

Redundancy Checklist

Redundancy -- checklist for employer proposing redundancies

Checklist

o Introduction

- Redundancy is a potentially fair reason for dismissal. It is for the employer to show that the only or principal reason for dismissal was redundancy. The employment tribunal must be satisfied that the employer has acted reasonably in treating that reason as a sufficient reason for dismissing the employee. Employers should always seek to avoid redundancies wherever possible.
- Dismissal for redundancy will be unfair (for employees with at least one year's service) unless the employer follows a fair dismissal procedure. Fairness is for the tribunal to determine in accordance with equity and the substantial merits of the case, taking all the circumstances into account including the size and administrative resources of the employer's undertaking.
- Employers have three options when handling redundancies:
 - deal with them on an *ad hoc* basis, with the company's practice varying according to the circumstances of each individual case, or
 - set out a formal policy which will be applied by the company when making redundancies, but without obtaining the agreement of the appropriate representatives to the policy, or
 - reach a formal agreement with the appropriate representatives on the procedure to be followed when redundancies are being considered. This provides management with a joint agreement for avoiding or minimising redundancies and for carrying out redundancies when they are inevitable. It reduces both the likelihood of conflict and the possibility of misunderstanding
- For dismissals which occur prior to 6 April 2009, or where the employee has been invited to a dismissal meeting, or the meeting has taken place, prior to 6 April 2009 the employer's procedure must also comply with the statutory dismissal and disciplinary procedures unless 20 or more redundancies are proposed within a period of 90 days or fewer.

o Identifying a redundancy situation

- Check the reason for impending redundancies. An individual redundancy is a dismissal attributable wholly or mainly to the fact that:
 - the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or
 - the employer has ceased, or intends to cease, to carry on that business in the place where the employee was so employed,
 - the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed, have ceased or diminished or are expected to cease or diminish

- For the purpose of collective redundancy, every dismissal is treated as a redundancy except those the employer can show are for one or more reasons any of which is related to the individual concerned
 - Confirm how many employees are proposed to be made redundant
 - Obtain details of the employees' salaries, ages, length of service
 - Consider whether redundancies can be avoided by other options, including:
 - restrictions on recruitment
 - voluntary early retirement or voluntary severance
 - retirement of employees beyond normal retiring age
 - retraining and transfer to other work
 - short-time working and job-sharing schemes
 - reduction in overtime
 - wage cuts
 - Invite volunteers for early retirement, redeployment, retraining, transfer or other alternatives to redundancy
- o Selection for redundancy**
- If compulsory redundancies are necessary, establish which employees are to be made redundant and the order of discharge. This involves identifying the correct pool of labour from which the selections are to be made.
 - Select and consider a fair method of selecting employees for redundancy. As far as possible, objective criteria precisely defined and capable of being applied in an independent way should then be used to determine which employees from the 'pool' are to be selected for redundancy. Where there is a customary or agreed selection procedure in force, this should always be considered. Failure to do so, in the absence of special reasons to justify departure, may render the dismissal unfair. Commonly applied selection criteria include standard of work performance (supported by objective evidence), attendance or disciplinary records and, in appropriate circumstances 'last in, first out'. Employers usually consider a number of criteria.
 - Identify how many redundancies are required. Collective redundancy consultation is required if 20 or more employees are proposed to be made redundant within a period of 90 days or fewer
 - Select employees for redundancy using the usual or agreed method of selection
 - Give as much warning as possible to the employees concerned. Write to them explaining that the company is proposing to make redundancies, the reasons why those redundancies may be necessary and that they are potentially at risk of redundancy
 - Invite employees to volunteer for redundancy
 - Decide how and when to make the facts public, ensuring that no announcement is made before the employees and their appropriate representatives have been informed
 - Notify employees that selection for redundancy is taking place and inform them of the method of selection
- o Consultation on collective redundancies**
- In calculating whether or not 20 or more employees are proposed to be made redundant within a period of 90 days or fewer:
 - exclude any employees in respect of whose proposed dismissals consultation has already begun
 - those volunteering for redundancy should normally be included as well as those it is proposed to make compulsorily redundant

- every dismissal is treated as a redundancy except those the employer can show are for one or more reasons any of which is related to the individual concerned
- The duty to consult is not limited to the representatives of those employees who are to be dismissed. The duty extends to employees affected by the dismissals or by measures taken in connection with them. This means that employers must assess the consequences of the redundancy on the remaining workforce, including any changes there may be to their terms and conditions.
- o **Appropriate representatives**
 - If a trade union is recognised then consultation must take place with that trade union. If no trade union is recognised then employers have a choice:
 - to hold an election and consult the employee representatives elected, or
 - to consult representatives who have already been elected for another purpose (eg, for health and safety purposes) but who have the authority to receive the information
 - If employees are not of a description in respect of which a trade union is recognised, they must be given the opportunity to elect representatives
 - Disclose to the appropriate representatives in writing:
 - the reasons for the proposals
 - the numbers and descriptions of the employees proposed to be dismissed
 - the total number of employees of that description employed at the establishment in question
 - the proposed method of selection
 - the proposed method of carrying out the dismissals, including the period over which the dismissals are to take effect
 - the proposed method for calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by statute)
 - Begin consultations with the appropriate representatives in good time and in any event:
 - at least 30 days before the proposed date for the first dismissal if there are between 20 and 99 proposed redundancies at one establishment to take effect within a 90-day period
 - at least 90 days before the proposed date for the first dismissal if there are 100 or more proposed redundancies at one establishment to take effect within a 90-day period
 - Consultations must be undertaken by the employer with a view to reaching agreement
 - Consultations should include consultation about ways of:
 - avoiding the dismissals
 - reducing the number of employees to be dismissed; and
 - mitigating the consequences of the dismissals
 - Consultations should involve due consideration of representations made by the appropriate representatives and the giving of reasons for rejecting specific points.
 - If, in any case, there are special circumstances which render it not reasonably practicable for the employer to comply with any of these requirements, he must take all such steps towards compliance as are reasonably practicable in the circumstances.

o **Department for Business, Innovation and Skills (BIS)**

- Notify the Secretary of State on form HR1:
 - 30 days before the proposed date for the first dismissal if there are between 20 and 99 proposed redundancies at one establishment to take effect within 90 days
 - 90 days before the proposed date for the first dismissal if there are 100 or more proposed redundancies at one establishment to take effect within 90 days
- Send a copy of the form of notification to the appropriate representatives in respect of any of the categories of employees to be made redundant
- Failure to notify in these circumstances is a criminal offence

o **Individual consultation**

- Each person who is likely to be made redundant must be consulted individually -- dismissals have been found to be unfair where the appropriate representatives have been consulted but not the individuals
- The employer should also inform the employee that he has the right to be accompanied at that meeting
- If it is to be meaningful, consultation should take place before selection has been determined finally. However, the consultation meeting must not take place unless the employee has been informed in writing that he is at risk of redundancy and has had a reasonable opportunity to consider his response to that information. The employee should be allowed to make representations (for example, as to means of avoiding redundancies, the selection criteria proposed etc)
- The timing and location of the consultation meeting must be reasonable. The employee should also be given a reasonable time for reflection and an opportunity to revert with further representations
- Consult with individual employees about proposed redundancies and the selection process
- Consider alternative positions for all employees (throughout the period up to their termination date). Discuss the alternative positions with them as part of the consultation

o **Dismissal**

- For dismissals which occur prior to 6 April 2009, or where the employee has been invited to a dismissal meeting, or the meeting has taken place, prior to 6 April 2009, the employer's procedure must also comply with the statutory dismissal and disciplinary procedures unless 20 or more redundancies are proposed within a period of 90 days or fewer. The minimum statutory dismissal and disciplinary procedures require the employer to:
 - set out in writing the reason the employer is contemplating dismissal by reason of redundancy and send a copy of the statement to the employee
 - invite the employee to attend a meeting to discuss the matter. The timing and location of the meeting must be reasonable and the meeting must be held without unreasonable delay
 - hold a meeting to discuss the proposed dismissal. The employee must be given a reasonable opportunity to consider his response to the proposal and the meeting must be conducted in a manner that enables the employee and the employer to explain their cases. The employee must take all reasonable steps to attend the meeting, and
 - after the meeting inform the employee of the decision and notify him of the right to appeal against the decision if he is not happy with it

- Prior to dismissing the employee the employer should:
 - write to the employee, setting out that the employee may be dismissed for redundancy and inviting the employee to attend a meeting to discuss this. The letter should also include the employee's scores in the selection process
 - hold a meeting to discuss the proposed redundancy, giving the employee an opportunity to discuss issues such as the redundancy scores, the reasons for redundancy and possible alternatives to redundancy
 - after the meeting, confirm what decision has been made and, if it is dismissal, give the employee the right of appeal
- Offer to help employees to find other work and allow them reasonable time off for the purpose. Employees who are under notice that they will be made redundant are entitled under the Employment Rights Act 1996 to reasonable paid time off work to look for alternative employment
- Pay a statutory redundancy payment to every qualifying employee with at least two years' continuous employment who is dismissed by reason of redundancy
- Statutory redundancy payments are calculated by working backwards from the employee's effective date of termination and adding:
 - one and a half weeks' pay and for each completed year of employment aged 41 or over
 - a week's pay for each completed year of employment between the ages of 22 and 40
 - half a week's pay for each completed year of employment aged 21 or less
 - taking no more than 20 years into account
 - ignoring any pay in excess of £450 a week
- If the employer wishes to operate a more generous redundancy scheme, it may do so, provided it does not contravene the age discrimination provisions. If it has introduced a more generous contractual redundancy payment scheme, it must do so. If it has operated an unvarying practice over recent time in the way it has operated a discretionary redundancy payment policy such as to give rise to a legitimate expectation in the part of the employees that it would do so again if they were to become redundant, the employer may be estopped from changing this practice to the employees' detriment
- Give the employee as much notice of the redundancy as possible. Write to each redundant employee giving them notification of:
 - due notice of the termination of his employment (or pay in lieu)
 - their redundancy payments (including a statement how any statutory element is calculated)
 - their right to appeal against the decision to dismiss
- If the employee appeals against the dismissal, invite him to attend a further meeting before the dismissal takes effect. At the appeal meeting, the employer should, as far as reasonably practicable, be represented by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting). After the appeal meeting, inform the employee of the final decision, preferably in writing.