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# Practical guidance on making redundancies





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# What is redundancy?

## 139 Redundancy

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

# What is redundancy?

- Includes the following scenarios:
  - Site or business closure
  - Reducing the number of people who carry out a role
  - Deleting a role from the organisational structure entirely
  - ‘Restructure’ – removing certain roles and adding new ones
- Doesn’t require the business to be under financial pressure or a downturn in work
- Can be a redundancy situation even where there is an overall increase in the number of jobs as part of a restructure
- Business rationale for redundancies isn’t generally scrutinised too heavily by Employment Tribunals

# Collective redundancies

- Special rules where an employer proposes 20+ redundancies at an establishment in any 90-day period
- Definition of redundancies for this purpose is wider than under the Employment Rights Act 1996
- Consultation with employee representatives
- Minimum periods before dismissals can take effect
- Severe consequences for non-compliance

# What does a redundancy procedure look like?

- Redundancy policy may set a fixed process
- Trade union recognised?
- Key stages of a redundancy process:
  - Forming the proposal
  - Defining the redundancy pool
  - Designing the selection matrix
  - Scoring matrix
  - Consultation
  - Notice of termination
  - Appeal

# Initial steps

- Do we need a 'business case' document?
- Beware of 'disclosable documents'!
- Always emphasise that it is a **proposal**
- Initial announcement
  - Never a good time – but some times are worse than others
  - Have an 'at risk' letter ready
  - Not a Q&A session or a consultation meeting
  - Who else needs to know?

# The redundancy pool

- Key question – what type of work is there a reduced requirement for?
- ‘Range of reasonable responses’
- Narrower pools may be more open to scrutiny e.g. ‘pool of one’
- Generally difficult to justify treating employees with the same job title differently
- Can we select those on fixed-term contracts first?
- ‘Bumping’



# Scoring matrix

- Do we even need to score?
- Can't we use an interview process instead?
- 'Objective' criteria
- Can we use 'subjective' criteria at all?
- How tailored should the criteria be to the role in question?

# Scoring matrix – specific criteria and potential issues

- Disciplinary record
- Length of service
- ‘Last in first out’
- Attendance record
- Performance
- Attitude
- Skills and experience

# Scoring – practical points

- What about volunteers?
- Can employees challenge their scores?
- What if somebody's score changes?
- Do we have to give details of other people's scores?
- Will Employment Tribunals do a re-scoring exercise?

# Alternative employment

- Part of a fair and reasonable redundancy process
- ‘Ringfencing’
- Filling vacancies shortly before starting a redundancy process
- How soon after is it safe to recruit?
- What do we do where more than one ‘at risk’ employee wants a vacancy?
- Time off to seek alternative employment

# Consultation

- Central pillar of a fair redundancy process
- Can be an opportunity to rectify any mistakes
- Right to be accompanied
- How many meetings and how long should it last?
- When to consult – before or after scoring?

# What should we be consulting about?

- The business reasons for the redundancy
- Potential alternatives to redundancy
- Selection pool
- Scoring matrix
- Employee's scores
- Alternative employment

# What does a Tribunal expect consultation to look like?

- Genuine and meaningful
- Takes place at a formative stage
- Providing adequate information
- Adequate opportunity to respond
- Conscientious consideration of points raised during consultation

# Pregnancy, maternity leave and long-term sickness absence

- Protection against being made redundant?
- Do we still consult with employees on long-term sick or maternity leave?
- Scoring
  - Pregnancy- and disability-related absences
  - Scoring for maternity absence periods – should they automatically receive full marks?
- Maternity and suitable alternative employment



# Questions and answers