation or the process as being unfair or discriminatory.

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Note:

- Employees dismissed for redundancy are usually entitled to a redundancy payment and their notice pay;
- An employee can only make a claim for unfair dismissal, based on an unfair redundancy, where they have been employed for at least 2 years (though there are some exceptions such as pregnancy, whistleblowing);
- There is no minimum service requirement for discrimination claims and compensation is not capped;
- The maximum compensation for unfair dismissal is one year’s salary subject to a cap of £78,335. The employee can ask to be re-instated in their job or given another one;
- *Any claim must be made within 3 months of the end of employment.* The first step is for the employee to file an online form with ACAS – before the end of the 3 months. (Please see separate Early conciliation factsheet)