



## Getting the procedure right

Last month [Topical Tips 122](#) considered the definition of redundancy and some of the problems arising from it. Having established a redundancy exists it is vital that the correct process is followed before an employee is made redundant. If this process is not followed an employer may face costly claims. It is not just a case of getting the right answer, but going the right way to get that answer.

## The legal bare minimum

Since October 2004 the law has required that a basic process should be followed in most redundancy situations. One of the aims was to keep matters simple and keep claims out of the Employment Tribunal. However, these minimum legal procedures have been subjected to much criticism as they have in fact led to an increase in Tribunal claims!

In essence the minimum process requires that the employer: writes to the employee explaining that they are at risk of redundancy; meets with the employee to discuss matters; and then if the employee is confirmed as redundant, offers an appeal.

In reality, the situation is more complex than this and as the minimum rules will soon be abolished, they will not be considered further here.

## The real bare minimum

If the redundancy goes to a Tribunal, the Tribunal will consider whether it was reasonable to make an employee redundant and the employer will usually be expected to have followed a more extensive process. This will include a proper consideration of the need for redundancies.

- How many are to be made redundant?
- What sections of the workforce are the redundancies to come from?
- What factors are to be taken in to account when deciding who will go and who will stay?
- Have these matters been discussed with those employees identified as potentially redundant? (This must be a genuine discussion with proper consideration given to what the employee has to say, including why the employee was identified as potentially redundant and whether there are alternatives to redundancy.)

## Many redundancies, different rules

Different rules apply when the proposal is to make 20 or more employees redundant at one establishment in a period of 90 days or less. They require the employer to provide specified information to representatives of a recognised trade union\* and to genuinely discuss certain matters with them. Depending on the numbers involved, the discussions must start between 30 and 90 days before the first redundancies are to take place. Notice of dismissal cannot be given until the process has completed. Failure to follow the process without good reason can result in compensation of up to 90 days' salary per employee – so it is very important to get it right!

\*If there isn't one, the alternative is elected representatives of the employees. The rules specify how the election is to take place.

## Informing the Government

Written notice of certain redundancies has to be sent to the Department for Business, Enterprise and Regulatory Reform (BERR). If the proposal is to make 100 or more employees redundant at one establishment in a period of 90 days or less, at least 90 days' notice must be given before the first redundancy takes effect. If the proposal is for at least 20 or more redundancies at one establishment in a period of 90 days or less, at least 30 days' notice is to be given.

## Barnes Roffe Topical Tips

- Follow the process properly.
- Remember, taking shortcuts to save time and money may seem attractive, but more often than not cost much more in the long run.
- If you talk matters through with your staff, not only do you minimise the risks of claims, you will end up with the right workforce to take your business forward.
- Ensure you treat all staff the same, as off the record chats with more senior members of staff could damage the process.

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