

HR Performance

Your Virtual HR Manager - 24 Hours Per Day!



HR Performance: July 2012 Article for IAM manager



The following article first appeared in the July 2012 edition of the manager Magazine which is the British Journal of Administrative Management.

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Re-dun-dant – adjective: No longer needed or useful; superfluous

However quickly you say it there is no way of making it sound more positive is there? And in the current economic climate, unfortunately, far too many people have heard this word.

I promise you that there is life after redundancy. Having been on the receiving end of that word twice before in my career, I am testament that both times it gave me a serious step up into the next part of my career. Every cloud has a silver lining...and all that, but before taking the opportunities that being made redundant will undoubtedly offer you, let's have a look at your rights during redundancy.

Whilst my definition of the word redundant may make you believe the term is referring to you the post-holder, in fact, in almost every case, it refers to the role being performed. So here's the starting point to consider, when redundancy comes knocking it will mean that the role being performed is no longer required. This can be because of new technology or systems substantially removing the need for the role; a re-organisation resulting in fewer staff being required or perhaps the organisation closing down or moving.

The main exception to the above is when a person is made redundant from their role to make way for another longer serving employee whose role is redundant – this is known as “bumping” or “transferred redundancy”. However, whilst an employer should consider bumping as part of the redundancy process it is by far straight-forward. By all means challenge your potential redundancy by asking them to consider bumping but don't hold your breath – your employer can refuse if there is good reason. Seek advice from the Advisory, Conciliation & Arbitration Service (Acas) if bumping is a feature of your particular redundancy from either side of the coin.

Now that you've been made aware that you are in a redundancy situation certain statutory rights apply. Firstly, you have the right to consultation.

Right to Consultation

If your employer is making less than 20 employees redundant then you have the right to be personally consulted.

If your employer is making 20 or more employees redundant in one business location within a 90 day period this is known as a collective redundancy and consultation would take place with the affected employees' representatives. Failure to consult representatives when a collective redundancy applies can result in a protective award of up to 90 days' pay to each affected employee.

The key purpose of consultation is that the employee affected is being given the opportunity to influence the redundancy process. Ultimately, if you fully understand the reasons why redundancy is being considered you may be able to offer ideas, solutions or suggestions that would make all the difference and mean that redundancy was not the only option. If an employer fails to consult adequately then any redundancy termination would almost certainly be unfair.

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Consultation Periods

Consultation periods should be sufficiently long enough to allow for a meaningful process to have been conducted. In the case of individual consultation this could realistically be achieved in two weeks. However, there are statutory periods of consultation. Where 20 to 99 redundancies are expected the period must commence 30 days prior to any dismissals taking effect; and when 100 or more are likely the period must be at least 90 days prior to any dismissals. Where 20 or more employees are affected the employer must also notify the correct government department within the correct timescales or face a fine.

A safe procedure to follow – and the minimum you should expect during consultation – is a first meeting to explain the situation and to be given the opportunity to influence the process, whilst also indicating what other work you would consider. A second meeting a week or so later informing you of any outcomes as a result of the first meeting and, if there were no alternatives to redundancy, then a final meeting where termination of employment on grounds of redundancy would take place.

Selection Pools

If it is not a clear case of a job being redundant or a department closing down, there may be a group of employees from which some will be made redundant. This group is known as a selection pool. For an employer to achieve a fair redundancy process there needs to be an objective selection criteria applied. Objective criteria could include disciplinary records, experience, capability or relevant skills and experience, but could not include any form of discrimination covered by the Equality Act, trade union membership, health and safety activity or working patterns e.g. part-time or fixed-term employees. There are also a number of other automatically unfair reasons for selection so please seek advice from Acas if you feel you are being selected for redundancy unfairly.

Last in/First out is also not an automatically safe objective criterion for selection pools as it can be indirect age discrimination which would result in an automatic unfair dismissal.

Suitable Alternative Employment

Following your first consultation meeting, assuming you wanted your employer to look for suitable alternative work, a job search should be undertaken to identify all available vacancies that exist within the company. For an employee facing redundancy it is always worthwhile asking for a job search to be undertaken on your behalf – never reduce your options. For the employer the safest route is always to complete a thorough job search – and never assume the affected employee would not consider what is available – as facing redundancy allows people to consider other options to achieve a work/life balance. As the employer, present every vacancy that exists – this will help protect you if faced with an Employment Tribunal.

Job Trials

If you are presented with an alternative offer of employment you do have the right to try that job out for four weeks. This is to enable you to decide if the job is in fact suitable alternative employment and for the employer to decide if you are suitable for the role. This period can also be extended by written agreement if you require training. If during the trial you decide the role is not suitable you will still be entitled to Statutory Redundancy Pay, but if you unreasonably refuse a suitable offer you may lose this right.

Termination of Employment

If, despite a full and meaningful consultation, there is no alternative option than redundancy then you should be invited to a termination meeting where you will have the right of representation. During consultation there is no statutory right to representation. Redundancy termination is still a dismissal and employers should follow the Acas Code of Practice as they would for a disciplinary offence.

Notice Periods

Always start by looking at your contract of employment. Statutory minimum notice periods are one week's notice for employment between one month and less than two years. After two years' service you will receive an additional weeks' notice for each year of service up to a maximum of 12 weeks' notice after 12 years' service. However, if your contract gives you greater entitlement this is what you'll receive. You may be released from your contract immediately if there is a clause in it that allows for payment in lieu of notice. Alternatively, for more senior roles the contract may allow your employer to place you on garden leave, but this must always be explicitly covered by a garden leave policy.

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Time Off Work

Should the end result of consultation be that you are served with notice of termination on the grounds of redundancy you are entitled to reasonable time off to look for alternative work. Acas defines reasonable as a maximum of 2/5ths of a weeks' pay. So if you work five days a week you would be entitled to two days a week off work after notice has been served. To exercise this right you would need to have at least two years' continuous service.

Redundancy Payments

The entitlement to a redundancy payment will only apply if you have been employed continuously for at least two years at the expiry of your notice period. How much you will receive is calculated by reference to your weekly wage, your age and the length of your continuous service with your employer. The amount you will receive is based on a maximum weekly wage of £430:00 (correct as of March 2012). If you earn less than £430:00 per week your calculation will be based upon your actual weekly wage. If you earn more than £430:00 per week your calculation will be based upon on £430:00 per week only, unless your contract of employment allows for greater payments. Statutory payments are calculated as follows:

- ◆ ½ week's pay for each full year of service where you were aged under 22
- ◆ 1 week's pay for each full year of service where you were aged 22 but under 41
- ◆ 1½ week's pay for each full year of service where you were aged 41 or above

Regardless of how long you have worked for your employer only a total of 20 years' service can be taken into account.

And if you are facing redundancy good luck with the future. In my experience it has always been brighter and filled with greater opportunity. Carpe diem!

I hope the above guidance has been useful. The article is not an exhaustive list but covers many of the most common elements of redundancy. If in doubt please contact the Acas helpline or website (details below) which is an excellent free source of advice and support for employees and employers alike.

Acas Helpline: 08457 47 47 47

Acas Website: www.acas.org.uk

James can be contacted by visiting www.tpgl.co.uk or calling 0845 880 2255