kirkrice
Accountants & Financial Advisors

Redundancy Procedures

Factsheet

www.kirkrice.co.uk

There have been many changes to employment law and regulations in the last few years. A key area is the freedom or lack of freedom to make an individual redundant.

An employee's employment can be terminated at any time but unless the redundancy is fair an Employment Tribunal may find the employer guilty of unfair dismissal.

We set out below the main principles involved concerning the redundancy of employees. We have written this factsheet in an accessible and understandable way but some of the issues may be very complicated.

Professional advice should be sought before any action is taken.

COVID-19 furloughed employees

Rather than make employees redundant, the government has introduced the Coronavirus Job Retention Scheme (CJRS), also known as the furlough scheme, open to all UK employers and extended until 31 March 2021. The extended CJRS can be used for employees on any work pattern including full time furlough. When on furlough, an employee can not undertake work for or on behalf of the business, but they can undertake training or voluntary work. Employers can use a portal to claim for 80% of furloughed employees' usual monthly wage costs, up to £2,500 a month. The government will review the amount of support in January 2021 to decide whether economic circumstances are improving enough so that employers will need to make more contributions for hours not worked. Under the extended CJRS an employer can claim for employees who were employed and on their PAYE payroll on 30 October 2020. The employer must have made a PAYE Real Time Information (RTI) submission to HMRC between 20 March 2020 and 30 October 2020, notifying a payment of earnings for that employee.

In addition, employees who have recently been made redundant or stopped working for the employer can be re-employed. The employees must have been employed and on the payroll on 23 September. The employer must have made an RTI submission to HMRC from 20 March 2020 to 23 September 2020, notifying a payment of earnings for those employees.

Employers should discuss with their staff and make any changes to the employment contract by agreement and may need to seek legal advice on the process. Furloughed employees can be on any type of contract including employees on agency contracts or on flexible or zero-hour contracts. If workers are required to complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Employees on maternity leave, contractual adoption pay, paternity pay or shared parental pay

If an employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply. If an employer offers enhanced (earnings-related) contractual pay to women on Maternity Leave, this is included as wage costs that can be claimed through the scheme. The same principles apply where an employee qualifies for contractual adoption, paternity or shared parental pay.

What is redundancy?

Under the Employment Rights Act 1996, redundancy arises when employees are dismissed because:

- the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was so employed or
- the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed or
- the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish or
- the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish. This may occur where the employee, whose job is redundant, is reallocated to another employee's job for which they have the necessary skills. The employee whose job remains is 'bumped' out of a job by the person whose job became redundant.

In other words, the business reasons for redundancy do not relate to an individual but to a position(s) within the business.

Consultation - legal requirements

Employers who propose to dismiss as redundant 20 or more employees at one establishment have a statutory duty to consult representatives of any recognised independent trade union, or if no trade union is recognised, other elected representatives of the affected employees.

Consultation should begin in good time and must begin:

- at least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less
- at least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

Employees on a fixed-term contract which come to a natural end will be excluded from collective redundancy. However, where such a contract is being terminated early because of a redundancy situation the exemption will not apply.

Employers also have a statutory duty to notify the Department for Business, Energy and Industrial Strategy (BEIS) if they propose to make 20 or more workers redundant at one establishment over a period of 90 days or less.

If an employer fails to consult, a Tribunal has discretion to make a protective award of up to 90 days pay.

It is good practice in all organisations however, regardless of size and number of employees to be dismissed, for employers to consult with employees or their elected representatives at an early enough stage to allow discussion as to whether the proposed redundancies are necessary at all. Then they should ensure that individuals are made aware of the contents of any agreed procedures and of the opportunities available for consultation and for making representations. It must be remembered that redundancy is a form of dismissal and although it is not a requirement to follow a disciplinary and dismissal procedure which satisfies the requirements of the ACAS Code of Practice, namely to include a letter setting out the reasons for the potential redundancy, a meeting and an appeal process, it is best practice to do so.

Disclosure of information

Employers have a statutory duty to disclose in writing to the appropriate representatives the following information so they can play a constructive part in the consultation process:

- the reasons for the proposals
- the number and descriptions of employees it is proposed to dismiss as redundant
- the total number of employees of any such description employed at the office in question
- the way in which employees will be selected for redundancy
- how the dismissals will be carried out and over what timescale
- the method of calculating the amount of redundancy payments (other than statutory redundancy pay) to be made.

To ensure that employees are not unfairly selected for redundancy, the selection criteria should be objective, fair and consistent. They should be agreed with employee representatives and an appeals procedure should be established.

Examples of such criteria include attendance and live disciplinary records, experience and capability. The chosen criteria should be measurable and consistently applied. Non-compulsory selection criteria include voluntary redundancy and early retirement, although it is sensible to agree management's right to decide whether or not such an application is accepted or not.

Employers should also consider whether employees likely to be affected by redundancy could be offered suitable alternative work within the organisation or any associate company.

Employees who are under notice of redundancy and have been continuously employed for more than two years, qualify for a reasonable amount of paid time off to look for another job or to arrange training.

Unfair selection for redundancy

An employee will be deemed to have been unfairly selected for redundancy for the following reasons:

- participation in trade union activities
- carrying out duties as an employee representative for purposes of consultation on redundancies
- taking part in an election of an employee representative
- taking action on health and safety grounds as a designated or recognised health and safety representative
- asserting a statutory employment right

- by reasons of discrimination
- maternity-related grounds.

The right to a redundancy payment

Employees who have at least two years' continuous service qualify for a redundancy payment

The entitlement is as follows:

- For each complete year of service until the age of 21 - half a week's pay
- For each complete year of service between the ages of 22 and 40 inclusive - one week's pay
- For each complete year of service over the age of 41 - one and a half weeks' pay.

A week's pay is that to which the employee is entitled under his or her terms of contract as at the date the employer gives minimum notice to the employee. The maximum statutory limit for a week's pay is £538 from 6 April 2020, and the maximum service to be taken into account is 20 years. This means that the maximum statutory payment cannot exceed 30 weeks' pay or £16,140. Employers may, of course, pay in excess of the statutory minimum.

The employee is also entitled to a period of notice or payment in lieu of notice by statute and their contract of employment.

How we can help

We will be more than happy to provide you with assistance or any additional information required so please do contact us.

Get in touch

Thames Valley Office

+44 (0)1344 875 000

The Courtyard
High Street
Ascot
Berkshire
SL5 7HP
United Kingdom

North Hampshire

+44 (0)1252 960 500

Victoria House
178-180 Fleet Road
Fleet
Hampshire
GU51 4DA
United Kingdom

London - Central Office

+44 (0)203 004 2232

One Mayfair Place
Level 1
Devonshire House
Mayfair, London
W1J 8AJ
United Kingdom

West London Office

+44 (0)208 789 8588

13 Princeton Court
53 to 55 Felsham Road
Putney
London
SW15 1AZ
United Kingdom

London - City Office

+44 (0)203 004 2232

The Leadenhall Building
122 Leadenhall St
London
EC3V 4AB
United Kingdom