

# Palmerslaw

## Guide to redundancy law

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## The prospect of having to deal with redundancy situations can be daunting for both employers and employees.

The law provides employees with a number of rights in a redundancy situation and, in order to avoid expensive mistakes, it is essential that employers and managers understand those rights.

Employees who are dismissed by reason of redundancy may be entitled to a **statutory redundancy payment** and may also be able to challenge the termination of their employment as an **unfair dismissal**. A successful claim for unfair dismissal means that the employer might be liable for costly compensation payments.

Employers need to know:

- What 'redundancy' actually means
- When they must inform and collectively consult with trade unions or employees' representatives about redundancy
- How to deal fairly with individuals being considered for redundancy so as to minimise claims for unfair dismissal
- The alternatives to redundancy – such as lay off and short-time working
- How to determine an employee's entitlement to a statutory or contractual redundancy payment

This guide sets out some of the key points involved but, if your business is considering making redundancies, it is essential that you seek further tailored and detailed legal advice.

# When is there a 'redundancy' situation?

The legal definition of 'redundancy' covers three types of situation:

- Business closure
- Workplace closure
- Reduction of workforce

## Collective consultation

If fewer than 20 employees are being made redundant, it is good practice for employers to consult with the employees, including on the reasons for the redundancies and any alternatives to redundancy.

If 20 or more employees are being made redundant over a period of 90 days or less, an employer has a duty to:

- Inform and consult appropriate representatives (these may be trade union representatives or, where no union is recognised, elected employee representatives)
- Notify the Secretary of State on form HR1

This is called 'collective consultation'. It is important that the requirement for this is observed because:

- A tribunal may award up to 90 days' gross pay in respect of each employee where there has been a failure to collectively consult
- An employer may also be fined if it fails to notify the Secretary of State



# Redundancy and unfair dismissal

An employee who has sufficient qualifying service has the right not to be unfairly dismissed.

Redundancy is a **potentially fair** reason for dismissal, but whether it is fair or unfair to dismiss for that reason will depend on whether the employer acts reasonably in all the circumstances.

A redundancy is **likely to be unfair unless** the employer:

- Identifies an appropriate pool for selection
- Consults with individuals in the pool
- Applies objective selection criteria to those in the pool
- Properly considers whether there is any suitable alternative employment

Employers are advised to take step-by-step guidance on adopting a fair procedure in order to ensure that the process is managed effectively.

In certain circumstances, selection of an employee for dismissal on grounds of redundancy will be **automatically unfair**, such as selecting an employee for a reason connected to pregnancy.

Section 105 of the Employment Rights Act 1996 prescribes various grounds that will make a redundancy dismissal automatically unfair and employers should seek specific legal advice to minimise the risk of employees arguing any of these grounds.

If the employer offers **voluntary redundancy**, they do not have to select people who apply. Voluntary redundancy cannot only be offered to employees whose age makes them eligible for early retirement, as this could represent **age discrimination**. However, a voluntary redundancy offer made to all employees could include an early retirement package for certain age groups.

# Alternatives to redundancy

A redundancy should never be a foregone conclusion: employers should always consider at the outset whether compulsory redundancies can be avoided.

As initial steps, an employer should consider suspension and/or restrictions on recruitment, overtime and the use of contractors/agency workers. If these initial steps are unavailable or are not sufficient, an employer should consider inviting employees to:

- Apply for alternative vacancies
- Volunteer for redundancy
- Consider early retirement under the pension scheme, if applicable

Alternatively, it may be appropriate to temporarily lay off employees or reduce their working hours, but employers must be aware that this, in itself, could entitle employees to claim a redundancy payment.



## Redundancy payments

Employees with at least two years' service are entitled to a statutory redundancy payment if they are dismissed by reason of redundancy.

Statutory redundancy pay is calculated according to a formula set out in section 162 of the Employment Rights Act 1996, which is based on age, length of service (a maximum of 20 years' service can be taken into account) and pay (there is an upper limit on the amount of a 'week's pay' that changes periodically in line with the Retail Prices Index). In addition to a statutory redundancy payment, employers should consider whether or not employees are entitled to an enhanced redundancy payment. This entitlement could be expressly included in contracts of employment or incorporated by being set out in another document, such as a redundancy policy in a staff handbook.



## Call Palmers Solicitors for advice

The specialist employment team at Palmers Solicitors can, at an early stage, assist you in mapping out a fair redundancy process and provide assistance with implementing that process, including providing template letters where required.

With our help, you can embark on a redundancy process with confidence, knowing that you have taken steps to effectively manage the risks and to put your business in the best possible position to swim through the mire of procedure, legislation and case law.

For tailored advice on the law surrounding redundancy, or any other employment law matter, please contact us.



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