

Briefing Note

January 2009

Redundancies

This paper gives a brief overview of redundancy procedures in England, Scotland and Wales. Different Laws apply in Northern Ireland.

The current downturn in the UK economy though acute is short term. With proper planning on current and future staffing needs, it may be possible to avoid implementing short-term solutions to the current situation.

Every organisation should have in place a strategy for managing human resources, which will minimise disruption, reduce or avoid job losses and make any organisational change easier. A poorly thought out approach to redundancy may spell disaster in the long term resulting in de-motivation, loss of confidence and low staff morale.

Before deciding on the redundancy option, the employer should consider other alternatives such as retraining and redeployment to other parts of the organisation, reduction or elimination of overtime, natural wastage, introduction of short-time working or temporary lay off (where this is provided for in the contract of employment or by an agreed variation of its terms), seeking applicants for early retirement or voluntary redundancy and termination of the employment of temporary or contract staff.

Should redundancies be unavoidable, it is important to follow the below procedures in order to minimise the financial and emotional costs to the individuals affected.

Consultation

A collective redundancy situation arises where an employer proposes to dismiss 20 or more employees as redundant within a 90-day period.

Employers are required to inform and consult appropriate representatives of employees who may be affected by proposed collective redundancy dismissals, or by measures taken in connection with them. This requirement is regardless of how long the employees have worked for their employer. Employers are also required (done before any redundancy notices are sent to affected employees) to notify the Department for Business, Enterprise and Regulatory Reform (BERR) of the proposed dismissals.

Consultation must be completed before any notices of dismissal are issued to employees. There is no requirement for an agreement to be reached but the employer must consult in good faith with a view to reaching agreement.

When should consultation commence?

Collective redundancies - Unless prevented by special circumstances the employer must begin the process of consultation in good time and in any event at least:

- 30 days before the first of the dismissals takes effect in a case where between 20 and 99 redundancy dismissals are proposed at one establishment within a 90-day period;



- 90 days before the first of the dismissals takes effect in a case where 100 or more redundancy dismissals are proposed at one establishment within a 90-day period.

An employer who has already begun consultations about one group of proposed redundancy dismissals and later finds it necessary to make a further group redundant does not have to add the numbers of employees together to calculate the minimum period for either group.

Other redundancies - There is no specific legal obligation to inform and consult employee representatives or to notify BERR if there are less than 20 redundancies. However, employers may be at risk of successful unfair dismissal cases if they fail to warn and consult **individual employees** affected by these or to adopt a fair basis for selection. Indeed, it is good practice to hold at least three meetings over a set period to consult employees.

Notice

This depends on what is specified in the contract of employment, however, the minimum statutory notice period is:

- at least 1 week's notice if employed between 1 month to 2 years
- 1 week's notice for each year if employed between 2 and 12 years
- 12 week's notice if employed 12 years or more

Information to be disclosed

An employer must disclose, *in writing*, the reasons for the proposals; the numbers and descriptions of employees it is proposed to dismiss as redundant; the total number of employees of any such description employed by the employer at the establishment in question; the proposed method of selecting the employees who may be dismissed; the proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which the dismissals are to take effect; and the proposed method of calculating any redundancy payments, other than those required by statute, that the employer proposes to make.

The consultation must also include ways of avoiding the redundancy situation or dismissals, or of reducing the number of dismissals involved and mitigating the effects of the dismissals.

Selecting employees for redundancy

The criteria for selecting employees for redundancy must be clearly defined. It must be fair, objective, and consistently applied. Examples of such criteria:

- attendance record (this must be accurate)
- disciplinary record (this must be accurate)
- skills or experience
- standard of work performance
- aptitude for work

Formal qualifications and advance skills may also be considered, but this must not be in isolation.

It is good practice to establish a redundancy appeals procedure to deal with complaints from employees who feel that the selection criteria has been unfairly applied in their case. This can be achieved by involving a more senior member of management or by setting up a committee of management and trade union or employee representatives, to consider individual grievances and any subsequent remedies. An advantage



of this is that complaints about selection for redundancy may be resolved internally and thus reduce the likelihood of complaints to employment tribunals.

Unfair selection criteria

Employees who are made redundant will be found to have been unfairly dismissed if they were selected for redundancy:

- for asserting a statutory employment right
- on parental leave or maternity-related grounds
- because they work part-time
- because they are fixed-term workers
- for exercising or seeking to exercise the right to be accompanied at a disciplinary or grievance hearing
- requesting flexible working arrangements
- for a reason relating to rights under the Working Time Regulations 1998
- for a reason relating to rights under the National Minimum Wage Act 1998
- for a reason relating to the Tax Credits Act 2002
- for whistle blowing
- for participation in trade union activities, for membership or non-membership of a trade union and in respect of trade union recognition or de recognition
- for carrying out duties as an employee representative or candidate for election for purposes of consultation on redundancies or business transfers
- for taking part in an election of an employee representative for collective redundancy purposes
- for taking action on health and safety grounds as a designated or recognised health and safety representative, or as an employee in particular circumstances
- for taking part (or proposing to take part) in consultation on specified health and safety matters or taking part in elections for representatives of employee safety
- for taking lawfully organised industrial action lasting eight weeks or less (or more than eight weeks in certain circumstances)
- for refusing or proposing to refuse to do shop work or betting work on Sundays (England and Wales only)
- for performing or proposing to perform the duties of an occupational pension scheme trustee
- for performing or proposing to perform the duties of a workforce representative for the purposes of the Trans national Information and Consultation of Employees Regulations 1999

Time off for job hunting/training

Employees that have been working continuously with an organisation for two years are allowed to take **paid** reasonable time off for interviews and training. This amounts to up to two fifths of a week's pay.

It is good practice for employers to give redundant employees as much information as possible to help them at this difficult period. Such information may include:

- information on the financial effects of redundancy on the individual (redundancy pay, pension payments and state benefits)
- how to complete application forms and present themselves at job interviews
- the importance of discussing the implications of redundancy with their family as early as possible
- how to search for appropriate vacancies in the press and follow up opportunities
- the importance of being prepared to consider a wide range of alternative jobs



Where resources permit, employers may offer staff individual counselling with trained counsellors or welfare officers, but where that is not practicable, HR managers may be given appropriate training for the task.

Alternative job offers

If an employee is offered and accept an alternative job, they have the right to a four week trial period in the new job and if training is required, this period can be extended by written agreement. If the employee decides the job is not suitable, they can give notice during the trial period and this does not affect the right to statutory payment. If the employee does not give notice by the end of the statutory, the right to redundancy pay ends.

Redundancy pay

Employees that are being dismissed for redundancy are entitled to redundancy pay if they have been working continuously with the organisation for two years. The amount depends on other factors such as the employees' age and is non-taxable.

Redundancy pay is calculated as:

- 0.5 week's pay for each full year of service where aged less than 22
- 1 week's pay for each full year of service where aged 22 or above but less than 41
- 1.5 week's pay for each full year of service where aged 41+

Next steps

ACE will continue to monitor the ongoing economic situation and to support members that are experiencing significant challenges as they come to terms with workloads and margins being squeezed. We will continue to inform members of developments and plans that potentially affect them and the sector as a whole.

Our business helpline is an important resource for members during these testing times. We have increased our capabilities in that area, as well as beefing up the guidance and information on human resources, contractual, insurance and risk management issues via our HR and Legal teams and through access to other experts in the industry.

For further information please contact Wendy Lasebikan, ACE's HR advisor, on 020 7202 0254 or wlasebikan@acenet.co.uk