

Understanding Redundancy

Don't get caught out – it's a complex process.

Hardly a day goes by without one company or another announcing cut backs, layoffs and redundancies. Reducing the workforce, to save money on wages, is often seen as an easy solution for company owners and directors. In reality nothing is further from the truth. Redundancy is a special type of dismissal; one that is governed by strict laws and ways of working. Rules that impact on the business in both the short and longer term. Rules that often lead to unforeseen consequences especially for those new to redundancy and/or looking for a quick and simple way to cut costs.

For example, an August 2023, review of published employment tribunal decisions relating to redundancies brought up nearly 11,000 cases. Each one driven by the belief that the employer had acted unfairly. No organisation can risk the time, cost and reputational damage that arises from a failure to understand or follow good practice. Redundancy Training for HR and Operational Teams is a low cost, high benefit, route for any organisation considering making redundancies.

In simple terms if you or your organisation is considering making staff redundant you need to ensure you are fully aware of the rules and regulations that govern the process. This document is designed to give an insight into the process and in doing so trigger thought. It is not a replacement for proper training and understanding.

Announcing redundancies always has an adverse effect on business. It can create the impression, rightly or wrongly, that the company is struggling financially and/or abusing its workforce. (The P&O Ferries initiative on 17 March 2022 is a classic example of the adverse publicity that can follow a redundancy notification). Redundancies frequently lead to a significant drop in staff loyalty, staff morale, motivation and productivity. Suppliers and customers can be affected too and may look to move their business away or impose more restrictive trading terms. For example 90 day credit terms may change to payment in advance if suppliers feel that payment is at risk.

Concrew Training's Redundancy courses for Directors, HR teams and employee representatives are designed to help ensure that the redundancy process is understood, the impact it can have on the business and if redundancies are genuinely needed how to approach the process in a way that delivers the best possible results for all.

1. Redundancy

Redundancy is a special type of dismissal. Reducing the workforce through redundancies can only be used in a very limited number of situations: Notably the business

- Is changing what it does
- is doing things in a different way, e.g. using new machinery or technology or
- changing location or closing down

- The job role is ceasing, that is to say there is no longer any need for anyone to be employed in the specified job role or the number of people required has reduced

Care is needed because once a role has been made redundant any future recruitment into that role may lead to employment tribunal claims for unfair dismissal.

In situations where redundancy is being considered employers need to:

- Do their best to avoid redundancies
- Consider all other options, eg short term working, relocation, TUPE
- Ensure the law and good practice is followed at all stages
- Reduce the impact any redundancies has on all staff, dismissed and not dismissed, alike
- Ensure everyone is fully informed and consulted, especially when consultation is required by law
- Consider appointing and training employee representatives. Our courses for employee reps may be of use

2. Managing Redundancies

If it is decided that redundancies are necessary and cannot be avoided it is imperative that the process is managed in a way that minimises negative impact. This includes ensuring the laws regarding redundancies are adhered to. These laws are complex and need to be understood fully. Employers who don't follow the law are likely to find themselves facing claims for protective award and unfair dismissal compensation.

3. Formal Procedures

Having a formal redundancy procedure in place helps avoid future problems. It might include:

- Alternative Options
- Identifying the roles/departments/locations being made redundant
- Volunteers
- Consultation
- Redundancy selection criteria
- Alternative employment options
- Redundancy notices, appeals and dismissals
- Redundancy payments
- Employee welfare and support

3.1 Alternative Options

Employers need to strive to avoid redundancies. This means considering all possible alternatives, but it is equally important that existing contracts, terms and conditions are considered too.

Possible alternative options may include:

- Recruitment freezes
- Pay freezes
- Overtime bans
- Short-time working
- Voluntary early retirement
- Retraining and moving staff to other job roles
- Fire and Rehire (treat with caution)

3.2 Identifying the roles/departments/locations being made redundant

The cohort from which employees will be selected for redundancy will usually be based on one or more groupings for example those that

- Work in a specific set department
- Work in a specific set location
- Have similar job descriptions
- Do similar types of work

3.3 Volunteers

Employees can volunteer for redundancy or the employer can ask for volunteers. The employer does not need to agree to any specific request but needs to ensure any refusal is fair and does not breach equality legislation.

All parties can benefit when a clear and easy to understand “voluntary redundancy policy” is in place.

3.4 Consultation

Employers are required to consult individual employees in a meaningful and effective manner and provide reasonable warning of the pending redundancy.

Strict rules apply when more than 20 people are being made redundant. These include the need for collective consultation. If 20 or more employees at any given location are to be made redundant, collective consultations with recognised trade unions or staff elected representatives are required. Notably:

- At least 30 days before the notification of redundancies for dismissals of 20-99 employees.
- At least 45 days before the notification of redundancies for dismissals of 100 or more.

In situations where there is no trade union recognition, nor employee representation or the employee representation constitution does not allow for collective consultation, suitable representatives will need to be elected. The employer is required to facilitate this.

Given the need for employers to evidence “meaningful” consultation employers’ may benefit from training the elected representatives in redundancies and collective consultation. (Concrew Training provide this service where needed). Employers need to consider the skills and experience of the elected representatives and the extent to which they are able to negotiate in a meaningful manner.

Failure to carryout meaningful collective consultation may lead to claims for protected award payments, up to 90 days gross pay per claimant

Union / Elected Employee Representatives have to be told:

- The reason for the redundancy dismissals
- The number of proposed redundancies and their job types
- The total number of employees affected
- The proposed methods of selection, scoring systems etc
- The procedure to be followed in dealing with the redundancies.
- The method of calculating the redundancy payment.

Note where more than 20 people are being made redundancy this has to be notified to the Redundancy Payments Service

3.5 Redundancy Selection Criteria

In situation where only some staff within a specific role/department/location are facing redundancy a grading system needs to be consulted on. The following criteria are often used:

- Length of service
- Attendance records
- Disciplinary records
- Skills, competencies and qualifications
- Work experience
- Performance records

Care needs to be taken to ensure that the approach selected is not discriminatory. A minimum of two people should carry out the scoring process independently and any variances in scoring ratified.

3.6 Alternative employment options

Employers must, where possible, offer suitable alternative work to redundant staff.

The law requires employees who have at least two years' service to be given paid time off to look for work during the final notice period.

Employers must try and move employees selected for redundancy into other jobs within their organisation instead of making them redundant. If a role is agreed suitable, employers should offer it instead of redundancy. Where multiple applications exist a fair process needs to be adopted and take into account the need to prioritise those on maternity/shared parent leave.

The role can be accepted on a trial basis for 4 weeks, with a return to redundancy after if the role is found to be unsuitable.

3.7 Redundancy Notices, Appeals and Dismissals

Once the employers has finished consulting everyone and gone through the selection process employers can issue the each employee affected with a redundancy notice. Where ever possible this should be given via a formal face to face meeting. Employees can be accompanied.

The details of the redundancy should be confirmed in writing by letter or email. And include

- How they scored in the selection criteria and why they received that score
- Their notice period and leaving date
- How much redundancy pay they'll get and how you calculated it
- Any other pay due to them, for example holiday pay
- When and how you'll pay them
- How they can appeal the redundancy decision

3.8 Redundancy Payments

Employers must pay at least the legal minimum ('statutory') amount of redundancy pay to employees who have worked for you for at least 2 full years.

Some types of workers do not qualify for redundancy pay. Some employees may be entitled to more than the legal minimum amounts due to conditions in their terms of employment. Higher payments may be offered to attract voluntary redundancy applications

Car needs to be taken to ensure that the latest minimum entitlements are known and the correct entitlement is calculated for each individual affected

3.9 Employee Welfare and Support

It is important to remember that the way staff are treated has implications on the employers reputation and standing within the community and in situations where the business will continue to trade, staff moral enthusiasm and productivity too.

Handling redundancies in a caring, sensitive and thoughtful manner can make a significant difference to how people cope and the ongoing success of the business.

Take time to explain the reasons for the redundancy. Explain what a tough decision it was and explain what has been done to minimise the impact. Remember to thank everyone for their contribution to the business and stress that redundancy was not a reflection on any individual personally.

At the same time remember that managers and employee representatives involved in supporting staff may not have any experience in this type of situation and may themselves require training and support. (Concrew Training can assist where required)

Employers need to consider each of the following groups and what can be done to train and support them through this demanding time

- employees at risk of redundancy
- managers who are breaking the news
- the people leading the consultation
- employee representatives
- those staying on

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