

Redundancy Factsheet



1. What is Redundancy?

Redundancy is when you are dismissed from your employment as your role is no longer required for one of the following reasons:

- ♥ If your employer has stopped or intends to stop carrying on the business they employed you for (i.e. business closure).
- ♥ If your employer has stopped or intends to stop carrying on their business in your place of work (i.e. workplace closure).
- ♥ If your employer no longer requires you to carry out work of the particular kind that you carry out.
- ♥ If your employer no longer requires you to carry out work of the particular kind that you carry out in your place of work.

Being dismissed by your employer for reasons of redundancy is a potentially fair reason for being dismissed. However, your employer will usually need to follow a fair process and act reasonably. You may have a right to statutory redundancy pay (see section 7 below).

The following paragraphs explain your legal rights to help you understand what you can expect of your employer.

2. Redundancy and Fair Dismissal

Who can claim unfair dismissal?

Normally an employee needs two years' continuous service in order to claim unfair dismissal. However that is not always the case.

Some reasons for a dismissal are 'automatically unfair' if they are the main reason for the dismissal. In a redundancy situation for example, if an employee is selected for an

'automatically unfair' reason, such as being pregnant or being on or having taken maternity leave, there is no requirement for 2 years' continuous service.

When is a redundancy dismissal fair?

Where a redundancy will be fair, the employer has:

- a. Applied fair and objective selection criteria;
- b. Consulted; and
- c. Looked for suitable alternative employment.

If this process is not followed, any dismissal may be unfair.

Where a redundancy dismissal is 'automatically unfair' the procedure followed by the employer is irrelevant.

3. Redundancy Pool

To dismiss an employee fairly by reason of redundancy, an employer must decide on the group of employees who are affected. This may include forming a group, known as a "pool", from which to select those employees who will be made redundant. This may not be required if you are the only person performing the role that is at risk of redundancy or if all of the employees in the particular group are at risk (this is known as a 'pool of one' scenario). Failing to identify an appropriate pool may result in a later dismissal being unfair.

Factors employers should consider when identifying the pool are:

- ♥ What particular kind of work is disappearing?
- ♥ Which employees do that type of work?
- ♥ What other roles involve skills which might be interchangeable with those identified?

Where there is a workplace closure, all of the employees at that workplace will usually be at risk of redundancy and a selection pool will not be necessary.

Your employer must ensure that the pool includes employees who are on maternity or other family leave.

Your employer will determine the pool, but there should be consultation on this. Consultation on the pool means your employer should consult all at-risk employees on the proposed pool.

Once the selection pool has been confirmed the employer will need to apply objective selection criteria to the employees in that pool to determine which employees will be selected for redundancy.

Again, if there is a pool of one or a workplace closure there may be no selection criteria to be applied. Consultation requirements are discussed further below at paragraph 5.

4. Applying Fair and Non-Discriminatory Selection Criteria

Your employer should ensure that the selection criteria adopted are fair and objective. Potential criteria that could be taken into account by your employer are:

- a. Skills, knowledge and experience
- b. Performance records
- c. Disciplinary records
- d. Attendance records

An employee's absence can be a criterion that is taken into account. However, the employer must discount any absence related to pregnancy or maternity leave to avoid an allegation of sex discrimination. If you believe you were selected because you took or asked to take maternity leave, you may have a claim for automatic unfair dismissal and sex discrimination.

It can also be unfair or discriminatory for your employer to take criteria such as a willingness to work extra hours into account.

5. Consultation Requirements

Consultation is essential to ensure any dismissal for redundancy is fair. A properly conducted consultation process requires your employer to have an open mind and be capable of being persuaded to change its mind about the matters which form the subject of the consultation. Consultation will therefore only be meaningful if it happens at an early stage in the process before any decisions have been made, or action taken.

The exact matters to be discussed may include:

- a. Your employer's business reasons for the redundancy proposal
- b. The basis for selection, both in terms of the pool itself and the selection criteria;

- c. An opportunity for you to challenge your employer's redundancy selection assessment and to request an explanation of any factors which may have led to their use and the reason why you have been selected;
- d. An opportunity for you to put forward any suggestions for ways to avoid a redundancy dismissal;
- e. Consideration of alternative vacancies that may exist; and
- f. An opportunity for you to address any other matters or concerns you may have.

The requirement to consult does not mean that your employer has to agree with what you say but rather that they have to consider your comments. It is important that your employer genuinely engages with the process.

There are no prescribed timeframes for a consultation to take place (unless there are 20 or more redundancy dismissals proposed in which case collective consultation requirements apply).

Individual consultation should however, take place before you are given notice of your termination by way of redundancy. If your employer has reached a decision to dismiss before the consultation is carried out or concluded, a tribunal is likely to find the consultation process was a sham and the dismissal was unfair.

Employers should ensure that any employees not present at the workplace, such as those on long-term sick leave, maternity and paternity leave, secondment and holiday are included in the consultation process.

6. Requirement to Consider Alternative Roles

Your employer must consider whether there is suitable alternative employment available which could avoid the need to make you redundant, including considering alternative employment in any associated companies.

Your employer should also provide you with sufficient information about any vacancies so you can consider whether there may be a suitable position for you. A failure to do this (except where there are no alternatives) may lead to a dismissal for redundancy being found to be unfair.

Your employer is not obliged to create alternative employment for redundant employees where none already exists. However, they should ensure that they undertake a sufficiently thorough search for alternative employment.

If you unreasonably refuse an offer of suitable alternative employment made before termination or within four weeks after, you will lose your entitlement to a redundancy payment. However, you are entitled to refuse a suitable job, as long as you are acting reasonably in doing so. It is for your employer to establish that the refusal is unreasonable and this will be a subjective question, judged on a case-by-case basis. For example, if the job is in a different location which you cannot reasonably travel to due to your personal circumstances.

The law provides additional protections to employees who are pregnant or who are on maternity, adoption or shared parental leave if their role is at risk of redundancy. If you fall into one of these categories, there is a duty on your employer to offer suitable alternative employment. This duty goes beyond simply offering you the opportunity to apply for the role. Instead, if you are pregnant or on maternity, adoption or shared parental leave, you will take priority ahead of other employees whose roles are at risk of redundancy, but are not pregnant or on such periods of leave, provided that the alternative employment is suitable and appropriate.

Suitable and appropriate means it is comparable in terms of the employee's skills, qualifications and status. The terms and conditions of the alternative employment, including pay and benefits, should also be no less favourable than previous ones.

From 6 April 2024, the Protection from Redundancy (Pregnancy and Family Leave) Act 2024 extended the protection from redundancy to those who take maternity, adoption or shared parental leave (for a period of at least 6 continuous weeks) for 18 months from the child's date of birth (if notified to the employer) or 18 months from the Expected Week of Childbirth (EWC) if not notified.

For those taking shared parental leave who have not taken maternity or adoption leave, the employee must have taken 6 weeks of continuous leave for the extended period of protection to apply. If the employee has taken 6 weeks' leave, but those 6 weeks were not continuous, the protection from redundancy will apply only during the period of shared parental leave.

7. Redundancy Payments

Statutory redundancy pay

Employees with at least two years' continuous employment at the relevant date are entitled to a statutory redundancy payment if they are dismissed due to redundancy.

Statutory redundancy pay is calculated according to a formula set out in s.162 ERA 1996 and is based on age, length of service (up to 20 years) and pay:

- a. $\frac{1}{2}$ a week's pay for each year worked under 22nd birthday;
- b. 1 week's pay for each year worked between 22nd and 40th birthday;

- c. 1 ½ week's pay for each year worked after 41st birthday.

A week's pay is subject to the statutory cap for the purpose of this calculation. The current cap is £700 from 6 April 2024 (revised annually). The most recent 20 years of service only are taken into account, working backwards from the termination date.

If the statutory redundancy payment is not made, you can complain to an employment tribunal. The time limit to make a claim is 6 months from the date of the termination of your employment.

Contractual redundancy pay

Some employers will offer enhanced redundancy payments. This can either be explicitly referred to in your contract of employment, or your employer may have paid enhanced payments in the past which may mean you have an implied right to an enhanced payment because of your employer's custom and practice of paying enhanced redundancy pay. If you are entitled to enhanced redundancy pay and the payment is not made, you can complain to the Employment Tribunal. The time limit to make a claim for breach of contract is 3 months from the date of the termination of your employment.

Notice pay

If you are made redundant, you will be entitled to receive whichever is greater of statutory or contractual notice payment. Your employer may ask you to work your notice period or they may choose to make a payment in lieu.

Accrued holiday

If you are made redundant, you will be entitled to receive payment for any accrued but untaken holiday entitlement.

Statutory Maternity Pay (SMP)

You may be entitled to SMP even if you are made redundant.

If you are made redundant during your maternity leave and you are in receipt of SMP you will still be entitled to SMP for the remaining weeks of your entitlement, even though your maternity leave will come to an end. This can either be paid in one lump sum or instalments.

If you are made redundant before your maternity leave starts and your employment ends before your 'qualifying week' (the 15th week before the date on which your baby is due), you will not be entitled to SMP.

If you are made redundant before your maternity leave starts but your employment ends after your qualifying week (the 15th week before the date on which your baby is due), you will still be entitled to SMP as long as you have a) worked for your employer for at least 26 weeks by the qualifying week, and b) earn more than £123 per week.

If you think you have been made redundant because of your pregnancy or maternity leave, you may have a claim for pregnancy/maternity discrimination.

The claim must normally be submitted to an employment tribunal before the end of the 3-month period usually starting with the date of the dismissal.

If you believe that you have been made redundant because you are pregnant or because you have taken maternity leave you should take advice to ensure that any employment tribunal claim is made in time.