

KEY REDUNDANCY PROCESS TIPS FOR EMPLOYERS

Is your business considering making redundancies, or are you in the middle of a consultation process?

Our specialist employment law team share their top tips for ensuring the process is conducted fairly and smoothly:

Start from the beginning

- Do not be tempted to jump into crossing roles off the structure chart in the first instance.
- Take a step back and consider the reasons for the proposed redundancy.
- Take the time to do this properly now and it will make the consultation process easier.
- Make a plan and take the time to prepare from the outset. Rushing into the process often results in risky, time consuming and expensive mistakes which could have been easily avoided.
- Whilst the majority of businesses make redundancies because they are looking to save costs, don't forget that there are three legal bases for a redundancy situation:
 - Business closure
 - Workplace closure
 - The businesses requirements for employees to perform work of a particular kind has ceased or diminished or is expected to do so – this is the most frequently used reason and can result from the decision to save costs or make efficiencies.
- Identify which type of redundancy is relevant to your business and if it's the final option, consider which kind of work has/will reduce or cease before then identifying which employees carry out that work.

Ways to avoid redundancy

- Before starting consultation, properly consider whether there are any ways to avoid compulsory redundancies. Don't be afraid to think broadly and to support change.
- Options include:
 - Furlough (until 30th April 2021)
 - Flexible working
 - Temporary stoppages, short time or reduced hours – either permitted by contract or expressly agreed with staff.

- Temporary or permanent reductions in pay or benefits – any changes to contractual benefits will require the express consent of employees as will any changes to pay.
- Redeployment or training

Whilst the majority of these options will require consultation and consent, many employees may be more inclined to agree to changes than take redundancy and face difficulties trying to find work again in the near future.

Don't predetermine the outcome

- Consultation should begin at a formative stage before a decision is made on which roles are made redundant.
- There is a big difference between:
 - deciding that the business must consider making compulsory redundancies – which is when consultation commences; and
 - deciding to dismiss particular employees – which happens at the end of the consultation process.
- Ensure that the language you use throughout the consultation doesn't predetermine the outcome. Refer to a redundancy proposal and when staff are put "at risk" and then subsequently "provisionally selected" ensure that you confirm that.

Thinking about pools

- This follows on from the first tip, and if you have properly considered the basis for the redundancy proposal, then this will be easier.
- After considering the basis for the redundancy proposal, an employer should then identify the pool – this is the group of employees from which it will select those who are to be made redundant.
- If the whole business or a particular workplace is closing – then the pool is more straightforward, and all staff are pooled.
- If there is a reduced need for work of a particular kind, then the pool will be those staff who carry out that work that's ceased or reducing.
- Failure to properly consider a pool will usually make the dismissal unfair.
- Employer's discretion over pool - there are no fixed rules about how the pool should be defined and, unless there is a collectively agreed or customary selection pool, an employer does have a measure of flexibility in this regard.
- The question of how the pool should be defined is a matter for the employer to determine and, provided that an employer genuinely considers the choice of a pool, it will be difficult (but not impossible) for an employee (or a tribunal) to challenge that choice.

Selection criteria

- If you have properly considered the basis for the redundancy, then the pool of employees at risk is easier to determine.
- Once you have identified the pool, you then need to select which employees out of that pool will be provisionally selected for redundancy.
- So how do you decide which staff are selected out of that pool? This is where the scoring process comes in and you need to choose selection criteria which are not only subjective but can be supported by evidence. For example – “performance” can be one of the selection criteria and the score can be supported by previous appraisals / 121s / review sessions.
- You’ll discuss and consult on the selection criteria early on the consultation process, but when it comes to scoring ensure that the scoring managers give written reasons for their scores.
- If you have different pools, then different selection criteria may be appropriate. A pool of Technical Managers will have different skills to a pool of Warehouse Operatives.
- In some situations, there will not be a selection process given the type of redundancy or number of roles at risk.
- At the end of the selection process staff will have been provisionally selected for redundancy. Those who have not been selected are no longer at risk.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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