

Redundancy Procedures

After many years of economic growth and job security redundancy is now a word making headlines again. Redundancies can give rise to claims for unfair dismissal and in order to avoid this, employers need to be aware of certain legal traps.

It is worth remembering that the current maximum compensatory award for an unfair dismissal is £78,335 (increased from £76,574 on 6th April 2015) or one year's gross salary whichever is lower and if discrimination is involved there is no upper limit at all.

If challenged, not only must the employer be able to demonstrate that redundancy was the real reason for a dismissal but equally importantly that the correct procedures were followed.

So here are some key aspects for employers to consider.

Time limits

In most cases an employee cannot claim unfair dismissal unless they have been with the same employer for more than two years. Two years continuous employment with the same employer is the relevant time period for an employee to become entitled to receive a statutory redundancy payment.

The reason

A genuine redundancy situation is one where the employer has ceased or intends to cease business, the location of the business is changing or the requirement for employees undertaking a particular kind of work has ceased or diminished. Unless one of these applies there may be an unfair dismissal rather than a true redundancy.

The group

Employers cannot select individuals for redundancy arbitrarily or without considering everyone who

undertakes a similar task. This means identifying the group or groups of people that may be affected and the law requires that all those people are considered as part of the redundancy pool.

Selection criteria

The employer must decide the basis upon which the redundancy decisions will be made and that selection criteria should be fair and objective. It is acceptable to base redundancy decisions on the ability of individuals and businesses are entitled to keep their best people but they must be able to justify the selection decisions.

Consultation

All those who are at risk should be given warning of the likelihood of job losses and there must be a genuine consultation process. If there are to be 20 or more redundancies there may be additional specific statutory consultation and notice requirements. The purpose of the consultations is to consider alternatives such as reducing hours, cutting pay, redeploying staff elsewhere or offering voluntary redundancy.

Notification

After the consultation process is completed those employees who have been selected should be invited to a dismissal meeting at which they are entitled to be accompanied by a colleague or trade union representative. The dismissals should be confirmed in writing. There is a right of appeal.

Alternative employment

There are rights for employees who are being made redundant to have reasonable time off to look for other employment or arrange training. As part of the redundancy procedure employers must also consider with certain employees whether they could be employed in another role within the business.

Payment

The amount of statutory redundancy pay is calculated on the basis of the number of years service, age and weekly pay. The maximum weekly pay for the calculation is £475 (increased from £464 on 6th April 2015) and the length of service is capped at 20 years. The current statutory maximum redundancy payment is £14,250 (increased from £13,920 as from 6th April 2014) although employees may have more generous terms in their contracts.

The above information is not intended to be a complete or definitive statement of the law. For more information or advice please contact our Employment Law team.