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| <<Company Name>>  Redundancy Procedure & Checklist  <<Date>> |

# Redundancy Procedure

Have you ceased, or do you intend to cease, to carry on the relevant business at or reasonably near the place where the employee is employed?

Or is the requirement for work of that kind to cease or diminish or is it expected to do so?

## If NO to both 🡪 potentially unfair dismissal; there is no redundancy.

## If YES to either 🡪 Q2.

# Have you considered practical alternatives to redundancy?

Alternatives may include overtime reductions, work sharing, short-time working, lay-offs, etc.

If your business is sufficiently large, you should consider redeployment.

## If NO 🡪 potentially unfair dismissal.

## If YES 🡪 Go to Q3.

# Consultation with appropriate representatives (collective consultation)

If 20 or more employees are affected by the redundancy proposal and there is no trade union or elected spokespersons, you must give appropriate time for the affected employees to elect representatives. You should choose an election organiser to take responsibility for the election of employee representatives. In the interests of impartiality, the election organiser should not be someone who may want to stand as an employee representative. If the employees fail to elect representatives within a reasonable period, the employer must give each affected employee the information that would have been provided to the elected representative.

You must ensure that the employee representatives understand what their role in the consultation process entails.

You should be aware that the obligation to consult collectively relates to any employees who may be affected by the proposed dismissals, or by measures taken in connection with those dismissals (e.g. alternative work), not just those whom it is proposed to make redundant.

**How many employees are going to be made redundant?**

If between 20 and 99 staff are being made redundant over a period of 90 days or fewer, you must begin consultation at least 30 days before the first dismissal takes effect;

If 100 or more employees are being made redundant over a period of 90 days or fewer, you must begin consultation at least 45 days (as of 6 April 2013) before the first dismissal takes effect;

If 20 or more staff are to be affected, you must give the Secretary of State 30 days’ notice, and 45 days’ notice (as of 6 April 2013) if 100 or more employees are involved. Failure to do so can lead to fines of up to £5,000;

Please note that the consultation period is deemed to begin as of the date of the first collective consultation meeting.

If fewer than 20 employees are being made redundant, there is no legal requirement to consult a recognised trade union.

In calculating the number of employees who are affected by the proposal, remember that:

* Voluntary redundancies are included in the total;
* Redeployment will count towards the total number of proposed dismissals; and
* Employers cannot deliberately ‘stagger’ redundancies in order to avoid the need to consult collectively.

Employees on fixed term contracts which are coming to the end of the agreed duration are not included in the calculation.

# Have you consulted with the appropriate representatives?

You must provide the appropriate representatives (e.g. of a trade union) with: reasons for your plans; numbers and details of employees involved and the total number of agency workers you have engaged (if any), the business in which they are utilised, and the type of work they are contracted to undertake; redundancy selection methods; the proposed method of calculating the amount of any redundancy payments; and procedural plans.

The purpose of the consultation is to discuss ways of avoiding the dismissals, reducing the numbers to be made redundant and mitigating the effect of the dismissals.

You must not start scoring employees for redundancy selection purposes until you have concluded collective consultation on selection ‘pools’, selection criteria and the numbers of employees affected.

## If NO 🡪 you may have a claim made against you for a protective award. A ‘protective award’ is the employee’s normal week’s pay paid for a period of time called the ‘protected period’. The maximum length of the protected period is 90 days.

## If YES 🡪 Go to Q5.

# Identifying the redundancy selection pool

You must consider carefully the ‘pool’ of employees from which those who are to be made redundant will be selected. This is straightforward when a company is closing down but when the potential redundancy is because of a reduction in the requirement for employees to carry out work of a particular type, then employees who do jobs that are interchangeable or the same or similar work should also be included in the pool.

# Deciding on the candidates for redundancy:

Once the redundancy pool has been identified, you must consider your selection criteria and ensure that they are objective and fairly applied. Criteria could include:

* Attendance record (excluding absence related to pregnancy or disability)
* Disciplinary record
* Skills and experience
* Standard of work performance.

If you recognise a union or have elected employee representatives, you must consult with them as to the appropriate selection criteria and procedure.

Is the selection procedure fair, clear and non-discriminatory?

Race, gender, marital status, disability, age, sexual orientation, gender reassignment, part time status, fixed term status, pregnancy and maternity, gender reassignment or trade union membership (or lack thereof) should not be a factor in selection.

## If NO 🡪 redundancies will be unfair dismissal and there may also be potential discrimination claims.

## If YES 🡪 Go to Q7.

# Consultation with individual employees/candidates for redundancy:

Have you notified any employee who is potentially affected by redundancy, including those who may be away from the office e.g. on maternity leave or secondment?

Have you written to the employee notifying him or her on the reason for the potential redundancy?

Have you invited the employee to a meeting to discuss his or her situation including those who may be away from the office e.g. on maternity leave or secondment? This will involve explaining to each affected employee the basis on which he or she has been provisionally selected for redundancy, giving the employee the opportunity to express his or her views, to ask any questions and to discuss any possible alternatives to redundancy.

Individual consultation with employees is essential, even when you are also required to consult collectively. These individual consultations should comprise at least 2 meetings between the potentially affected employee and the Company. No decision should be taken until the Company has consulted each individual employee who has been notified that they are potentially affected.

## If NO 🡪 unfair dismissal.

## If YES 🡪 Go to Q8.

# The Consultation:

You have no statutory obligation to offer employees the right to be accompanied at the meetings to discuss redundancy, but it is good practice to do so.

Similarly, you have no statutory obligation to offer an employee the right to appeal against his or her selection for redundancy, but the Acas guidance on managing redundancies recommends setting up an appeals procedure. The guidance states that this should reduce the likelihood of employees bringing tribunal claims in the event that employees feel the selection criteria have been applied unfairly.

Have you informed the employee of his or her right to be accompanied?

Have you informed the employee of your decision and his or her right to appeal?

## If NO to either 🡪 increased risk of potentially unfair dismissal.

## If YES to both 🡪 Go to Q9.

# Have you called for volunteers for redundancy?

## If NO 🡪 it is not essential, but good practice to do so.

## If YES 🡪 Go to Q10.

# Have you considered suitable alternative employment with the employee?

You should take reasonable steps to find alternative employment for affected employees as a means of avoiding redundancy.

Suitable alternatives should be comparable, and should take effect immediately on the termination of the previous contract. However, you should not assume that, because an alternative position would involve, say, a reduction in salary or loss of status, an employee would not be interested in it. The safest course of action is to provide employees with details of all vacant positions and let them decide what they want to do.

A statutory trial period of four weeks is applicable in the new employment.

Remember that, if an employee on maternity or adoption leave is given notice of redundancy, you are under a duty to offer the employee any suitable vacancy that exists.

## If NO 🡪 potentially unfair dismissal.

## If YES 🡪 potentially fair dismissal for reason of redundancy (but go to Q11).

# Is the employee entitled to a redundancy payment?

The employee must have had two years’ continuous employment, and must have been dismissed for reason of redundancy.

If the employee refused a reasonable suitable alternative employment, he or she will not be eligible for a statutory redundancy payment.

A basic award for redundancy is calculated according to a formula based on length of service, age and weekly pay. The current maximum basic award is £13,500. Statutory and non-statutory redundancy payments are exempt from income tax up to the £30,000 tax-free limit.

Cases of unfair dismissal can result in:

* A basic award of up to a maximum of £13,500; and
* A compensatory award of up to a maximum of £74,200 (unlimited if the dismissal / selection for redundancy is connected with discrimination, health and safety matters or public interest disclosures). If you are in any doubt as to whether a redundancy may lead to claims of unfair or wrongful dismissal, you should consider signing a Settlement Agreement with the employee.