



Redundancy: An Employer's Guide



The redundancy process can be stressful for both employer and employee. Employers who do not follow the correct procedures could face the expense of defending Employment Tribunal claims and Tribunal awards against them. This redundancy guide takes employers through the process step-by-step helping you to avoid any potential pitfalls.

No employer wants to be in a situation where redundancies must be made. Making staff redundant should always be the last option available to businesses. If all avenues have been explored, it is vital for employers to follow the correct procedures to ensure success in defending an employment tribunal claim and financial awards against them.

This guide to redundancy for employers explains all you and your business need to know to ensure the smooth running of any redundancy process. If you require additional advice in relation to any redundancy matter, you can contact our expert employment law team today.



What is redundancy?

Redundancy occurs when a business needs to reduce its workforce because a job or jobs are no longer needed.

There are many reasons why an employer might make some of their workforce redundant, the legal definition to be met to establish there is a redundancy situation is, that there is a ceasing or diminished requirement to do work of a particular kind. Some of the most common reasons are:

- The business is moving to a location where the employee does not live
- The business is closing down
- New technology has made the job unnecessary
- The job the employee was hired to do no longer exists
- The business needs to cut costs by reducing staff numbers

In most cases, for small to medium-sized businesses, redundancies happen due to cost saving reasons. Employers will look to reduce their overheads if their business is struggling and employees are usually one of the most expensive overheads.

No matter the number of employees at risk, it is advisable to follow a fair procedure in relation to each employee at risk of redundancy, this is with a view to avoiding issues of unfair dismissal or discriminatory dismissals. To ensure there is a fair process there should be:

- Adequate warning of the impending redundancy
- Meaningful consultation with the affected employees with a view to avoiding compulsory redundancy, such as consideration of voluntary redundancies and any other alternatives to redundancy in the consultation process.
- Establishing the correct pool of employees at risk. The pool/s should comprise of those doing work of a similar nature or work that is interchangeable (putting job titles aside). This can also require an employer to consider wider pools, for example across other sites if the sites are in close proximity to each other, or, if their employees interchange across their sites. Of course there can be instances where there is no pool and an employee at risk may find themselves in a standalone redundancy situation, this being so the need to draw up selection criteria would fall away.
- If compulsory redundancy is being considered, having established the pools at risk of redundancy, having a fair selection process to decide who will be made redundant.
- Look for and making available any opportunities for redeployment before confirming redundancy. Employers with employees at risk of redundancy should consider putting any current recruitment/advertisement of roles on hold.

Who can be selected for redundancy?

Selecting employees to be made redundant can be a little tricky. In the first instance employers should consider objective selection criteria, such as the qualifications and skills that the employee has. In addition to this, an employer will want to consider:

- Disciplinary record
- Standard of work performance
- Skills or experience

Subjective selection criteria can be used, but only once objective criteria has been exhausted in the first instance.

However, employers need to be very careful at this point of the process. If it is ruled you have chosen unfairly or that the selection was discriminatory, the employee could raise a claim in the employment tribunal in respect of the same. Some factors that are not considered to be lawful reasons for selecting employees are:

- Age or gender
- An employee who is pregnant or on maternity leave
- An employee who has asked for a holiday
- An employee who is a member of a trade union
- A whistleblower

Throughout the process, many companies may ask for volunteers to be made redundant and offer a redundancy payment. It is, however, the employer's decision whether they select any of the volunteers who come forward.



What is a redundancy consultation period?

Meaningful consultation is key to ensuring that the redundancy is carried out fairly. This is so the employee can ask why they are being made redundant, potentially come up with a solution that is not redundancy, or at least minimise the amount of redundancies.

If you are making up to 19 redundancies, there are no rules as to how you should carry out this consultation, save to say that if the redundancy consultation was a rushed through it is unlikely to be a meaningful consultation and would therefore be open to challenge. However, if you are proposing to dismiss 20 or more employees as redundant at one establishment within a period of 90 days or less, there are collective redundancy obligations.

Collective redundancy obligations require employers to have a consultation period for at least 30 days before any dismissals take effect, with a representative/s (rep) of the employees. The rep may be a trade union rep, or an elected employee rep or a standing body of elected or appointed representatives not specifically elected for the purpose of redundancy consultation.

In the unfortunate circumstance where an employer must make 100 or more redundancies, this consultation period rises to 45 days before any dismissals take place.

How much notice do I need to give an employee?

The amount of notice will depend on how long the employee has been at the company and any contractual notice entitlement under the employees' contract of employment. The minimum statutory amount of notice you need to give an employee is:

- At least one week's notice if the employee has been employed between one month and two years
- One week's notice for each year if the employee has been employed between two and 12 years
- 12 weeks' notice if the employee has been employed for 12 years or more

However, the employees notice will be whichever is the higher of, their statutory notice, or, their contractual notice.

What is redundancy pay?

If an employee has worked continuously for your company for at least two years, they are entitled to statutory redundancy pay, although some employment contracts and employers are often more generous.

The statutory redundancy pay that your employee will be entitled to is:

- Half a week's pay for each full year worked when the employee is under 22
- A week's pay for each full year worked when the employee is between 22 and 41
- One and a half week's pay for each full year worked when the employee is older than 41

The length of service is capped at 20 years, and the pay is capped at £538 per week.

For example, a 31-year-old who has worked for your company for six years and earns £500 a week would be entitled to £3,000 redundancy pay:

- One week's pay (£500) x each full year worked (6) = £3,000

For the employee, up to £30,000 of the redundancy payment is tax-free.

Who pays redundancy, the government or the employer?

Redundancy payments are made by the employer, not the government. An employer should pay an employee their redundancy payment no later than the employee's final pay date, unless it has been agreed in writing that this can be a later date.

If employers fail to pay redundancy pay, an employee has six months from the date their employment ended to make a claim for redundancy payment to an employment tribunal.

Should an employer become unable to pay the redundancy pay, then the secretary of state can step in to make the respective redundancy payments.

Will I need redundancy letters for employees?

It is advisable that employers issue letters to employees throughout the redundancy process. These letters should keep the employee informed about the redundancy proceedings, whether it is informing them of their position, inviting them to a consultation meeting, or informing them they have been selected for redundancy.

There are a number of redundancy letters that employers need to write, including:

- Job at risk of redundancy letter
- Redundancy consultation letter
- Redundancy notice letter

Each letter should include as much information as possible, including any updates as well as the steps management is taking to ensure redundancies are kept to a minimum.

Employers should inform employees of their termination payment entitlements (providing them with a financial statement) informing employees of how much redundancy pay, notice and holiday pay they can expect. Once the redundancy consultation and decision has been done the employee should be given the decision in writing with details of how to appeal if they wish to do so.

Whichever stage of the process you are writing a letter for, ensure you are always understanding and personal during a time which can be very upsetting and stressful for employees and employers alike. Reassure them that your door is always open should they need to talk and give information on where they can find support should they need it.

How can Percy Hughes & Roberts help?

If you are a business owner and you are thinking of making redundancies, but don't know where to begin, Percy Hughes & Roberts can help.

At Percy Hughes & Roberts, our Head of Employment, *Sarah Simcott*, boasts years of experience and promises a confidential, friendly, and honest approach to all issues within the employment law field.

If you have any questions regarding redundancies and the potential pitfalls, you can get in touch with us for expert advice. Get in touch with our [Wirral Employment Law Lawyer](#) today by calling 0800 781 3894 or by completing the "[Get in touch](#)" form on this site.

PHR Solicitors
19 Hamilton Square,
Birkenhead,
Wirral,
Merseyside,
CH41 6AY

T: 0800 781 3894
E: law@phrsols.co.uk