

Covid-19 Information Sheet – *Redundancies*

This information sheet has been produced by students from BPP's Pro Bono Centre under the supervision of legally qualified staff members. The information contained in this document is accurate as of 1st December 2020.

In this factsheet, we have put together a summary of our advice on redundancy, including redundancies during the COVID-19 pandemic.

The meaning of 'redundancy'

What does redundancy mean?

Redundancy is a form of dismissal from your job which happens when an employer decides to reduce the size of its workforce. In the UK, there are three situations in which redundancies can happen:

- Business closure – where the employer has ceased or intends to cease continuing the business;
- Workplace closure – where the employer ceases or intends to cease carrying on the business in the place where the employee was employed by it;
- Reduction of workforce – where the employer has a reduced need for employees to carry out work of a particular kind, or to do so at the place where the employee was employed to work

Who can be made redundant?

You can only be made redundant, and receive a redundancy payment, if you are an employee. If you are a self-employed contractor, then redundancy will not apply to you. It is not always clear whether or not someone is an employee, but as a general rule if you work regularly for a business, have a manager or supervisor who controls your workload, you cannot send anyone else to do your work or the business you work for pays tax and national insurance on your behalf, you are probably an employee.

Many people have a clear written contract of employment which sets out their employment status, but this is not always the case. If you are unsure whether or not you are an employee, you should consider seeking legal advice to help you determine this. Sources of free legal advice are included at the end of this Factsheet.

Individual redundancies – consultation and selection

What sort of consultation process can an employee expect?

You are entitled to be consulted with if your employer is considering making you redundant. An employer should inform an employee that they are 'at risk' of redundancy and then start a consultation process. This involves speaking to the employee about:

- why they are at risk of redundancy; and
- any alternatives to redundancy.

Consultations will usually be a face-to-face meeting with your manager or the person leading the redundancy process. The meeting can take place over the phone or as an online meeting if you agree to it and there is a clear need, for example if you work remotely. If you are working at home during the COVID-19 pandemic, it is likely that your employer will consult with you remotely, either over the phone or on a video call.

If your employer is proposing to make less than 20 employees redundant, consultations will be on a one to one basis. Your employer may allow a companion to attend a redundancy consultation meeting with you. Usually employers will allow a trade union or employee representative or, if you do not have one, a colleague. If you particularly want to bring an external person, like a friend or family member, you should ask permission for this ahead of your meeting.

If an employer is considering making 20 or more redundancies at the same time this will be treated as a 'collective redundancy' situation and the process is different. Please refer to the section on 'Collective Consultations' below for further information on this.

In an individual consultation, there is no minimum period for how long a consultation should last before an employer can give notice of redundancy. What is important is that the consultation process must be meaningful, which means providing enough information to the employee and allowing enough time for discussion and response. An employee can put forward suggestions to avoid redundancy and an employer should give these due consideration.

How should an employer select individuals for redundancy?

Your employer may ask for volunteers for redundancy, essentially these are employees who take the option to leave with an agreed redundancy exit package. This may avoid or reduce the need for compulsory redundancies. If you volunteer, it is still up to your employer whether they select you for redundancy. Just because you volunteered does not mean you will be made redundant. If there are not enough volunteers for redundancy, your employer may then need to choose individuals from a selection pool.

You must be selected for redundancy in a fair way, for example because of your level of experience or capability to do the job. This may be done by use of an objective scoring system, giving scores against an agreed selection criteria. You should not be selected because of a personal characteristic, for example because of your age, race, gender, if you are pregnant or on maternity leave, or if you suffer from a disability. If you are, this would be unlawful and you may have a claim against your employer for unfair dismissal and/or discrimination. Please refer to the section on 'Unfair Dismissal' below.

Who gets selected for redundancy must be based on objective criteria, such as:

- Length of service (this should only be used as one of a number of criteria)
- Attendance records
- Disciplinary records
- Skills, competencies and qualifications
- Work experience
- Performance records

The above list is non-exhaustive and illustrative only; your employer may use some of these and/or other criteria specific to the roles or business in question. What is important is that criteria should be clear, objective and ideally measurable, so that you can understand how you have been assessed, scored and selected.

Suitable alternative employment

What does 'suitable alternative employment' mean in the context of a redundancy?

Your employer is under a duty to make reasonable efforts to find you a suitable alternative job within the organisation or its group of companies before making you redundant. If one is found, your employer must offer this to you, as failure to do so could make a dismissal for redundancy unfair. The requirement of 'suitability' is important, and depends on a number of factors such as:

- How similar is the role to your current job?
- Do you have the required skills and abilities for the new role?
- How much you will be paid and what benefits you will receive?

During the redundancy consultation process, you have the right to ask your employer about any alternative roles, query the process they are following to find you alternative employment and speak to specific teams that might be hiring. Your employer may expect some level of proactivity from you, for example they may send you lists of vacancies to consider or you may have to interview with another team or manager.

If your employer is able to make an offer of suitable alternative employment:

- an offer should be clearly communicated to you (verbally or in writing);
- an offer should be made before your current job ends;
- the new role should start within 4 weeks of your current job ending; and
- you should be provided with full details on the new role.

What options does an employee have if offered suitable alternative employment?

A trial period

You have the right to try out the new role for 4 weeks before deciding whether to take it. If you are offered numerous alternative jobs within the organisation, then you can try out each role for 4 weeks. It is advisable to get the dates for the trial period in writing with a clear end date, especially if you need to extend the 4-week period as the new role requires training.

Rejecting an offer for alternative employment

If you want to refuse the offered role and ensure redundancy pay is still paid:

- You must refuse the role before your current job/trial period ends in writing;
- You must also provide a good reason for refusing the role. What is considered as a 'good reason' includes factors such as:
 - Lower pay
 - The status of the new role
 - Longer journey to work/ lack of public transport
 - Extra costs of getting to work
 - Health issues
 - Any disruption caused to family life (e.g. problems with childcare)

If your employer does not accept your reason for refusal

Your employer can refuse to pay your statutory redundancy pay if you have not provided a good reason for refusal. If this happens:

- Speak directly with your manager or the person managing the process and explain why you feel the new role is unsuitable;

- If this does not resolve the situation, follow your employer's grievance procedure, which usually involves writing a letter explaining the situation and why you think you are entitled to redundancy pay; or
- As a last option, you can call ACAS to begin the early conciliation process and consider bringing a claim in the employment tribunal. See more on this process below.

Collective Consultations

What is a collective consultation process?

If your employer is making 20 or more employees redundant within a period of 90 days or less, they must follow the 'collective consultation' process, rather than an individual consultation process.

The consultation must take place between your employer and a representative for the employees who are at risk of redundancy. This is either a trade union representative or an elected employee representative. If the business you work for does not have any employee representatives, they will need to be elected at the outset of the consultation process. Your employer should communicate with affected employees about how that election process will happen, and you should have the chance to nominate colleagues (or even yourself) as an elected representative.

Certain information must be provided to representatives, including:

- Reasons for the proposed redundancies;
- Number of proposed redundancies and job types;
- Total number of affected employees;
- Proposed method of selection; and
- Proposed method of calculating redundancy payments.

During the collective consultation process, the employer should discuss how to avoid or reduce redundancies and how to limit the impact on employees involved (for example by offering re-training) with representatives, who will then relay the information to the employees at risk of redundancy.

How long is a collective consultation process?

If there are between 20-99 proposed redundancies, consultation must start at least 30 days before any dismissal takes effect.

If there are 100 or more redundancies, consultation must start at least 45 days before any dismissal takes effect.

Once the consultation concludes and the redundancies are unavoidable, your employer has a duty to give the affected employees termination notices showing the agreed leaving date.

Unfair Dismissal and Employment Tribunal Claims

What can an employee do if they think they were unfairly selected or a redundancy process was unfair?

Redundancy is a potentially fair reason for dismissal from employment, meaning that if an employer has a genuine redundancy situation, follows a fair selection and consultation process and pays any statutory or contractual payments due to an employee, then the dismissal is lawful.

A redundancy has the potential to be considered an unfair dismissal, however, if you can show that there was not a genuine need to make redundancies in your workplace, or that your

employer failed to follow a fair redundancy process, or that your selection for redundancy was somehow unfair or discriminatory.

If you think this is relevant to your circumstances, there are a number of things you can do to challenge the dismissal:

- Request to appeal the decision to make you redundant. On confirming your redundancy, your employer may explain your right to appeal and you should follow the process they outline (which might also be contained in their policies, procedures or any handbook). If your employer does not mention a right to appeal, you can still ask about this. An appeal usually involves writing a letter to your employer, stating why you think the decision was unfair and what solution you are looking for.
- If you are not satisfied with your employer's response, or not offered an appeal, you should then talk to your trade union or employee representative (if your organisation has one).
- If you have still not been able to resolve the issue, you can consider making a claim to the employment tribunal for unfair dismissal.

If you are considering an appeal or a claim, you may want to seek some legal advice on this before you begin a claim. Sources of free legal advice are listed at the end of this Factsheet.

A claim to an employment tribunal must usually be made within 3 months less 1 day from the date your employment ended. If your claim is only about redundancy pay, it must be made within 6 months. These are very strict deadlines and you should not miss them, even if you are awaiting legal advice.

How do you make a claim for unfair dismissal?

Before making a claim to the employment tribunal for unfair dismissal, you must satisfy the following conditions;

- You must be an employee (not a self-employed contractor). See the section on 'Who can be made redundant' above for further information on this.
- You must have worked for your employer for a minimum of two years.

You must contact ACAS and inform them that you want to make a claim to the employment tribunal. ACAS will offer you the chance to settle the dispute without going to the tribunal using the free 'early conciliation' service. ACAS will talk to you and your employer with the aim of reaching an agreement. You or your employer can ultimately refuse this service, but you must go through this process before you can start a claim. If conciliation is refused or does not solve the problem, ACAS will send you an early conciliation certificate and you can then commence your claim in the employment tribunal.

Find out more about ACAS here: <https://www.acas.org.uk/early-conciliation>

How do you submit your claim?

If you want to make a claim, you must fill out a ET1 form which can be found on the GOV.UK website here: <https://www.gov.uk/employment-tribunals/make-a-claim>

You will need the number provided on the early conciliation certificate (provided by ACAS – as set out above) to fill out the form. You do not have to pay a fee to make a claim and you do not need a solicitor or legal representative; you can bring your claim as a 'litigant in person'.

Some factors the tribunal will consider when assessing whether you were unfairly dismissed:

- Was there a genuine need to make redundancies in your workplace?
- Was your employer following a fair procedure for consulting the workforce and selecting people for redundancy?
- Was the decision to select you fair?

- Did your employer make reasonable efforts to find you alternative employment elsewhere in the company?

You should consider these factors when completing your ET1 and try to clearly explain why you consider the redundancy was unfair in your situation.

What if you think your selection from redundancy was discriminatory?

If you consider your selection for redundancy was not on objective and measurable grounds, but instead was because of or in some way related to:

- age
- a disability
- gender reassignment
- your status as married or in a civil partnership
- pregnancy or maternity leave
- race
- religion or belief
- sex
- sexual orientation

then as well as a claim for unfair dismissal, you may have a claim for discrimination. This is also a claim in the employment tribunal and can be presented in the same way as an unfair dismissal claim, using the ET1 form. The characteristics in the above list are all 'protected characteristics' under the Equality Act. If you think you may have a claim for discrimination, consider seeking advice from one of the services listed at the end of this Factsheet.

Redundancy Payments

How are redundancy payments calculated?

You'll normally be entitled to statutory redundancy pay if you are an employee and have been working for your current employer for 2 years or more (subject to the rules in relation to refusal of suitable alternative employment as set out above).

Redundancy pay can be calculated using the [redundancy pay calculator](#) on GOV.UK. It is based on age, weekly pay and number of years in the job (length of service).

You'll get:

- half a week's pay for each full year you were under 22
- one week's pay for each full year you were 22 or older, but under 41
- one and a half week's pay for each full year you were 41 or older

Length of service is capped at 20 years. Your weekly pay is the average you earned per week over the 12 weeks before the day you received your redundancy notice (although see further below in relation to redundancy payments and furloughed employees).

As well as statutory redundancy pay, your employer should either:

- pay you through your notice period or
- pay you instead of your notice period – this is called 'pay in lieu of notice'

If you do not have normal working hours (for example if your hours vary from week to week) your notice pay is based on the average you earned per week over the 12 weeks before your notice period started (although see further below in relation to redundancy payments and furloughed employees).

If you were made redundant on or after 6 April 2020, your weekly pay is capped at £538 and the maximum statutory redundancy pay you can get is £16,140. Redundancy pay under £30,000 is not taxable.

Redundancy – relationship with furlough scheme

Does the furlough scheme mean employers can avoid redundancies?

The Furlough scheme (also known as the Coronavirus Job Retention Scheme) was initially introduced to support employers and help them avoid redundancies as a result of the COVID-19 pandemic. The scheme allows businesses to 'furlough' employees, i.e. place them on a temporary leave of absence from work. Furloughed employees receive 80% of their current salary for hours not worked, up to a maximum of £2,500. The third extended phase of the scheme has been in place since 1 November and will run until March 2021.

The Furlough scheme is intended to and has protected many jobs from redundancy. The Furlough scheme remains open to all employers at the date of writing (even if they have not used the scheme before) and if you are involved in a redundancy consultation, you can ask your employer whether they might consider furlough as an alternative. The option to furlough will not however be suitable for every business and unfortunately some employers will need to make redundancies alongside, or instead of, furloughing employees.

You can read more detail about the Furlough scheme in our Factsheet on this specific topic at this [link](#).

Can an employer make an employee who is on furlough redundant?

Employers who have made use of the Furlough scheme are still able to start a redundancy process, meaning you could be put at risk of redundancy if you are on furlough. Your employer will still have to follow a redundancy consultation and selection process with you, as detailed in the sections above.

Notice period and pay

From 1 December 2020, employers cannot use the Furlough scheme to cover notice periods or pay in the event of redundancies. This means that, if you are made redundant, your period of notice or any notice payment will usually be paid at your pre-furlough rate of pay, not your furloughed rate. You should ask your employer to clarify the level of pay for your notice period or any payment in lieu of notice.

Statutory redundancy payment

Since 31 July 2020, employers have been required to base the calculation of statutory redundancy pay on pre-furlough pay. If you are an employee who does not have normal working hours, and your redundancy pay is based on an average over the last 12 weeks, the averaging must be based on full rather than reduced pay.

If an employee was recently made redundant, could they benefit from the extended Furlough scheme?

The furlough extension from October to March 2021 means some redundancies implemented by the end of October may have been unnecessary or could have been postponed. Employees who were on the payroll of a business on 23 September 2020 and who were subsequently made redundant may be re-employed and furloughed.

Your employer does not *have* to re-hire former employees; there is however a moral obligation for them to consider doing so. If you were made redundant in October, you may approach your employer and ask if they will consider rehiring you, but the choice will ultimately remain with your employer, there is no legal obligation for them to do so.

If you have received any redundancy payments from your employer and you are re-hired and placed on furlough, essentially you will no longer have an entitlement to that redundancy payment and will need to agree with your employer how this will be dealt with. You may need to repay this immediately, in instalments or as a deduction from future salary.

Further Information

Help and Advice

There are a number of organisations and charities that can help provide further information and advice:

BPP Employment Law Telephone Advice Line (ELTAL):

This is a free employment law helpline run by the BPP University Pro Bono Centre. Email probono@bpp.com to access this service.

Gov.uk:

<https://www.gov.uk/redundancy-your-rights>

ACAS:

<https://www.acas.org.uk/your-rights-during-redundancy>

Citizens Advice:

<https://www.citizensadvice.org.uk/work/leaving-a-job/redundancy/check-if-your-redundancy-is-fair/>

LawWorks:

<https://www.lawworks.org.uk/legal-advice-individuals/find-legal-advice-clinic-near-you>

Information and Updates

The UK Government publishes a number of documents and updates as part of the ongoing response to COVID-19. These can be found on the UK Government website here: <https://www.gov.uk/coronavirus>

Wellbeing

This is an extremely difficult time for everyone. There is much uncertainty and a lot of anxiety. Along with your physical health, it is important to look after your emotional wellbeing during this period. There are a number of organisations that can help you during this difficult time.

Mind - 0300 123 3393 (Monday to Friday, 9am to 6pm) www.mind.org.uk