

Redundancy procedure

Once the employer has established that there is a genuine redundancy situation, the employer needs to follow a fair procedure.

A dismissal must be fair in all the circumstances if it is not to fall foul of the unfair dismissal legislation. In the case of redundancies, this includes an obligation to undertake meaningful consultation with the individual employees affected.

The idea of the consultation is to look for ways to avoid the redundancy, to look at redeployment to suitable alternative employment and generally to minimise the impact of the redundancy situation as far as possible.

The employer will also need to consider a fair and objectively reasonable method of selecting which employees are to be made redundant if applicable.

The following steps set out a very basic idea of some of the steps that should be followed to carry out a fair procedure for dealing with a straightforward redundancy situation. Alternative or additional steps may be required depending on the circumstances.

ACAS have recommended a 30 day consultation period in the past and following this is still good advice. Please seek advice (from a solicitor) on your situation to see if there is a genuine redundancy. If you are thinking of a shorter consultation period than 30 days, mention this to your advisor.

First meeting (usually with the group of potentially redundant employees)

- The employer should meet with all the potentially redundant employees to explain the reasons for the potential redundancies and that, although the employer has looked at alternatives, there do not appear to be any viable alternatives to redundancy at the current time.
- The employer should explain to the employees how many jobs are at risk of being redundant and the reasons for this.
- This should be presented as a possibility only at this stage (to avoid any claim that the decision has already been made).
- The employer should explain to the group that it will continue to look at ways to avoid redundancy and, if necessary, look at alternative roles within the organisation.
- The employer should consider asking for volunteers for redundancy at this meeting.
- The potentially redundant employees should be asked to consider ways of avoiding redundancy.
- The employer should explain the selection criteria it intends to use for selecting the redundant employees (if relevant) and ask for any comments on the criteria that the employer plans to use.

- The content of the meeting should be confirmed in writing to each potentially redundant employee and a copy of the selection criteria form and guidance should be included with the letter.

Scoring

- After the first meeting the employer will need to mark each potentially redundant employee according to the selection criteria.
- Ideally, where possible 2 managers should agree the scores to help ensure the marks are objective.

First letter

- The markers should establish the employees with the lowest scores. Then, the employer should write to each of the potentially redundant employees informing them of their provisional selection for redundancy and inviting them to a meeting to discuss this. It is recommended that they should be allowed to be accompanied by a trade union representative or colleague at this meeting.

Individual consultation meeting

- At the meeting, the employer should consult with the potentially redundant employee about their potential redundancy, their scores, the proposal to select them for redundancy and the terms of the redundancy.
- Their response should be considered and discussed at the meeting.
- If there are any available posts on a lower grade with less responsibility, the employer should also discuss these with the potentially redundant employee or discuss any other suitable alternative posts.

Follow up after individual consultation meeting

- The employer will then need to follow up any suggestions the employee has made to avoid their redundancy and consider any representations they have made in relation to the scores (if relevant) or alternative employment or any other matters.

Second letter

- This letter will invite the employee to a final meeting (Which is Step 2 of the Statutory procedure - which at the moment you must follow when making redundancies- this is being abolished in April 2009 but you will still need to follow a fair procedure) at which they can be accompanied by a colleague or a trade union representative towards the end of the consultation period. You must offer them the right to be accompanied to this meeting as it is mandatory.

Final meeting (with each individual – The right to be accompanied is no longer mandatory at this meeting, but I would recommend you offer the right in any event

- Provided that each potentially redundant employee is still the employee with the lowest score (if relevant), the employer will need to hold a further individual meeting.
- You can offer the employee the right to be accompanied by a trade union representative or work colleague though this is not mandatory as the current ACAS Code does not apply to redundancy.
- Assuming nothing has changed following the previous meeting, the employer should confirm to the employee that they are being made redundant. The employer should also confirm their entitlements and inform the employee of their right to appeal.

Final letter - written confirmation of termination on grounds of redundancy

- After the meeting, the employer should write to each of the redundant employees concerned setting out the decision to make them redundant and notifying them of their right to appeal the decision.
- Wherever possible, the appeal should be to a higher level of management than the original decision-maker.
- If the employer has a policy in relation to appeals, the employer should make sure that this procedure is followed.

Appeal

- If the employee does appeal, the employer should invite them to attend a further meeting to hear the appeal. It is recommended that the employer should allow a colleague or trade union representative to accompany the redundant employee at this meeting.
- Following the meeting, the employer should write to the redundant employee informing them of the outcome of the appeal and confirming that this is the final decision. Please take further advice so that the particular grounds of appeal can be fully considered.

N.B.

You should have a note taker to take minutes at all meetings. Having followed the procedure you are also recommended to keep all the documents in a safe place.

THIS IS PURELY A GUIDE AND DOES NOT CONTAIN FULL DETAILS OF WHAT YOU NEED TO DO TO CARRY OUT A FAIR REDUNDANCY DISMISSAL BASED ON THE PARTICULAR FACTS OF YOUR CASE.

SMITH LAW PARTNERSHIP ACCEPTS NO LIABILITY ARISING OUT OF ANY ACTION YOU MAY TAKE BASED ON THIS GUIDE.

WE CAN DRAFT THE LETTERS YOU WILL NEED TO SEND TO YOUR EMPLOYEES, DRAFT BESPOKE SELECTION CRITERIA AND GIVE YOU DETAILED ADVICE ON HOW TO FOLLOW THE PROCEDURE.

For further advice contact Lara Colgan on 01376 321311 or at laracolgan@slpsolicitors.co.uk.

