

# Redundancy – compliance tips

## Redundancy Tips

The downturn in the economy has been widely reported and our experience has been that many businesses are being forced to consider (or indeed have already completed) compulsory redundancy programmes.

In recent years many employers have taken an understandably robust view when it came to following the letter of redundancy law. This was possible due to a combination of factors such as generous redundancy packages and the ease with which redundant employees could find alternative employment. However, our view is that such a robust approach is now considerably more risky given the reduction in available alternative employment.

One of the main components of compensation in a redundancy claim is loss of earnings. With fewer jobs available in the market redundant employees are likely to incur higher loss of earnings. This in turn will make legal action more

likely, and should the employer have failed to follow the law, compensation will be higher. Our prediction is that redundant employees will be more willing to 'have a go' than they were 12 months ago.

Set out below are some reminders of issues that are often overlooked, and tips for ensuring compliance.

### Process is the key

As with many areas of employment law, it is essential that a fair process is followed and documented. Many employers are familiar with the process, but as an outline reminder it will include:

- establishing that the situation at hand falls within the definition of redundancy;
- considering a fair and objective process of selection if affected employees undertake the same or similar work;
- consulting with affected staff on an individual

basis, and doing so collectively where there are 20 or more affected employees;

- amending your plans if appropriate following issues raised during consultation; and
- considering alternative roles for potentially redundant staff.

### Hints and tips

We have not attempted to set out a detailed synopsis of a fair redundancy process in this overview. Instead, we set out below some of less common issues that can be relevant in a redundancy situation and suggest how they can be best handled.

1. Documents - take great care when developing plans for change that could lead to redundancies. It is essential that no decisions are taken as to likely outcome prior to consultation. Documented plans for change have a nasty habit of appearing as evidence in Employment Tribunal proceedings.

2. Process - if there are fewer than 20 redundant staff the statutory dismissal procedure will apply. This will involve the employer issuing a letter outlining the circumstances giving rise to dismissal, holding a meeting and a providing right of appeal.
3. Bonuses - how will bonus entitlements be impacted by redundancy terminations? If the scheme rules result in forfeiture of entitlement due to an incomplete bonus period, is there any PR value in honouring a pro-rata proportion?
4. Multiple sites - take care when more than 20 staff are at risk where they are spread over more than one site. Will all sites be treated as one 'establishment' and as such trigger the collective redundancy consultation obligations? If you get this wrong you risk a protective award of 13 weeks pay per affected employee.
5. Maternity leave - women at risk of redundancy whilst on maternity leave have special protection and are entitled to be offered (rather than be considered for) alternative employment. A failure to do so will result in an automatic

unfair dismissal, and probably also a finding of sex discrimination.

6. Agency staff - if you have agency staff that are to be terminated, is there a risk that they could allege employment status and claim the resulting employment rights? Assess the risk and establish whether the risk is covered in your contract with the agency.
7. Communication - ensure that the process to be followed and any redundancy package is clearly explained to the employee – uncertainty adds considerably to the stress levels of at risk employees.
8. Further support - is outplacement support to be offered, and if so on what basis?
9. Alternatives - be proactive in your search for alternative roles, and include group companies in your search. Document your efforts in this respect.
10. Redundancy pay - how will redundancy pay be calculated? Consider whether employees may argue that there is an implied right to enhanced redundancy payments, or perhaps

an express right for employees that might have transferred to your business under TUPE together with enhanced redundancy entitlements.

Mark Minns has advised many businesses on the handling of fair handling redundancy processes, from those affecting a handful of employees in one office to large scale collective redundancy exercises spread across different sites and group companies. If you would like to discuss any aspect of this note or redundancy situations generally, please contact us.

**Note:-**

mpm legal LLP will be holding a free redundancy best practice seminar in the autumn. Please email [mark@mpmlegal.co.uk](mailto:mark@mpmlegal.co.uk) for further details.

**t: + 44 (0) 118 900 1880**  
**f: + 44 (0) 118 900 1881**  
**w: [www.mpmlegal.co.uk](http://www.mpmlegal.co.uk)**  
**e: [mark@mpmlegal.co.uk](mailto:mark@mpmlegal.co.uk)**