

The Redundancy Process – Part 1



Redundancy: avoid the mistakes and minimise the disruption

The thought of having to reorganise staff with as little business disruption as possible, while navigating through a complex legal process, can be a daunting prospect. Add to this the worry of potentially large compensation awards if you get the legal process wrong, and it is easy to understand why many employers feel despair when faced with the need to lay off staff. However, given thought and preparation, it is possible to avoid the common mistakes and properly and sensitively complete the redundancy process.

In this and the next Topical Tips we will look at some of the more common errors and ways to avoid them. Here we will look at whether there is a redundancy, then next month we will look at the process to follow to safely implement redundancies.

Is there a redundancy?

Redundancy is a technical term, and will often catch out the unwary. It is a fundamental and often costly mistake to dismiss an employee for redundancy where no redundancy exists.

Basically, a redundancy will exist in the following circumstances:

1. Business closure

This is redundancy in its simplest form, covering a business closing down altogether. It can, however, cover other scenarios, such as an employer replacing its old business with an entirely new one, which is sufficiently different in nature.

2. Workplace closure

This happens where an employer closes down a particular workplace at a particular location, even where it carries on business elsewhere. It also includes an employer moving part of its business to another location.

However, there can be difficulties when it is unclear whether an employee was employed to work at the location that has closed. If not, apart from in rare circumstances (see Bumping below), there will be no redundancy.

It is a common mistake to assume that if the employee's contract allows the employee to be moved around that there is no redundancy. When assessing if a redundancy exists, it is necessary to look at the reality of what happens, rather than simply looking at the employment contract. So there is likely to be a redundancy where the employer moves its business from a particular location where an employee normally works, even though that employee's contract requires the employee to work from other locations.

3. Reduced need for employees

This third scenario tends to be the most difficult to identify as it covers a number of different situations, although they all have a common theme, namely a reduced need for employees to do work of a particular kind. Different kinds of work are identified by the special skills, aptitudes or knowledge they require.

A reduced need for employees can cover the following situations: duties being reallocated; a fundamental change in duties; reorganisation leading to a reduced need for employees; restructuring of departments.

It is even possible to have a reduced need for employees where workload has increased. For example, an employer may choose to meet an increased workload by installing machines that do the work of several employees.

4. Bumping

It is common to assume that if an employee is to be dismissed for redundancy, it must be for their redundancy. This assumption is wrong. It is possible to dismiss an employee for redundancy where the redundancy relates to another employee's job, for example there is less need for the type of work that Ms. Smith does, but she is given the job of Mr. Jones, and Mr. Jones is made redundant. The reason for Mr. Jones dismissal is redundancy, only it is the redundancy of Ms. Smith's position and not his own.

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- Be aware that you should not try to disguise another form of dismissal as redundancy. If the staff dismissal is really as a result of their performance then you should deal with it under the correct procedure. Redundancy is not a catch-all to let staff go when you wish avoid other dismissal processes. Incorrect treatment could leave you open to an unfair dismissal claim
- Remember that the redundancy process should follow a best practice procedure to ensure that it is fair (see next month's Topical Tip for details)
- At Barnes Roffe we are not employment lawyers, but we will be delighted to introduce you to a specialist. You should always take such advice on such complex matters and this issue of Topical Tips should not be taken as comprehensive advice in all situations

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