

Helping our clients to achieve

Frequently asked questions on redundancy for employers

Date: February 2009

by **Gill Brown, partner specialising in employment law**

Direct line 01256 854605 email gbrown@phillips-law.co.uk

Can I make employees redundant straight away?

No. There is a duty to consult before any redundancies are made. You must follow a proper redundancy process otherwise, even in a genuine redundancy situation, you may find you have unfairly dismissed employees and be liable for a claim.

Can I cut my employees hours?

Not without their agreement. You cannot enforce this unless you have reserved the right to do so in your contracts of employment, which is not usual, or unless there is a negotiated collective agreement accepting this, usually through a union.

Can I cut my employees pay?

Not without their agreement. (See answer to question above)

Can I lay off employees to see if matters improve?

Not unless your contracts of employment permit this, which is unusual except for manufacturing contracts or where there is a negotiated collective agreement.

How can I reduce employment overheads without enforced redundancies?

You can ask for volunteers from your work force who may wish to reduce their working hours/ take an unpaid sabbatical/ accept a reduced salary for reduced responsibility or volunteer for redundancy. You should emphasise to anyone applying that their application will be considered but, dependant upon business needs, it may not be accepted.

Where do I start if I have to make enforced redundancies?

You firstly must identify the roles (NOT people) which are to become redundant or which are to be reduced in headcount. Then identify the people affected or likely to be affected by this and all the personnel who are interchangeable in any affected role? This group of employees

Helping our clients to achieve

are “at risk” of redundancy and should be told this in an initial meeting. You should outline numbers involved, your company process for selection between affected employees, timescales and consultation arrangements.

What is the required consultation period before I can enforce redundancies?

This depends on the numbers involved. For under 20 redundancies (within a 90 day period) there is no set period for consultation but each individual who may be affected, must be consulted and the consultation period should be more than a week. Fourteen days is usually felt to be reasonable in these circumstances. 20-99 affected employees are entitled to collective consultations for at least 30 days. For 100+ employees special arrangements apply, collective consultations must take place for at least 90 day and the dti must be informed.

What must I do during the consultation period?

Meet with all potentially affected employees to listen to any suggestions they may have for avoiding redundancy, consider any alternatives you may have for other roles or ways of avoiding redundancy. If more than one person is being considered for redundancy from a pool of employees, some of whom will not be made redundant, then a clear and fair selection process must be in place and be discussed during the consultation period. Employees have a right to be accompanied to the meeting(s) by a work colleague or trade union representative.

How do I select between employees when I need to reduce headcount?

If, for example, you have the need to reduce from 6 to 4 employees in a certain role then you should prepare a matrix containing a variety of different and objective, non-discriminatory selection criteria. At least 2 separate individuals should then score each of the 6 employees against the criteria and these are then combined to come up with final scores. In theory the 2 with the lowest total score would become redundant and the 4 highest remain. The consultation period does however, allow for those affected to challenge their scoring and have it reconsidered and therefore no final decision should be made until the end of the consultation period.

Do I need to put all of this in writing?

Yes. Employees should receive a letter after each stage of the process confirming their rights, the stage of the process they are at and what happens next. The scoring of those at risk should also be well documented and it is advisable to take minutes of the meetings.

Helping our clients to achieve

What if I can offer an alternative role?

If the employee is offered a “reasonable” alternative role and they refuse to take it then they will be treated as resigning. However, what is “reasonable” in the eyes of the employer, may not be in the eyes of the employee and can lead to disputes. If the employee accepts the alternative then they have a statutory 4 week trial period. If the role is not deemed suitable during this period, for good reason, the employee can still accept redundancy. The 4 week trial can be extended by the written agreement of the parties.

What is the employee entitled to when being made redundant?

Unless the contract of employment provides for enhanced benefits on redundancy, your employee will be entitled to: either their period of notice or a payment in lieu of notice; payment for unused holiday accruing to the termination date; a statutory redundancy payment if they have been employed for at least 2 years. Statutory redundancy pay is based on number of completed years of employment x weekly wage capped at the statutory maximum (from 1st Feb 2009 this is £350) x a multiplier dependant upon age of the employee during the various years of employment. Statutory redundancy pay is not subject to income tax or National Insurance deductions. The employee, as in all cases of termination of employment, is also entitled to appeal the decision to make them redundant and is entitled to an appeal hearing if they do appeal.

What are the penalties for getting it wrong?

You must take care to follow each step of the process carefully as failure to comply with any step can give rise to a claim for unfair dismissal. The process must be transparent, be objectively justifiable, fair and compliant with your legal obligations. Selection criteria must be reasonable and be applied fairly and consistently.

Failure to do this could potentially lead to a variety of claims including potentially expensive discrimination claims.

ENDS