

How to...

Manage redundancies

A quick and easy reference
guide on the basics

Top tips on making redundancies

1. Identify whether a redundancy situation exists
2. Consider alternatives – don't conclude any decisions until consultation has been completed
3. Carry out a fair selection of employees at risk of redundancy
4. Ensure appropriate individual and (if relevant) collective consultation, is carried out
5. Search for, and offer, any suitable alternative employment
6. Notify the employee of termination by reason of redundancy
7. Check if the employee is entitled to receive redundancy pay and calculate according to the statutory formula and any company enhanced redundancy scheme

About our HR How to Guides

These bite-sized reference guides provide an outline of the processes commonly managed by HR in the workplace. They do not provide full detail of these processes and are not a substitute for legal advice, particularly as every situation will depend on the particular circumstances.

Making redundancies

Is there a redundancy situation?

A redundancy situation arises where:

- an employer's need for employees carrying out work of a particular kind at the place where the employee is employed ceases or reduces or is expected to cease or reduce, or
- the business in which the employee works, or that business at the place where the employee is employed, is shut down or it is intended to shut down.

Why is it important to get the process right?

"Redundancy" is one of five potentially fair reasons for dismissal. Employees with over two years' service can bring an unfair dismissal claim and employees with under two years' service may still claim that their dismissal was tainted with discrimination or was linked to whistleblowing disclosures.

After establishing there is a genuine redundancy situation, employers must ensure they follow a fair redundancy process in order to avoid a claim for unfair dismissal. This could include following any established company procedure the employer may have and/or any process agreed with trade unions or employee representative bodies.

What are the key elements of a fair redundancy procedure?

The key requirements are that the employer:

- gives warning of the proposed redundancies
- considers the pool of relevant employees
- carries out a fair selection of employees at risk of redundancy
- consults with the employees identified as being at risk of redundancy
- looks for and, if applicable, offers any suitable alternative employment to affected employees

It is important to look at ways to avoid the need to make compulsory redundancies at all, or to reduce the number of redundancies at the outset (and throughout the consultation process). Options for this include suspending recruitment and inviting employees to volunteer for redundancy, agree to a change in hours, or reduced pay.

Is a collective redundancy procedure required?

If compulsory redundancies cannot be avoided, the first step will be to establish how many redundancies are being proposed.

- If 20 or more redundancies are being proposed in a 90-day period then the collective consultation obligations will arise and it will be necessary to notify the Secretary of State of the proposed redundancies
- If less than 20 redundancies are being proposed in a 90-day period then the procedure for individual redundancies set out below will apply

The collective redundancy process is complex and has potential civil penalties for non-compliance so you should take further advice.

The selection process

The next step is to identify, by a fair selection process, which employees are at risk of redundancy.

The selection process may be relatively straightforward, e.g. where a workplace is being shut down and the employees are no longer required. In other cases, it is necessary to identify a "pool" of affected employees, then choose the criteria that will be used to select which individuals from that pool are at risk of redundancy and apply those selection criteria fairly.

Selection pool

The selection pool is the group of employees within the job categories or departments from which redundancies are to be made. It will usually include all employees doing, or capable of doing, similar work and it may be appropriate to combine sites, departments or job groups in one pool where the employees are interchangeable. It will be difficult for employees to challenge the selection pool if it has been decided objectively, fairly and reasonably.

Selection criteria

To ensure the redundancy process is fair, adopt reasonable criteria for selection. Identify the skills, experience and qualifications that will be needed in the workforce going forward, and use these to draw up the selection criteria. If selection criteria are set out in collective agreements and/or the staff handbook, these should usually be followed. Different weights may be given to certain selection criteria, provided this can be objectively justified.

Key points about selection criteria:

- avoid subjective criteria
- to avoid unlawful discrimination, beware of criteria which may adversely affect employees with protected characteristics, such as sickness absence for disabled employees
- if there is a recognised trade union, draw up the selection criteria in consultation, and if possible, by agreement with the union. Consultation with the union or employee representatives is a requirement for collective redundancies

Ensure that the criteria are applied accurately, reasonably, fairly and objectively when scoring employees against the criteria, that there is no breach of discrimination legislation, and that the outcome of the selection process can be substantiated. For example, if an employee is marked down on performance ensure that this is consistent with any relevant appraisal records. Ensure records are kept of the scoring process and adequate reasons are given.

Special care should be taken when making an employee on maternity leave redundant as she has the benefit of additional legal protection.

Warning employees of potential redundancies

Once the selection pool and an appropriate set of objective selection criteria have been established, the employees who are potentially at risk of redundancy should be warned. This can be done by arranging a meeting with all of the employees who might be made redundant as a group and explaining to them the reasons for the potential redundancies, how many jobs are at risk, that ways of avoiding redundancies are being explored, and asking for suggestions to avoid them.

Scoring

This first meeting should be followed up by a letter confirming the information given at the meeting and containing a copy of the proposed selection criteria and scoring guidelines if relevant. The employer should score each potentially redundant employee using the selection criteria and scoring guidelines ensuring that two line managers conduct the scoring, thus helping to ensure it is done objectively.

Individual consultation

After having warned the employees who are “at risk” of redundancy, the employer must consult with each of these employees individually. The consultation process should ensure employees fully understand the proposals for redundancies and have the opportunity to express their views on them. Proper and genuine consideration must then be given to the employees' views.

The process would normally involve:

- a letter to each individual employee provisionally selected for redundancy inviting them to a meeting to discuss their provisional selection. The letter should invite them to bring a trade union representative or colleague to the meeting and contain sufficient detail to understand the reasons for the redundancy, why the employee has been provisionally selected, and explain that no final decision has been made. The letter should be sent in time for the employee to have a reasonable opportunity to consider the information before holding the meeting
- a first individual meeting to discuss::
 - the reason for the redundancies and the timescales involved
 - the pool, selection criteria scoring and why the employee has been provisionally selected
 - ways of avoiding redundancies and reducing the number of employees to be made redundant
 - suitable alternative employment and ways of mitigating the effects of the redundancies

There is no requirement to reach agreement with employees on these points.

- Follow up by the employer to consider any suggestions for avoiding redundancies or any changes in the employee's score as a result of the process

- A second individual meeting to confirm the employee's selection for redundancy, go through the redundancy package and remind the employee of the right to time off to seek alternative employment

Throughout the consultation process, employers must take reasonable steps to find alternative employment for employees who would otherwise be made redundant. If an employee unreasonably refuses suitable alternative employment, they may forfeit their statutory redundancy pay.

When the consultation process has been concluded, those employees selected for redundancy should be informed that their contract is being terminated by reason of redundancy and they should be given:

- notice to terminate their employment, or a payment in lieu of notice if this is permitted under their contract
- a statutory redundancy payment

It is good practice to allow employees selected for redundancy to appeal against their dismissal.

How much redundancy pay is an employee entitled to?

An individual will be eligible for a redundancy payment if they are an employee with two years' continuous employment and they have been dismissed for reason of redundancy. Employees who are laid off or on short time may also be entitled to a redundancy payment.

Statutory redundancy pay is calculated in accordance with a statutory formula (see the Government's useful redundancy pay calculator: <https://www.gov.uk/calculate-employee-redundancy-pay>). An employer may make enhanced redundancy payments provided the scheme mirrors the statutory scheme with regard to age bands and multipliers, and all payments are calculated in the same way.

Collective redundancies

Where an employer proposes to make 20 or more employees redundant over a period of 90 days or less, the employer has additional obligations to:

- inform and consult appropriate employee representatives: if 100 or more redundancies are proposed, consultation must begin at least 45 days before the first dismissal takes effect. For fewer than 100 redundancies, the consultation period is 30 days
- notify the Secretary of State (in practice, BEIS on Form HR1): notification must be received by the Secretary of State at least 45 days before the first dismissal if 100 or more redundancies are proposed within a 90-day period, or at least 30 days before if fewer than 100 redundancies are proposed

A key point to note is that the definition of redundancy for these purposes is much wider than that used for individual redundancy. This means an obligation to consult may arise even where the employer is not proposing to make employees redundant but where dismissals for reasons not relating to the individual concerned are a likely outcome. Examples of dismissals which might be caught include those dismissed and re-engaged in order to impose a variation of terms, employees who accept alternative roles, employees who have material changes to terms and conditions and those accepting voluntary redundancy.

A failure to consult properly in accordance with statutory obligations will render an employer liable to pay affected employees a "protective award" to compensate for the lost opportunity to be consulted. The amount of any award is limited to 90 days' pay for each employee. There is no maximum figure to a week's pay, and generally it will be the pay the employee was entitled to receive under their contract of employment.

Please contact one of the partners in our team, or your usual advisor at Clyde & Co.



Robert Hill

Partner

T: +44 20 7876 6214

E: robert.hill@clydeco.com

50

Offices

3,600

Total staff

390

Partners

1,500

Lawyers

www.clydeco.com

Clyde & Co LLP accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary. No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co LLP.

Clyde & Co LLP is a limited liability partnership registered in England and Wales.
Authorised and regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2018