

A Guide to Redundancy

WHAT IS REDUNDANCY?

The definition of Redundancy is set out in section 7(2) of the Redundancy Payments Act 1967 which provides as follows:-

“[...]an employee who is dismissed shall be taken to be dismissed by reason of redundancy if for one or more reasons not related to the employee concerned the dismissal is attributable wholly or mainly to— [Emphasis added]

- (i) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or*
- (ii) the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish, or*
- (iii) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or*
- (iv) the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done in a different manner for which the employee is not sufficiently qualified or trained, or*

- (v) *the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained.”*

WHAT IF EMPLOYEES CARRY OUR SIMILAR/INTERCHANGEABLE WORK?

In addition to showing that there is a genuine redundancy situation within the definition above, the Company has to show that it has conducted the redundancy in a fair way and has not unfairly selected any employee for redundancy. The issue of selection arises where a group of employees carry out similar and interchangeable work.

Employees who carry out similar and interchangeable work should be pooled for consideration for redundancy. One of the key factors in redundancy is that the position is redundant and not the employee. It is important that an employer does not select certain people over others within the same pool for redundancy, if the employees carry out similar or interchangeable work. All of those employees should be included in the “selection pool”.

The procedure for selecting employees for redundancy from that pool must be objectively justifiable, fair and transparent by reference to selection criteria.

WHAT ARE THE RISKS IF EMPLOYEES ARE NOT POOLED CORRECTLY?

Employees may seek to claim that they were unfairly selected for redundancy. That unfair selection could be as a result of the employer incorrectly identifying the pool for selection for redundancy and may result in an employee succeeding in a claim for unfair dismissal.

WHICH EMPLOYEES SHOULD BE POOLED TOGETHER?

The pool is likely to be easy to identify in circumstances where there is a clear link between the work disappearing and group of employees who do that work.

There are no definitive rules about how to identify a pool for consideration for redundancy. It is a balancing act between identifying a wide pool and risking damage to staff morale and

identifying a pool which is too narrow which could leave the employer vulnerable to a claim for unfair dismissal as a result of unfair selection for redundancy.

The most important thing for the employer to be able to show is that the choice of pool was reasonable in the circumstances.

WHAT FACTORS SHOULD AN EMPLOYEE CONSIDER WHEN IDENTIFYING A POOL FOR REDUNDANCY?

- whether there are pre-existing selection criteria in contracts, agreed with unions or habitually used which may be considered a custom and practice;
- the type of work that is disappearing and the employees who carry out that type of work. The pool should include all employees who carry out work of the kind which is no longer needed;
- whether the employees carry out similar or interchangeable work on a day-to-day basis. The pool should include employees whose jobs are similar to the employees for whom there is a reduced need.
- in considering whether the employees' roles are interchangeable, consider whether the employees are capable of doing each others work. If the type of work that is disappearing is carried out by employee B, and employee A does similar or interchangeable work, consider including A in the same pool as B. However, if employee B cannot do some of employee's A role, it may not be appropriate to pool those employees;
- consider including employees doing work other than the type of work that is disappearing, where the employees whose work is disappearing could just as easily do that type of work.

PROCEDURE FOR REDUNDANCY

Once an employer has established that a genuine redundancy situation exists and established the pools for redundancy, if the position is not a standalone position, the following procedure should generally be followed:-

Step 1 - Initial meeting and follow up letter

The potentially affected employees should each be invited to separate informal meetings. At that meeting, they should each be advised of the employer's position and that as a result the employer is considering restructuring certain areas of the business.

The employees should be advised that as a result of the restructuring, that their positions are at risk of redundancy and that a consultation process will take place. The employees should be advised that at the consultation meeting, they will be invited to discuss alternatives to redundancy.

At that that meeting or shortly after that meeting, the employees should be provided with a letter confirming in writing that their roles are at risk of redundancy and inviting them to a consultation meeting. That letter should outline the details for the consultation meeting and advise the employee that he or she may be accompanied by a trade union representative or colleague, depending on what is allowed in the employee handbook.

The consultation meeting should be scheduled a few days later allowing the employees a reasonable amount of time to assimilate the news and to allow them a reasonable amount of time to consider alternatives to redundancy that they may wish to propose at the consultation meeting.

Step 2 – The consultation meeting.

In advance of the meeting, the employer should consider alternatives to the proposed redundancy such as redeployment, the employee undergoing training so that he may carry out additional tasks etc.

It is important to avoid any references to any personal characteristics of the employee including performance and level of pay. The employer should also be prepared to answer questions from the employees as to why only their roles are affected, who else may be affected, what alternatives the employer has considered etc.

The purpose of the meeting should be outlined, confirming that the meeting is to explore alternatives to redundancy and confirming that no decision has been made in respect of redundancy at this stage.

A list of alternative vacancies within the employer organisation should be prepared and provided to the employee at the meeting (or in advance of the meeting if possible).

At the conclusion of the meeting, the employer should confirm to the employee that the employer will consider the position and revert to them within a reasonable timeframe, so that they employer is seen to have had sufficient time to consider the alternative proposed.

It is important that a decision as to whether to make the employee redundant or not is not communicated at this meeting.

Step 3 – Communicating the decision and follow up letter

In the event that the employer feels that there is no feasible alternative to redundancy, the decision to terminate the employment of the employee selected for redundancy should be communicated to that employee.

The employer should invite that employee to a further meeting, allowing the employee to be accompanied by a trade union representative or work colleague (as per what is contained in your employee handbook). The employer can then go through the redundancy package and advise the employee of the right to time off to seek alternative employment.

The employer should then write to the employee confirming the redundancy and confirming the termination date. The employer should explain the calculation of the redundancy payment and any other payments (including the ex –gratia payment if one is on offer) to be made to the employee.

Is there a right to appeal a redundancy decision?

The employee should be advised of the right to appeal the decision of redundancy and advised who will consider that appeal and the timeline involved.

If employee appeals, you should invite them to attend a further meeting to hear the appeal. If possible, the meeting should be held by someone senior to the person who held the previous meeting. The employee should be allowed to be accompanied by a colleague or trade union representative if requested. Following the meeting, you should write to the employee confirming the outcome of the appeal and that this is a final decision.

WHY IS PROCEDURE IMPORTANT?

The importance of the above procedures is to demonstrate that the employer followed fair procedures in the event that the employee was to challenge the redundancy in the courts or in the Workplace Relations Commission. The employer should be in a position to show that it has considered alternatives to redundancy and they were not feasible. It is important that the Company maintain all correspondence and notes on the meetings with the employees concerned.

WHAT NOTICE DOES THE COMPANY HAVE TO GIVE?

The selected employee should be issued with a notification of termination of employment by reason of redundancy using the RP50 form. At least 2 weeks' notice of termination must be given under the Redundancy Payments Acts to persons who are entitled to redundancy payments (i.e. those persons who have at least 104 weeks' continuous service with the employer).

While this 2 week period can run concurrently with the employee's contractual notice, an employer is not entitled to pay the employee in lieu of this notice during the 2 week period. The employee is entitled to work during this 2 week period. However the remainder of the contractual notice may be paid in lieu, provided there is a contractual provision permitting payment in lieu of notice.

WHO QUALIFIES FOR STATUTORY REDUNDANCY?

In order to qualify for a statutory redundancy payment, an employee must have 104 week's continuous service with the Employer. The lump sum is calculated as follows:-

- 2 weeks pay for each year of employment, plus
- One bonus week's pay.

For the purposes of calculating statutory redundancy pay, there is a cap of €600 per week as the maximum amount that the employee is entitled to. There is no rebate for redundancy payment for employers.

CAN AN EMPLOYER MAKE ADDITIONAL PAYMENTS?

There is no obligation to pay an additional severance payment, known as ex gratia payments, unless it is custom and practice to do so or the employer wishes to make one by exception to reduce the risk of an employee taking a claim against the employer.

Should the employer make any ex gratia payment to an employee, the employer should insist that the employee signs a Discharge/Waiver Agreement. Such an agreement essentially states that the employee waives all claims that they may have against the employer.

LEGAL NOTICE

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