

Redundancy

Your rights



Overview

Being made redundant is often a distressing and unsettling experience but in such circumstances you may have rights to compensation. You may be entitled to be paid notice monies, or compensation if your dismissal was unfair. You may also be due a redundancy payment, or compensation for discrimination, depending on the circumstances of your case.

What is redundancy?

Your dismissal may amount to a redundancy if:

- The business in which you work has or will cease to exist
- The business has or will cease to exist in the place where you work; or
- The need for employees to carry out work of a particular kind has (or will) ceased or diminished.

The focus is on the need for employees, so if the same amount of work is to be done by fewer employees that is still a redundancy.

What are your basic rights?

All employees who are made redundant have the right to work out or be paid in lieu of their notice period. Generally the employer chooses which it is.

Please see our factsheet on 'Executive dismissal' for more information on what you can do if your employer fails to provide you with the correct notice.

If you have one year's continuous service or more, you may also be entitled to bring a claim for unfair dismissal. (The requirement for one year's continuous service does not apply in a small number of cases, such as where the dismissal is on the grounds of maternity or 'whistleblowing'. Redundancy is a potentially fair reason for dismissal but your individual circumstances could mean that it is not fair in your case. We deal with these circumstances in more detail below.

Please see our separate factsheet on 'Unfair Dismissal' for more information.

If you have 2 years' or more continuous service, you have the right to a statutory redundancy payment. This is calculated on the basis of your age and length of service. You are entitled to receive a week's gross pay currently capped at £400 per week (as of 1st February 2011) for each year of service, multiplied by 0.5 for each year of service under 22 years of age and by 1.5 for each year of employment undertaken aged 41 and over, capped at a maximum of 20 years' service. To calculate the statutory redundancy payment you would be entitled to, visit the BIS website at http://www.direct.gov.uk/en/Employment/RedundancyAndLeavingYourJob/Redundancy/DG_174330

You may also have a contractual right to an enhanced redundancy payment. Employees are entitled to an enhanced redundancy payment if they can show that either it is an express contractual entitlement, or it is

implied by custom and practice because there has been a very consistent, uniform and notorious formula or policy applied by the employer to calculate redundancy payments.

The Age Discrimination Regulations which came into force in 2006 suggest that any enhanced redundancy schemes should mirror the statutory scheme in terms of payments linked to the age of an employee.

Finally, if there are 20 or more employees being made redundant by an employer at one establishment within a period of 90 days, the employer will have collective consultation obligations owed to a union or employee representatives. This collective obligation is quite separate from the obligation of a fair employer to consult even if only one employee is to be made redundant.

Please see our separate factsheet 'Collective Redundancies' for further details about the specific requirements.

Genuine redundancy?

One of the first questions you should ask when you are first put 'at risk' of redundancy is whether your role really is potentially redundant. Some employees do not believe that it is and that redundancy is being used as a mask for dismissing them for another reason. Factors that could point to a sham redundancy include:

- You have plenty of work to do/your department is busy
- You know or suspect there are plans to replace you
- There has been no explanation of how your work will be carried out after your dismissal
- There is some evidence of unlawful discrimination
- You believe that the redundancy is retaliation for a grievance you have recently raised or for 'whistleblowing': drawing attention to some breach/potential breach of a legal or regulatory obligation.

Selection

Even if you believe that a genuine redundancy situation exists, you may not be satisfied that your selection for redundancy has been fair.

If an entire business is closing and there are no opportunities for redeployment, there may be no question as to the method or basis on which employees are selected for redundancy, if all employees are being made redundant.

However, usually there is a reduction in the number of employees required to carry out certain work and this means that of all the employees who do a specific type of work, only some will be selected for redundancy.

One of the first requirements of fairness in the selection process is that where a number of employees are doing the same type of work they are included in a pool for selection and are scored against fair and objective selection criteria. Those with the lowest scores are then selected for redundancy.

Selection Criteria

Selection criteria typically include skills, experience and aptitude, standard of performance, attendance/disciplinary record and possibly length of service.

Selection criteria should be as objective as possible and should be weighted proportionately to their importance. They should avoid including criteria that may be considered discriminatory. For example, considering employees' attendance records might discriminate against a person who had a period of sickness absence as a result of a disability, or a woman on maternity leave. Factors such as age, race and trade union activities do not constitute objective criteria and the consideration of these factors should not form part of the decision making process. Length of service is often included as a selection criterion in redundancy situations, with longer serving employees receiving a higher score than those with less service. Issues may arise here in relation to age discrimination if such a criterion cannot be justified.

You may want to know who has been responsible for scoring individuals against the selection criteria and what documentation or other evidence they have relied upon e.g. most recent appraisals. Selection is one of the key areas for argument in a redundancy process because of the sense that employees may be chosen due to managers' likes/dislikes, favouritism or for personal reasons rather than for objective reasons.

You may be offered a formal right of appeal against the score you obtain and if you want to challenge your redundancy later on (if this materialises), you are advised to raise such an appeal.

Consultation

You are entitled to be provided with adequate warning and to be consulted individually before a final decision is made and you are issued with a notice of redundancy. The consultation process should give you an opportunity to learn and understand how you have been selected and the chance to challenge the basis of your selection if you feel that you should not have been chosen. It is also an opportunity to discuss potential suitable alternative employment and for you to make suggestions as to how your redundancy might be avoided.



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Suitable alternative employment

If you are selected for redundancy in your current role, your employer must consider all reasonable alternatives to dismissal including whether there are any suitable jobs elsewhere in the organisation for you. They must offer you any such positions. However, your employer is only obliged to offer actual vacancies and there is not necessarily an obligation to displace another employee to accommodate you.

You may lose your right to a statutory redundancy payment if you unreasonably refuse an offer of suitable alternative employment. Whether alternative employment is suitable in your case depends on the job offered and the terms attached. For example, if the status or pay of the job offered is significantly below the status or pay of the current job, then the alternative employment may not be suitable. You can refuse it without losing your redundancy payment.

If, however, the job is suitable then your refusal has to be reasonable. This is where your personal circumstances become relevant. If, for example, the job offered is based in a different location, it may not be suitable if travel to the new location is difficult or does not fit with childcare arrangements.

Any offer of suitable alternative employment must be made prior to the date your dismissal is due to take effect. Your employer may therefore offer you suitable alternative employment during your notice period even though you may have already obtained new employment elsewhere. You are entitled to a four week statutory trial period, during which time you may decide (if reasonable) that the role is not a suitable alternative and that you wish to leave and accept the redundancy payment.

Employees on maternity leave

If you are on maternity leave, you should be afforded the same opportunities for consultation in respect of redundancy, so far as is possible, as other employees. If you are made redundant for a reason related to your pregnancy or maternity leave, you will have a claim for sex discrimination and automatically unfair dismissal.

If you are on maternity leave (ordinary or additional) when your role is made redundant, Regulation 10 of the Maternity and Parental Leave Regulations 1999 provides that you are entitled to be offered any suitable alternative vacancy that may exist, even if that vacancy is within an associated employer, and even if there are better candidates for the position.

This gives the employee on maternity leave priority over other employees who are also at risk of redundancy and is a rare example of lawful 'positive discrimination.' You cannot be made to apply for any such vacancy or be interviewed for it, it should simply be offered to you. The offer must be made before your old employment ends.

To be a 'suitable alternative vacancy' the role must involve work of a similar kind and appropriate for you to do in the circumstances, and the terms and conditions as to capacity, place of employment and otherwise must not be substantially less favourable than under your old contract.

If your employer does not comply with Regulation 10, you will automatically have a claim for unfair dismissal and/or sex discrimination.

The fact you are pregnant or on maternity leave does not affect your statutory redundancy pay entitlement, nor should it affect any contractual enhanced redundancy pay.

If your employment terminates before the 15th week preceding your expected week of childbirth, you will not be entitled to statutory maternity pay. Your entitlement to contractual enhanced maternity pay will depend upon the terms of your employer's scheme.

Part-time / Fixed-term employees

Part-time and fixed-term employees have a right not to be treated less favourably in a redundancy process as a result of their status unless such treatment can be objectively justified. Treating female part-time employees less favourably may also amount to indirect sex discrimination and would therefore require objective justification on that basis also.

Less favourable treatment will include less favourable terms and conditions in comparison to other employees, such as in relation to enhanced redundancy compensation schemes. However, it is worth noting that an employer is only required to calculate any enhanced redundancy payment for a part-time employee in accordance with their part-time salary.

Contractual claims

You may have a claim for breach of contract for your notice period or for an enhanced redundancy payment if you have been deprived of these.

You may also have a claim in respect of any contractual bonus. This will depend upon the precise wording of your contract. Loss of bonus as a result of your redundancy could also form part of the loss claimed in an unfair dismissal, discrimination or whistleblowing claim.

See our separate *'Bonus Discrimination'* factsheet for more information.

Unfair dismissal

You may have a claim for unfair dismissal if your employer has failed to show that the reason for your dismissal was fair and/or that the procedure followed prior to dismissing was fair. A claim could be brought on the basis that your dismissal was not genuinely due to redundancy, that you were not adequately warned and consulted, that you were unfairly selected for redundancy, or that there was a failure to make reasonable efforts to redeploy you into suitable alternative employment.

The maximum compensatory award for a successful unfair dismissal claim is currently £68,400 (as of 1st February 2011).



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Discrimination

You may also be able to bring a further claim for direct discrimination if your redundancy amounted to less favourable treatment on grounds of your sex (including marital status and pregnancy), race (including nationality), religion or philosophical belief, sexual orientation or age. The same applies if the redundancy was related to a disability, or where your employer had failed to make reasonable adjustments to accommodate your disability. If you believe the selection criteria applied had a detrimental impact on persons of a particular race, sex, religion or belief, sexual orientation, age or disability, and they had such a detrimental impact on you, you may have an indirect discrimination claim.

Compromise agreements

Many employers offer compromise agreements to employees who are made redundant, requiring them to waive all claims they may have against the employer. It may be a condition of receiving an enhanced redundancy payment that you enter such a compromise agreement.

Bringing a claim

If you are just claiming a statutory redundancy payment the time limit for bringing a claim to an Employment Tribunal is six months less one day from the date employment ends.


For unfair dismissal and discrimination it is three months less one day. Please note that this time limit will no longer be extended even where an internal appeal or grievance procedure is ongoing. The ACAS Code of Practice on Discipline and Grievance Procedures does not apply to redundancy dismissals. However, for a discrimination claim you will need to lodge a grievance and follow the ACAS Code, (which can be downloaded from the ACAS website). This is aimed at assisting parties to resolve disputes within the workplace. If your claim is successful but the Tribunal considers that you have unreasonably failed to comply with the Code, your compensation could be reduced by up to 25%. (There are also penalties on the employer if they do not comply with the Code). Please note that time limits can be complicated and that you should take prompt legal advice if you think you may have a claim.


Please see our separate *'Unfair Dismissal'* factsheet for more information.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This information was correct at time of going to press August 2011.