

## **Redundancy – Key Points to Remember**

This document is intended to act as a source of general information to Members who, as employers, may be facing a redundancy situation. Further more detailed information and template letters are available in the **Redundancy Guidelines for Members** which may be found on **AssIST**. The website of the Labour Relations Agency (<https://www.lra.org.uk/>) is also a very useful source of guidance for small employers. When dismissing a member of staff, whether on redundancy or any other grounds, it is always advisable for an employer to take independent legal advice.

The information in this document is general in nature and Members must refer to the contracts of employment of any of their staff potentially affected by redundancy, as these may include specific entitlement regarding for example, notice periods.

### **1 A definition of Redundancy**

Redundancy is a lawful basis for the dismissal of an employee. In law, dismissal by reason of redundancy occurs if the dismissal is wholly or mainly attributable to:

- The employer closing down or intending to close down the business for which the employee was employed;
- The employer closing down or intending to close down the place where the employee was employed;
- A reduction/cessation or an anticipated reduction/cessation of the particular work for which the employee was employed; or
- A reduction/cessation or an anticipated reduction/cessation of the particular work in the place where the employee was employed.

### **2 Notification of Redundancy**

As a person who employs fewer than 20 staff, you are not required to notify the Department of Employment and Learning (DEL) of redundancies.

### **3 Redundancy Selection**

If you are making all of your staff redundant, you should undertake a fair and reasonable consultation process (see section 4) and give your staff advance warning that redundancies are likely. If you are making only one or some of your staff redundant, you should provide your staff with details of how the redundancy selection criteria have been arrived at; provide an opportunity for your staff to comment on the criteria; and provide an opportunity for each employee to comment on your assessment of him/her against those criteria.

The redundancy criteria that you use must be objective and non-discriminatory. The criteria that can be used may include:

- Skills, qualifications and aptitude;
- Standard of work performance;
- Adaptability;

- Attendance/disciplinary record (if using attendance as a criterion, be mindful of the risk of discrimination on the grounds of disability, pregnancy, maternity, race etc).

When assessing individual staff against the redundancy criteria, you should obtain objective evidence to support your assessment.

The use of certain criteria to select staff for redundancy will make any subsequent dismissal automatically unfair and the use of such criteria must therefore be avoided. These criteria include:

- Membership/non-membership of a trade union;
- Lawful industrial action lasting up to 12 weeks;
- Being an employee representative;
- Actions taken on specified health and safety grounds;
- Pregnancy, maternity, paternity, adoption and/or parental leave;
- Part-time or fixed-term contract status.

#### **4 Consultation with Staff**

There is no statutory consultation procedure for employers who are making fewer than 20 staff redundant. However, **you are required to undertake a fair and reasonable consultation process and to give your staff advance warning that redundancies are likely, prior to issuing an actual notice of dismissal.** Consultation should take place at an early stage before a final decision on redundancy has been taken. You should meet with your staff as a group and individually, regardless of the number you plan to make redundant. At the start of consultation, you must provide written details of:

- The reason for the redundancy/(redundancies);
- The number and categories of staff involved;
- The total number of employees in these categories;
- How you plan to select staff for redundancy;
- How you will carry out the redundancy/(redundancies).

#### **5 Alternatives to redundancy**

You should where possible consider alternatives to redundancy, discuss these with your staff and give them opportunity to put their views across. If a suitable job is available for an employee you should offer it to him or her instead of making him or her redundant.

#### **6 Time off to look for work**

If staff under notice of redundancy have been employed for two years or more, they are entitled to reasonable paid time off during their notice period to look for alternative employment. However, in relation to any period of time off to look for work, you do not need to pay staff more than 40% of their weekly salary.

## 7 Notice Periods

The notice you are required to give to a member of staff will depend on the period set out in their individual contract of employment, if this is different from the sample contract issued to Members. The minimum statutory notice periods are set out below and are reflected in the sample contract/statement of particulars of employment issued to Members:

Service	Notice
Up to 2 years	1 week
2-12 years	1 week for each year of employment
Over 12 years	13 weeks

## 8 Dismissal

If after consultation and selection you have decided to proceed with redundancy, you should write to the selected member(s) of staff notifying them of this and inviting them to a meeting to discuss<sup>1</sup>. The employee has a legal right to be accompanied to the meeting by a colleague from work or a trade union representative. After the meeting, you should write to the employee advising them of your final decision. You must advise the employee of their right to appeal against that decision. Further information on this, including template letters, is provided in the Redundancy Guidelines for Members on AsslSt.

## 9 Entitlement to Redundancy Pay

Employees dismissed by reason of redundancy with two or more years' service (including most fixed-term employees if they have been employed for a continuous period of two years) are entitled to statutory redundancy payment based on their age, length of service and weekly earnings. For each complete year of service, up to a maximum of 20 years, such employees are entitled to:

Each year of service below age 22 – half a week's pay
Each year of service at age 22 or above but less than age 41 – one week's pay
Each year of service at age 41 or above – one and a half weeks' pay

A week's pay is that which the employee is entitled to under their contract of employment at the relevant calculation date, or at the maximum statutory limit (currently £490 per week), whichever is less.

If you are making staff redundant, please contact the Pay Team on 028 90524918 for advice on calculation of weekly pay for redundancy purposes and payment of final salary.

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<sup>1</sup> Even though as a Member you may not be standing for re-election and there is unlikely to be any way to avoid a redundancy, statutory dismissal procedures require you to notify your staff of the intention to dismiss. It further requires you to meet with them to discuss this before you make your final decision.