Guide to Redundancy

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human resource management

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Legal Framework

The following legislation should be considered when looking at redundancy:

- Redundancy Payments Acts 1967-2014
- Unfair Dismissals Acts 1977-2015
- Minimum Notice and Terms of Employment Acts 1973-2005
- Employment Equality Acts 1998-2015
- Protection of Employment Acts 1977 to 2014
- Protection of Employees (Employers' Insolvency) Acts 1984 to 2012

Definition of Redundancy

The definition of redundancy has been outlined where, "An employee is dismissed by reason of redundancy if, ' for one or more reasons not related to the employee concerned', his dismissal is attributable 'wholly or mainly' to one of the five situations outlined in s 7 (2) of the Redundancy Payments Acts as set out below:

- the fact that the Employer has ceased, or intends to cease, to carry on the business in the place or for the purposes of which the Employee was employed, or
- the fact that the requirements of that business for Employees to carry out work of a particular kind in the place where the Employee was so employed have ceased or diminished or are expected to cease or diminish, or
- the fact that the Employer has decided to carry on the business with fewer or no Employees, or
- the fact that the Employer has decided that the work for which the Employee had been employed should be done in a different manner for which the Employee is not sufficiently qualified or trained, or
- the Employer has decided that the work for which the Employee had been employed should be done by a person who is also capable of doing other work for which the Employee is not sufficiently qualified or trained.

Redundancy Process

The first step in any redundancy process is to ensure that a genuine redundancy situation exists. One or more of the five redundancy grounds as outlined must be demonstrated and be able to withstand scrutiny in order to provide demonstrable evidence that the steps being taken in putting a role at risk of redundancy are justified.

Having demonstrated that a genuine redundancy situation exists and which position/s is to become redundant, it is essential to ensure that the procedures whereby an employee is selected for redundancy are transparent, objective and fair.

If the Organisation has used an agreed selection procedure or has used a specific one in past redundancy situations the Employer will need to have a specific reason in departing from this agreed selection procedure or custom.

Selection for Redundancy

- To fairly select an Employee(s) role for redundancy, the Employer should first establish which position/positions are to become redundant. Having established that certain positions are no longer required, Employees of that category must be considered against the criteria for selection.
- When setting out the criteria for selection, Employers should consider precedence (has the Organisation had redundancies previously and if so what selection methods were used). The two main methods of selection used are 'last in first out' or 'matrix selection criteria' which may be based on qualifications, skills, experience or a combination of all three.
- If the Organisation has an agreed selection procedure or one they have used in the past they must have a specific reason if they wish to depart from an agreed selection procedure or custom and practice.
- If the Employer decides to select Employees for redundancy on a 'last in first out' (LIFO) basis, then length of service of the Employees eligible for redundancy should be compared, and the Employee with the shortest service, i.e. the last in, will be made redundant.
- Alternatively, if the selection is to be made on the basis of qualifications, skills, experience etc., then these should be considered for all Employees of that grade,

and the least qualified/skilled/experienced should be selected for redundancy.

Unfair Selection for Redundancy

Although a redundancy situation exists, an Employee may have grounds for complaint if the manner of the selection for redundancy was unfair.

In selecting a particular Employee for redundancy, an Employer should apply selection criteria that are reasonable and are applied in a fair manner. An Employee is entitled to bring a claim for unfair dismissal if they consider that they were unfairly selected for redundancy or consider that a genuine redundancy situation did not exist. Examples of these situations might include where the custom and practice in the workplace has been last in, first out and the Employee's selection did not follow this procedure. Another example may be where the Employee's contract of employment sets out criteria for selection which were not subsequently followed.

Under the Unfair Dismissals legislation, selection for redundancy based on certain specific grounds is considered unfair. These include redundancy as the result of an Employee's trade union activity, pregnancy or religious or political opinions.

The Employment Equality legislation also prohibits selection for redundancy that is based on any of the following nine grounds: gender, civil status, family status, age, disability, religious belief, race, sexual orientation or membership of the Traveller community.

Consultation and Alternatives to Redundancy

- The decision to make redundancies should be the last resort. All other suitable alternatives should be explored prior to initiating redundancies during the consultation period. One of the conditions looked at in determining whether a dismissal by redundancy is fair or not is whether the conduct of the Employer was reasonable.

- An Employer should have an 'at risk' meeting with the Employees prior to making the decision to dismiss due to redundancy. This can be viewed as being fair and reasonable. The purpose of this meeting is to inform the Employees that there is a possibility that redundancies may arise and that the Organisation is looking at all suitable alternatives to making redundancies. Employers should at this stage give Employees an opportunity to explore other options that they may see as an alternative to redundancy.

- Following on from the 'at risk' meeting, Employers should engage in consultation with the affected Employees to discuss whether any alternatives have been discovered and to consider the proposals of the Organisation itself and whether they can reduce the number of or prevent the redundancies. If at this stage it is found that there are no suitable alternatives, it is then that formal notice of redundancy would be given. Upon issuing formal notice of redundancy the Employer must ensure that those impacted have full recourse to an appeal mechanism.

Redundancy arising from Lay – Off and/or Short – Time

- People often use the term 'lay off' to refer to redundancies. Lay off in this context is not the same as a redundancy. Lay off and short time are temporary situations where an Employer is no longer able to retain the Employee in their normal capacity. This may be viewed as a favourable alternative to redundancy.

  Lay off occurs where Employees are not required to work for a specified period of time, until trading conditions improve, or until the reasons behind the lay-off no longer exist. Ordinarily, Employers are required to give "reasonable" notice of lay-off. However, in respect of Covid-19, Employers may experience shut-downs with little or no notice, due to the public health nature of this crisis. Where an Employer has to lay off a member of staff they should issue this notice to the Employee using Part A of Form RP9 – https://www.workplacerelations.ie/en/publications_forms/lay_off_and_short_term_procedures_form_rp9_.pdf

- Short time occurs where an Employee's working week decreases to less than half of his/her normal weekly hours or his/her pay is less than half of his/her normal take home pay; and the situation is not considered to be permanent and advance notice is given. A Form RP9, citing short time

should be issued to the relevant Employee(s).

Pre-Emergency Measures in the Public Interest (Covid-19) Act, 2020 (the 2020 Act)

Prior to the enactment of the Emergency Measures in the Public Interest (Covid-19) Act, 2020 an Employee could have acted on their right to claim redundancy in certain circumstances. This was owing to the fact that any period of lay off or short time is temporary in nature and therefore an Employer would have been cognisant of the time limits that are placed on the duration of these arrangements prior to an Employee being able to claim redundancy.

Prior to the 2020 Act if an Employee had been laid off or put on short-time for (i) 4 or more consecutive weeks, or (ii) 6 or more weeks within a 13-week period of which not more than 3 are consecutive, the Employee could have notified their Employer in writing of intention to claim a statutory redundancy payment, on the assumption that they satisfied the qualifying criteria, by having at least 2 year's continuous service.

In these circumstances the notice would have been given after 4 weeks of the lay-off or short-time commencing.

Prior to the 2020 Act an Employer would have been able to provide counter notice, within 7 days of the Employee's notice, contesting liability to pay a redundancy payment. This applied in circumstances where it was reasonably expected that within 4 weeks of the Employee's notice the Employee would have been provided with at least 13 weeks for full time work without being laid off or placed on short-time for any week.

Prior to the 2020 Act, one repercussion for the Employee in proceeding in this manner, was that the claim would have been viewed as voluntary in nature and the Employee would have lost any right to notice from the Employer under the Minimum Notice and Terms of Employment Acts 1973-2005.

Post-Emergency Measures in the Public Interest (Covid-19) Act, 2020

With the introduction of the 2020 Act, the ability of an Employee who has been placed on lay off or short time, for a period of (i) 4 or more consecutive weeks, or (ii) 6 or more weeks within a 13-week period of which not more than 3 are consecutive, to claim redundancy after 4 weeks has been removed for the duration of the effects of the measures taken due to Covid-19. This means that it is not permissible for an Employee who is on layoff or short time to claim redundancy during the period 13 March 2020 to 31 May 2020. The 2020 Act also provides for this period of time to be extended.

While the 2020 Act has temporarily removed the right of an Employee to claim redundancy it does not mean that this right will not be reinstated, therefore it would still be best advice to issue the RP9 form when notice of either lay off or short time is given to an Employee.

Redundancy following Lay Off or Short Time

Where an Employee does not serve notice of redundancy on the Employer but the lay-off or short-time situation continues, then the temporary situation may have to come to an end and the Employer will have to determine if a redundancy situation now exists. If a redundancy subsequently transpires for an Employee on short time the statutory redundancy payment owed by the Employer shall be based on the fulltime remuneration of the Employee. Where an Employer has to affect a redundancy following a period of lay off or short time then the right to notice under the Minimum Notice and Terms of Employment Acts 1973-2005.

Please note that the measures applying by virtue of the Emergency Measures in the Public Interest (Covid-19) Act, 2020 relating to the prevention of claiming redundancy or providing counter notice for those on lay off or short time are temporary in nature. The provisions explicitly linked to the prevention of claiming redundancy in these circumstances are outlined in the 2020 Act as applying from March 13, 2020 – May 31, 2020. However, this timeframe may be extended by Government and we expect updates on this sometime in May 2020.

Re deployment

Another alternative to redundancy is redeployment. This is where Employees are moved from one area to work in another area in the business as an alternative to redundancy.

Collective Redundancies

A collective redundancy situation arises where the dismissal for redundancy purposes occurs over any period of 30 consecutive days and where a minimum number of Employees may be affected based on a specific threshold of Employee numbers in their totality, such as those indicated below:

- five persons in an establishment normally employing more than 20 and less than 50 Employees.

- ten persons in an establishment normally employing at least 50 but less than 100 Employees.
- ten per cent of the number of Employees in an establishment normally employing at least 100 but less than 300 Employees.
- thirty persons in an establishment normally employing 300 or more Employees.

Legislative Requirements

Under the Protection of Employment Acts 1977 to 2014 an Employer has certain mandatory obligations when it comes to proposing collective redundancy situations, such as:

- engaging in an information and consultation process with Employees' Representatives and

- notifying the Minister for Employment Affairs and Social Protection of the proposed collective redundancy.

For the avoidance of doubt, the 30 day mandatory information and consultation process and the aforementioned 30 day period from the date of notification to the Minister may run concurrently. However, since it will not be possible to complete the notification to the Minister until the identity of the Employees' Representatives, for the purpose of the information and consultation process has been established, it is conceivable that both periods may not be entirely concurrent.

Notice of Redundancy

Under the Minimum Notice and Terms of Employment Acts 1973 – 2005 Employers are required to give the following notice:

13 weeks – 2 years:	1 weeks' notice
2 – 5 years:	2 weeks' notice
5 – 10 year:	4 weeks' notice
10 – 15 years:	6 weeks' notice
15 years or more:	8 weeks' notice

Under the Redundancy Payments Acts, a minimum of two weeks' notice is required for those who meet the 104 week requirement. Employers should check what contractual notice is detailed within the Employees' terms and conditions. If the contractual notice period is greater than the statutory entitlement then the contractual notice period must be observed.

Appeal

Following a decision to dismiss by virtue of the role in question becoming redundant, then in accordance with fair procedures and natural justice an appeal mechanism should be provided to the Employee in question. Where an appeal, if made, is found to be unsuccessful and notice has been served then on the date of dismissal, the Employer must arrange for the Statutory Redundancy payment to be made to the Employee concerned who should in turn confirm receipt of same. Where an ex gratia payment is provided a settlement agreement should be signed by all parties involved.

Time off to look for work

An Employee is entitled, during the redundancy notice period, to reasonable, paid time-off to look for new employment or to make arrangements for training for future employment.

Maternity Leave and Redundancy

An Employee cannot be given Notice of Redundancy while on maternity leave or additional maternity leave. Under the Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004, the date of an Employee's notice in a redundancy situation under the Redundancy Payments Acts 1967 to 2014 is deemed to be the date of her expected return to work as notified to her Employer under the maternity protection legislation above. An Employer should consider all alternatives and also ensure a fair process is followed.

Statutory Redundancy Payment

Once notice has been issued the Employer arrangements for payment of Statutory Redundancy should be prepared in order to issue payment upon the date of termination. In order for an Employee to be entitled to a redundancy lump sum they must:

- Have at least two years continuous service (104 weeks);
- Be in employment, which is fully insurable under the Social Welfare Acts;
- Be over the age of 16;
- Have been made redundant as a result of a genuine redundancy situation.

An eligible Employee is entitled to two weeks for every year of service, plus a bonus week. When calculating a week's pay, any other payment normally received by the Employee, such as average regular overtime and benefit in kind,

should be added to the gross weekly wage. This total is then subject to a Wage Ceiling, which is currently €600.

All statutory redundancy payments are tax free. Entitlements to redundancy payment should be reviewed in light of any post dismissal arrangements put in place. Continuous and the rules governing non-reckonable service should also be examined for redundancy payment purposes.

Inability to Pay

In the event that an Employer is unable to pay the statutory redundancy amount, they must be able to prove this through documented evidence as well as completing a signed RP50 to the Department Employment Affairs and Social Protection.

Non-Statutory Payments

An Employer may choose to pay additional ex-gratia amounts to Employees upon termination of Employment. This is often the case with voluntary redundancies in particular. Care should be taken in the taxation of these payments as they are not treated the same as the statutory redundancy payment.

Risks Associated with Redundancy

Paramount to any considerations of redundancy is the fact that fair procedures must apply. Implicit in any potential redundancy are the justifications demonstrating a genuine redundancy situation exists, fair selection procedures are employed and legislative requirements are met in terms of procedures and compliance.

Should any of aforementioned not be in line with fair procedures or natural justice then redress may be sought by an Employee under the Unfair Dismissals Acts (as long as a dismissal has occurred), the Redundancy Payment Acts, the Protection of Employment Acts or the Employment Equality Acts (where the dismissal arose by virtue of one of the nine grounds), which may result in the imposition of a financial liability or other redress on the Employer.

Questions and Answers – Redundancy

What makes a redundancy genuine?
A genuine redundancy is taken to exist where one of the following arise:

- The Employer ceases to carry on the business for which the Employee was employed, or ceases to carry on the business at the same place where the Employee was employed.
- The work for which the Employee was employed has ceased or the requirement to perform that work has reduced.
- The Employer has decided to carry on the business with fewer or no Employees. Work may be reallocated to other Employees.
- The work which the Employee performed is to be performed in a different way and the Employee is no longer qualified to undertake the work.
- The Employee's work is to be undertaken by another person who is sufficiently qualified and capable to undertake other work for which the Employee is not sufficiently qualified or trained.

How long can an Employer put an Employee on layoff or short time before a right to claim redundancy exists?
By their very definition any period of layoff or short time is temporary in nature. However, with the enactment of the 2020 Act an Employees' right to claim redundancy, where they have 4 or more weeks of continuous lay off or short time or the Employee has a series of 6 or more weeks (of which 3 weeks were consecutive) within a 13 week period, has been removed from March 13, 2020 – May 31, 2020. The 2020 Act provides for the right of the Government to extend this date. From a practical point of view Employers should continue to complete the RP9 form as the removal of the right to claim redundancy is temporary.

What happens if an Employee gives written notice of a claim of redundancy whilst on a period of layoff or short time?
Following the enactment of the 2020 Act, where an Employee is on a period of layoff or short time for 4 or more weeks or the Employee has a series of 6 or more weeks (of which 3 weeks were consecutive) within a 13 week period, then the Employee cannot give notice to claim redundancy to the Employer from the period of March 13, 2020 – May 31, 2020. It is worth noting that provisions are contained within the 2020 Act to also extend this date.

What is a collective redundancy?
A collective redundancy means the dismissal for redundancy reasons over any period of 30 consecutive days of at least:

- Five persons in an establishment normally employing more than 20 and less than 50 Employees.
- Ten persons in an establishment normally employing at least 50 but less than 100 Employees.
- Ten percent of the number of Employees in an establishment normally employing at least 100 but less than 300 Employees.
- Thirty persons in an establishment normally employing 300 or more Employees.

What is the Employer obliged to do in a collective redundancy situation?

When an Employer proposes to implement collective redundancies they must, under the Protection of Employment Act 1977 (as amended):

- Give the Minister for Jobs, Enterprise & Innovation written notice of their proposals at the earliest opportunity and at least 30 days before the first dismissal takes effect.
- The Act also provides that an Employer contemplating collective redundancies must, with a view to reaching an agreement, similarly consult the representatives of the Employees affected not later than 30 days before the first dismissal takes effect.

What is a reasonable alternative to redundancy?

If an Employee refuses a reasonable offer of alternative work, they may lose their entitlement to a redundancy payment. What is reasonable depends on the facts of each case.

In general, alternatives which involve a loss of status or a lessening of the terms and conditions of employment would not be considered reasonable.

Furthermore, an Employee may be justified in refusing an offer that involves travelling an unreasonable distance to work.

In order for an Employee to be entitled to a redundancy lump sum they must:

- Have at least two years continuous service (104 weeks);
- Be in employment, which is fully insurable under the Social Welfare Acts;
- Be over the age of 16;
- Have been made redundant as a result of a genuine redundancy situation.

What is the minimum period of notice required for redundancy?

Under the Redundancy Payments Acts, a minimum of two weeks' notice is required.
Under the Minimum Notice and Terms of Employment Acts 1973 – 2005 the following notice applies of service of between:

Thirteen weeks to 2 years	– 1 weeks' notice
2 and 5 years	– 2 weeks' notice
5 and 10 years	– 4 weeks' notice
10 and 15 years	– 6 weeks' notice
Over 15 years	– 8 weeks' notice

Employers should check what contractual notice is detailed within the Employees' terms and conditions. If the contractual notice period is greater than the statutory entitlement then the contractual notice period must be observed.

Are Temporary / Fixed Term / Fixed Purpose Employees entitled to redundancy?

Where a fixed term contract expires or where the specific purpose for which the contract was created ceases, without the contract being renewed, a redundancy situation can arise (provided that the other requirements under the Redundancy Payments Acts are met).

How do you calculate a statutory redundancy payment?

An eligible Employee is entitled to two weeks for every year of service, plus a bonus week. When calculating a week's pay, any other payment normally received by the Employee, such as average regular overtime and benefit in kind, should be added to the gross weekly wage. This total is then subject to a Wage Ceiling, which is currently €600. All statutory redundancy payments are tax free.

Are overtime and bonuses used in calculating weekly wage for Redundancy purposes?

The weekly wage for redundancy purposes is gross pay before tax and PRSI deductions. It is calculated by adding together the gross weekly wage, average regular overtime and benefits-in-kind up to a maximum of €600 a week.

Average weekly overtime earnings are calculated as follows:

• Average overtime is calculated as the total amount of overtime earned in the period of 26 weeks ending 13 weeks before the date of redundancy divided by 26.

What is reckonable service for redundancy purposes?

An absence from work while on maternity leave, additional maternity leave, adoptive leave,

additional adoptive leave, parental leave, force majeure leave and Carer's leave.
Any absence that is authorised by the Employer, e.g. Career Break, Annual Leave, Public Holiday leave etc.

What is non-reckonable service for redundancy purposes?

Non-reckonable service is only confined to the last three years of employment before redundancy. The following absences are all deemed to be non-reckonable for statutory redundancy calculations:

- An absence greater than 52 consecutive weeks by reason of occupational injury/illness;
- An absence in excess of 26 weeks by reason of an ordinary illness/injury;
- An absence by reason of lay-off by the Employer;
- An absence by reason of strike.

What happens if an Organisation cannot pay the Statutory Lump Sum?

In the event that an Employer is unable to pay the statutory redundancy amount, they must be able to prove this by sending in the following information along with a signed RP50 to the Department of Social Protection:

- A letter from an Accountant or Solicitor stating that the Organisation is not in a position to pay and accepting liability for the 100% owing to the Social Insurance Fund, and
- Documentary evidence i.e. Audited accounts/statement of affairs.
- The statutory redundancy payment will then be processed and paid to the Employee through the Social Insurance Fund.

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