

Redundancy Checklist

1 Is there a genuine redundancy situation?

- 1.1 For there to be a genuine redundancy situation, the circumstances must fall within the statutory definition of redundancy.¹ It covers the closure of part or all of a business, a workplace closure or a reduced requirement for employees to do work of a particular kind.
- 1.2 A workplace closure can include the situation where the employer moves part of its business to another location.
- 1.3 There may be a reduced requirement for employees even if the amount of work remains the same. It can arise as a result of a reallocation of duties or the restructuring of departments.

2 Pool for selection

- 2.1 An employer should begin by identifying the group of employees from which those who are to be made redundant will be selected. Where, for example, a manufacturing facility needs fewer employees, the appropriate pool will normally be the manufacturing department. However, where employees from other departments are doing similar work to the manufacturing employees, or where employees' roles are interchangeable, it may be reasonable to extend the pool for selection.
- 2.2 It is not always necessary to select from a pool, for example if an employee is carrying out a unique role that is disappearing.

3 Selection criteria

- 3.1 After the selection pool, an employer should then decide on fair and objective selection criteria. Most employers use a matrix of criteria which takes into account issues such as individual performance, relevant experience, qualifications/training, disciplinary records and attendance records. Criteria should be capable of verification, for example against personnel records or appraisals. Criteria that are unlikely to be fair as they are too subjective include "attitude to work" and "employees best suited to the needs of the business."
- 3.2 "Last in First Out" used to be a common form of selection but it is increasingly unpopular.

¹ Section 139, Employment Rights Act 1996

- 3.3 It may not be necessary to apply criteria to select employees where unique roles are disappearing or where all of a business is closing.

4 Announcement

All of the affected employees should be informed of the fact that the employer proposes to make redundancies, the rationale behind the decision, the pool for selection and the selection criteria.

5 Individual consultation meeting 1

Unless the pool and criteria have been agreed with trade union or employee representatives, the affected employees should be invited to a consultation meeting to discuss the pool and criteria.

6 Applying the selection criteria

- 6.1 After considering any comments received in relation to the suitability of the pool and selection criteria, the criteria should then be applied to each employee in the pool. A written record of the individual employee assessments should be kept.
- 6.2 Care should be taken in relation to attendance records to ensure that absence related to maternity or other family friendly leave is discounted. Also, where an employee's absence is related to disability, selection on grounds of attendance record may be discriminatory. It is best practice not to use attendance records as the sole selection criterion.

7 Individual consultation meeting 2

- 7.1 All employees who, following the selection process, are at risk of redundancy must be informed of their selection at a consultation meeting. Other issues to be discussed include:
- the individual's selection assessment and scores
 - the timescale
 - the financial package available
 - alternative employment (see 11 below)
 - details of any support available eg outplacement services

7.2 Employees should be given an opportunity to make suggestions as to how to avoid their being made redundant.

8 Individual consultation meeting 3

Employees should then be given the option of challenging their selection at another individual consultation meeting. Further discussion may be required in relation to the issues listed above.

9 Dismissal meeting

9.1 The statutory disciplinary procedures apply to redundancy dismissals other than those in a collective redundancy situation. If the statutory disciplinary procedures apply and are not followed the dismissal will be automatically unfair.

9.2 In terms of the procedures, the employee requires to be given a letter informing them that they are potentially redundant and inviting them to attend a meeting.

9.3 After the meeting, the decision to dismiss by reason of redundancy must be communicated in writing and the employee given the right to appeal. If the employee appeals the decision, the employer must invite him to an appeal hearing and after the meeting inform him of the final outcome in writing.

9.4 Employees can either be given notice of the termination of their employment or the dismissal can take place immediately with the employer making a payment in lieu of notice.

9.5 Employees must be allowed to bring a trade union representative or work colleague to the meeting at which the decision to terminate their employment is communicated.

10 Collective consultation

10.1 If there is a proposal to make 20 or more employees at one establishment redundant within a 90 day period the employer is obliged to consult with appropriate trade union or employee representatives (for 30 days if between 20 and 99 redundancies are proposed and for 90 days if 100 or more redundancies are proposed). A failure to do so gives rise to potential liability for a protective award of up to 90 days' pay per affected employee.

10.2 The Secretary of State must be notified, usually on a HR1 Form. Notification must be received at least 30 days before the first dismissal takes effect where the employer proposes to dismiss between 20 and 99 employees, or at least 90 days before where the employer proposes to dismiss 100 or more employees.

10.3 If there are no appropriate trade union or employee representatives in place, representatives must be elected in terms of the statutory requirements. Please contact us if you require further details.

- 10.4 The employer must provide a copy of the HR1 Form to the appropriate representatives and must disclose in writing -
- the reasons for the proposals
 - the numbers and descriptions of employees whom it is proposed to dismiss as redundant
 - the total number of employees of any such descriptions employed by the employer at the establishment
 - the proposed method of selecting the employees who may be dismissed
 - the proposed method of carrying out the dismissals including the timescale
 - the proposed method of calculating the amount of any redundancy payments to be made
- 10.5 An employer should also consult with the affected employees individually in a collective consultation situation. The process will usually involve (in addition to the consultation with the representatives):
- an announcement to the group of affected employees
 - individual consultation meetings to confirm those selected for redundancy
 - optional individual consultation meetings to allow the employees the opportunity to challenge their selection
 - optional dismissal meetings (as the statutory dismissal procedures do not apply, employees can be notified in writing of their dismissal)

11 Alternative employment

- 11.1 It is important to consider alternative employment for potentially redundant employees to ensure a fair redundancy procedure. Vacancies in any associated companies, as well as the employing company, should be drawn to the employee's attention. If an alternative job becomes available during the notice period, it should be notified to the employee.
- 11.2 It is not only equivalent jobs which must be considered – if an employee is prepared to accept a job of a lower status, a failure to offer such a job may render a dismissal unfair.
- 11.3 Any employees at risk of redundancy who are on maternity leave have special protection and may have an automatic right to be offered any suitable vacancies before any other employees who may be candidates.
- 11.4 An offer of alternative employment must be made before the end of the employment under the previous contract and must take effect within 4 weeks.
- 11.5 If an employee refuses an offer of suitable alternative employment, they will lose their entitlement to a statutory redundancy payment if the refusal was unreasonable.

12 Trial periods

If an employee accepts an offer of alternative employment with different terms and conditions, they are entitled to a statutory 4 week trial period (or longer period for retraining as agreed in writing) to "test" the new employment. If the employee terminates the employment during the trial period, they will be treated as having been dismissed by reason of redundancy. If their refusal to continue the suitable alternative employment was unreasonable, they will not be entitled to a statutory redundancy payment.

13 Statutory redundancy payments

13.1 All employees with at least 2 years' continuous employment are entitled to a statutory redundancy payment. The employee is entitled to:

- One and a half weeks' pay for each complete year of service from age 41
- One week's pay for each complete year of service between ages 22 and 40
- Half a week's pay for each complete year of service under the age of 22

13.2 A week's pay is capped at the statutory maximum, currently £330.

14 Contractual redundancy entitlement

14.1 In addition to a statutory redundancy payment, employees may also be entitled to a contractual enhanced redundancy payment. This may be a result of a redundancy policy being an express term of employment or where implied redundancy terms have become contractual by custom and practice.

14.2 Contractual redundancy payments which mirror the statutory redundancy payment formula with uplifts are not discriminatory on the grounds of age. Other schemes which include age or length of service as criteria must be objectively justified.

Example Redundancy Consultation Project Plan

Non-collective ²	Collective ³
Announcement (individually or to group of affected employees)	Announcement (to group of affected employees)
Individual meeting 1 to discuss pool and selection criteria	Election of employee representatives (if required) ⁴ Meeting with representatives to discuss pool and selection criteria
Selection of those at risk of redundancy from pool	Selection of those at risk of redundancy from pool
Individual meeting 2 to confirm selection	Individual meeting 1 to confirm selection
Individual meeting 3 to challenge selection (optional)	Individual meeting 2 to challenge selection (optional)
Letter inviting employee to attend dismissal meeting	
Dismissal meeting	Dismissal meeting
Appeal meeting	Appeal meeting

² There is no statutory period for consultation in a non-collective situation – a period of around 2 weeks is normally appropriate.

³ Throughout the collective consultation process there will be other meetings with the representatives as required to discuss, for example, the financial package, timescale, ways of avoiding the dismissals, reducing the numbers of employees to be dismissed etc.

⁴ The collective consultation period of 30/90 days cannot start until the representatives are in place.