

Preparing for Change: Manager on-line magazine article published 3<sup>rd</sup> May 2012



IAM's Chief Operating Officer, James Turner, outlines an individual's rights when negotiating a redundancy.

*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 unfortunately, in the current economic climate, 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 working life, I can testify 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 look at your rights during redundancy itself.

#### Role in play

While 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 the starting point to consider is that when redundancy comes knocking it will mean that the role being performed is no longer required. This could 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 even the organisation closing down or moving. The main exception to this 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, while an employer should consider bumping as part of the redundancy process it is far from straightforward. 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 on either side.

Then, now you've been made aware 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 fewer than 20 employees redundant then you have the right to be individually 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 being made to each affected employee. The key purpose of consultation is that the employee affected is 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 which may mean redundancy is not the only option. If an employer fails to consult adequately any termination will almost certainly be unfair.

## Consultation periods

Consultation periods should be sufficiently long to allow a meaningful process to have been conducted. In the case of individual consultation this could realistically be achieved in two weeks. However, there are also 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.

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

## 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 objective selection criteria then need to be applied. Objective criteria could include disciplinary records, experience, capability, or relevant skills and experience, but cannot include any form of discrimination covered by the Equality Act, trade union membership, health and safety activity or working patterns, e.g. comparing part-time and 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

Assuming you wanted your employer to look for suitable alternative work, a job search should be undertaken following your first consultation meeting 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. 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, therefore, 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 you decide the role is not suitable during the trial 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

Finally, if, despite a full and meaningful consultation, there is no alternative option to redundancy, 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, but as a redundancy termination is still a dismissal, employers should follow the ACAS Code of Practice, just as they would do 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 week's notice for each year of service up to a maximum of 12 weeks' notice after 12 years of service.

However, if your contract gives you a 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, and generally 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.

## 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 two fifths of a week's pay. So if you work five days a week you would be entitled to two days a week off work after notice is served. However, to exercise this right you would need at least two years of 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 on your actual weekly wage. If you earn more than £430.00 per week your calculation will be based on £430.00 per week only, unless your contract of employment allows for more payments. Statutory payments are calculated as follows:

- ◆ Half a week's pay for each full year of service where you were aged under 22.
- ◆ One week's pay for each full year of service where you were aged 22 but under 41.
- ◆ One and a half 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.

I hope the above guidance has been useful. This 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 visit the ACAS website, which is an excellent free source of advice and support for employees and employers alike.

And if you are facing redundancy, good luck for the future. In my experience it has always been brighter and filled with greater opportunity than you may imagine at this point. Carpe diem!

Useful further information:

ACAS helpline: 08457 47 47 47  
ACAS website: [www.acas.org.uk](http://www.acas.org.uk)