

CLIENT GUIDE 3 : REDUNDANCIES

In today's economic climate, it is more important than ever for employers and employees to understand an employer's responsibilities when it is considering redundancy.

The meaning of redundancy

At law a redundancy situation arises when an employee's dismissal is wholly or mainly attributable to the employer:

- (1) Ceasing or intending to cease to carry on the business for the purposes of which the employee was employed by it (business closure); or
- (2) Ceasing or intending to cease to carry on that business in the place where the employee was so employed (workplace closure); or
- (3) Having a reduced requirement for employees to carry out work of a particular kind or to carry out work of a particular kind at the place where the employee was employed to work (reduced requirement for employees).

Follow a fair procedure

A redundancy is a potentially fair reason for dismissal but there is a general duty on an employer to act fairly when carrying out redundancies and to avoid claims for unfair dismissal. Broadly a fair redundancy procedure involves:

1. Consultation with affected employees in good time and before making a final decision.
2. Fair selection of the employees to be made redundant.
3. Considering alternatives to dismissal including whether there are any suitable jobs elsewhere within the organisation.

Until the statutory procedures are repealed next year (forecast for April 2009), the redundancy procedure must incorporate the statutory disciplinary and dismissal procedures (SDDP).

Consultation

There should be meaningful consultation with the individual before confirming the redundancy. Matters which should be covered include:

- why redundancies are necessary;
- why the individual has been provisionally selected;

- the timing of the redundancy, if it is confirmed;
- the possibility of alternative employment or, if there is none, why not;
- the redundancy package being offered in the event of redundancy; and
- the opportunity for the employee to ask questions and state his or her views.

There is no definite guidance on the length of the consultation period but it should be as long as possible and generally not less than two weeks.

An employer should also consider inviting employees to volunteer for redundancy before consultation takes place (retaining a right to refuse any applications to avoid loss of key staff).

Fair selection

Where only part of the workforce is being made redundant, a fair basis on which to select employees for redundancy should be adopted. A pool of people who are potentially affected by the redundancy should be selected. The pool must be widely drawn and should not be confined to people in the redundant roles. Employees to be made redundant should then be selected from the pool using an agreed procedure and objective criteria.

Alternative employment

Alternative employment for potentially redundant employees needs to be considered and an employer is expected to do what it reasonably can to find alternative work (including considering alternative employment with any associated companies). This obligation continues throughout the redundancy process.

Checklist

The following is an employer's checklist of the redundancy dismissal procedures:

- Step 1:** establish whether there is a genuine redundancy situation.
- Step 2:** consider pool and selection criteria and list any alternative vacancies.
- Step 3:** first meeting with employees.
- Step 4:** first letter to employees.
- Step 5:** scoring each potentially redundant employee using the selection criteria and scoring guidelines.
- Step 6:** second letter to employees. (This letter will be step one of the SDDP and should also contain any further information necessary in order to enable the meeting at step two of the SDDP to take place).

JUDITH M LONG

solicitors

Step 7: first individual meeting with each employee. (This meeting will be part of step two of the SDDP).

Step 8: follow up after the meeting any suggestions made to avoid redundancies and consider any representations made on scores.

Step 9: second individual meeting with employee. (This meeting may fulfil the obligation in step two of the SDDP to inform the employee of the decision and of their right of appeal).

Step 10: dismissal letter.

Step 11: appeal. This appeal meeting will be step three of the SDDP).

If 20 or more redundancies are being proposed in a 90-day period, then the collective consultation obligations will arise and further steps will need to be followed.

If you are considering redundancies or require more detailed information on the steps which must be followed, contact **Judith Long**.

JUDITH M LONG

solicitors

76 Empire Square East
Long Lane
London
SE1 4NB

Tel: 020 7403 3337

Fax: 020 7407 1982

E-mail: judithmlong@msn.com

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