Redundancy Guide For Employers

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Whether you are looking to reorganise your business to change the structure or skills mix or just reduce headcount, we can support your business if a redundancy situation arises.

We understand that redundancy can be a daunting process and have extensive experience of supporting our clients through what is often a difficult time. Our practical and pragmatic advice will ensure that you are able to achieve the reduction in workforce or restructure that you envisage by following the correct legal procedures to avoid any potential claims.

We set out below our top tips for dealing with redundancy.

Before instigating any kind of redundancy dismissal process, you should be aware that if tested, you would need to satisfy a Tribunal that you have a genuine redundancy situation. Broadly speaking this means that you must either closing a place of work or reducing the number of employees doing work of a particular type. If you are replacing the employee in question, or it is a restructuring which will not result in fewer employees doing work of a particular type, then it is unlikely to be considered a genuine redundancy situation. Employees may have a valid claim against your company if they believe that there was another reason for their dismissal which amounted to discrimination (e.g. pregnancy), or was a result of whistleblowing. With our guidance throughout the redundancy process, we will show you how to avoid this

eventuality.

If you are proposing to make 20 or more employees redundant in one establishment in a 90-day period, then you will have additional collective consultation obligations. Employee representatives will need to be appointed if not in post already, and minimum time periods for consultation apply. If you fail to comply with these obligations, your employees may have an additional claim for up to 180 days' gross pay. Our team are highly experienced in the rules of collective consultation, and will follow best practice to ensure the best possible outcome for your firm.

If employees have more than two years' service, from the point of view of the Employment Tribunal, they must be consulted with, in order to ensure fairness. You have a duty to warn employees of the possibility of redundancy and consult with them during the process. In the interests of fairness, it is recommended that you enter the consultation period with an open mind, ensuring that no final decision is made until the period has ended.

Where work of a particular kind is ceasing or reducing, you will need to consider carefully which employees to 'pool' together as potentially redundant. This will normally involve grouping those who do the same or similar work, but may also include employees who, despite doing different work, have interchangeable skills.

When deciding which employees to select for redundancy, you must ensure that you undertake a comparison of all those in the pool. Your selection criteria should be, as far as possible, objective and capable of verification. You should be very careful to avoid using criteria which puts certain protected groups at a particular disadvantage; for example, a policy of 'last in, first out' can (if used on its own) put younger employees at a disadvantage, as they are less likely to have longer periods of service. This could amount to age

discrimination.

Bumping is a process whereby you move a potentially redundant employee into a different post and instead dismiss the employee currently performing that role. This can still constitute a fair dismissal and can give your business greater control over which employees are dismissed if used correctly.

Once you have identified the employees who will be made redundant, you should then make efforts to look for alternative employment for them within the company, or associated companies. Failure to do so is likely to give rise to an unfair dismissal claim. You should inform ‘at risk’ employees of all existing job vacancies (including roles that are more junior/senior to the role they are in), and give them a fair opportunity to apply.

If an employee is on maternity leave during your redundancy consultation process, she will have the right of first refusal of any suitable alternative roles. If you fail to offer such roles to her before all others, it may mean her redundancy dismissal amounts to an automatically unfair dismissal claim and sex/maternity discrimination.

As part of the redundancy process, there are advantages to giving your employees a right of appeal. You must ensure that you listen to the employee’s issues and respond to each point they raise.