

There are many challenges which businesses face on a day to day basis. Whether in “good times” or “bad”, employers need to ensure that the workforce they have reflects their current and anticipated needs.

A business faced with the situation that they are over staffed or have a requirement to cut costs generally may decide that redundancies need to take place. However pressing the need to reduce numbers however, the employer needs to ensure that it follows proper procedures in order to minimise the risk of successful, and expensive, unfair dismissal claims.

This document sets out in general terms procedures and issues to take into consideration from the outset, when any employer is considering making redundancies.

## Is there a Legally Fair Reason?

To dismiss an employee fairly, an employer must do so for a legally fair reason.

The law of unfair dismissal sets out a limited number of fair reasons to dismiss an employee. One such reason is redundancy.

For a redundancy situation to exist, the dismissal of an employee must be wholly or mainly attributable to the employer:

- Ceasing (or intending to cease) to carry on the business for which the employee was employed.
- Ceasing (or intending to cease) to carry on the business in the place where the employee was so employed.
- Having a reduced requirement to carry out

work of a particular kind or at the particular place where the employee was so employed.

## A fair procedure must be followed

Once it has been established that there is a genuine redundancy situation, the employer must then follow a fair procedure (and possibly certain statutory redundancy procedures) to dismiss the employees fairly. An employer will normally act fairly if it:

- Warns and consults the employees and/or their representatives.
- Adopts a fair basis on which it selects employees for redundancy.
- Takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within its own organisation.

## Consultation

### Individual consultations

The employer must warn the employees of the possibility of redundancy and then consult individually with them before reaching any firm decision regarding their dismissal.

Typically consultation will include:

- Warning the employee of the fact that the individual is selected provisionally for redundancy.
- The basis for selection.
- Providing an opportunity for the employee to comment on and challenge their redundancy selection.

- Providing an opportunity for the employee to put forward any suggestion to avoid their redundancy.
- Consideration of any alternative employment position that may exist.
- Providing an opportunity for the employee to raise any matters or concerns they may have.

The employee should be given the ability to be accompanied by a colleague or Trade Union representative at all consultation meetings.

### Collective consultations

If the employer is proposing to make 20 or more employees redundant at an establishment within a 90 day period, it must consult representatives of the affected employees about the dismissals before any employee is given notice.

The representatives are trade union representatives or elected employee representatives if there is no recognised trade union.

When required, the consultation must begin in good time. It should in any event start at least 30 days before the first dismissal takes effect if more than 20 employees are affected, or 45 days if more than 100 employees are affected.

The consultation should include ways of avoiding the dismissals, reducing the number of employees to be dismissed and mitigating the effect of dismissals.

In addition to the collective consultation requirements, the employer should still consult each affected employee individually.

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