





A Practical Guide to *Handling Redundancies*

This paper covers the main areas to consider when handling redundancies:

-  The Legal Requirements
-  Breaking the News to Those Affected
-  Dealing with the “Survivors “ who are staying with the business
-  Legal Obligations Impacting Redundancy Dismissals

Introduction

Susan was a Manager with a large professional firm. She came into the office early one morning, expecting to have a brief meeting with one of the Partners before going out to meet a client. What happened instead was that she was asked to see the Managing Partner, who was in a room with the HR Manager. They told Susan that she was being made redundant with immediate effect. She was asked to leave the building straight away and was escorted off the premises by a security guard. Two hours after leaving the house to go to work, she was back at home, alone, with no job, dazed and shocked. Some weeks later, she was allowed back in to the office to collect her belongings from her desk, under supervision.

This is typical of the kind of horror story often told about redundancies (it also happens to be true).

Redundancy can be traumatic, not only for the individual involved but also for those left behind and for the organisation that implements it. Handled badly, redundancies can destroy the morale within a business and leave it in a poor position to carry on. It can also leave business owners open to legal challenges if they do not follow the correct procedures.

There are three key areas to consider when handling redundancies:

- the legal requirements
- breaking the news to those affected, *and*
- dealing with the “ survivors “ who are staying with the business

The Legal Requirements

The following is, in no way, a comprehensive account of the legal obligations of a business, but raises some of the key areas to be aware of.

Redundancy can affect hundreds of employees or may only affect one and the legal requirements are determined, in part, by the numbers involved.

Where over 100 employees are to be made redundant, the business must inform the B.E.R.R. at least 90 days in advance. There is also a requirement to consult with employees' representatives at least 90 days before redundancies take effect.

Where between 20 and 99 employees are affected, these timescales are reduced to 30 days.

For less than 20 employees, there is no requirement to inform the B.E.R.R., but there is still a need to consult individually with the employees concerned [see obligations below] .

Collective Consultation means just that – an open discussion of:

- the reasons for the redundancies
- alternatives to making them
- the procedures and timescales to be followed
- compensation arrangements
- the criteria to be used for selecting those to be made redundant
- the number of redundancies and the areas affected.

There is no requirement that the consultation must lead to agreement between the parties, but it must be carried out in good faith and not simply involve the management telling the workforce what is going to happen.

In a unionised workplace, the consultation will generally involve union representatives. In other cases, it could involve other representative bodies, such as Works Councils, or the workforce could be asked to elect representatives specifically for this purpose.

If the business does not follow these procedures, it leaves itself open to an action for breaking the rules and any redundancies could be challenged in tribunals as constituting “ unfair dismissal “. This is true even when dealing with individual redundancies, where there must still be a period of warning and consultation before the redundancy takes effect.

It is important that the consultation period is completed before any notices of redundancy are sent out or it could be argued that the consultation is merely a sham.

The selection procedures used to identify those to be made redundant need to be clear and objective. They can include:

- length of service if this can be shown to relate to a business requirement [max 5 years]
- type of work carried out
- skills and qualifications
- attendance
- disciplinary record
- performance levels

They cannot, of course, include gender, race or ethnic origin, age [seek guidance] religion, disability, marital status or pregnancy.

Statutory redundancy payments (for employees with more than 2 years continuous service) are based on length of service, age and weekly earnings, although most employers pay more than the statutory amount anyway.

Since October 2004, new rules have come in to effect concerning Statutory Dismissal procedures, which cover situations involving individual redundancies. See the below on this highly important change in dismissal legalities.

Breaking The News

It is hard enough to lose one's job without it being made worse by insensitive actions by the management of the business. Preparation, discussion and openness can help to ease the impact and make it easier to bear.

Here are a few tips for handling the situation.

- If at all possible, deliver the news face to face rather than by telephone or email. Consider how to deal with people who are out of the office on maternity leave, annual leave, training courses, etc.
- Explain clearly why this is happening and why the person has been selected
- Don't give too much detailed information at once. The person is unlikely to take much in after hearing the news and it is best to leave details of compensation, timing, etc. until a subsequent meeting or to give this in a letter
- If it is important for security reasons that the person leaves the premises immediately, plan a way for this to happen which allows them to maintain their dignity and composure. Consider their need to say goodbye to colleagues.
- Consider the person's emotional state and give them time to express, and get over, their immediate reactions
- Don't make excuses, blame others in the business or tell them "you're lucky to be going" to try to ease the blow. Keep it professional.
- Be aware of their personal situation, e.g. whether they live alone, whether they have family who will be affected. Don't make a lot of this in the discussion, but be aware how it could affect their reaction and mental state
 - Where appropriate, offer outplacement support – counselling, practical advice, etc.

Dealing With The Survivors

One might think that those who survive a round of redundancies would feel grateful and happy to still have a job, perhaps motivated to work harder to avoid being the next ones out of the door. Certainly, that seems to be the view of the management teams in some businesses. But this is not the case.

The people who are left may feel a range of emotions – shock, fear, disillusion, resentment, something akin to grief at the loss of colleagues who may have been friends. None of these emotions tend to produce a happy, productive workforce. Special measures and care need to be taken to support the survivors.

It is vital that the whole process is handled in such a way that the management of the business retain a good relationship with those who are left, that motivation and morale are not fatally undermined.

Here are some ways to avoid some of the worst de-motivation occurring:

- Maintain regular, open communication about what is happening and why. Do not leave gaps to be filled by rumour and gossip, which fuels fear and resentment. As part of this, make sure that management are seen and are available for discussion (allowing for the fact that some information may be sensitive). This is not a time to hide away behind closed doors.
- Explain the reasons for any actions to be taken and invite genuine discussion.
- Recognise that people will be feeling strong emotions and allow for this. Do not put pressure on people to work harder during this period, do not expect “business as usual “ while the process is going on.
- Give people a forum to vent their feelings in a reasonable manner.
- Demonstrate that those who have to leave are dealt with in a reasonable and humane manner
- Show people that they are valued, invest time in any necessary training and coaching where people need to learn new skills to adapt to changed circumstances (even whilst recognising that, if redundancies are necessary, some budget restrictions may need to be imposed).
- Don't speak badly of people who have left or not talk about them at all.
- Explain what is going to happen in the future and where the remaining employees fit into this.
- Do not make false promises as this can lead to distrust and resentment in the future.

A period of redundancies is never going to be an easy or a happy time for anyone but, handled in a sensitive and professional way, it need not be traumatic.

The important thing is that the way the redundancies are handled:

- does not leave the business hampered by claims for breaches of regulations or unfair dismissal *and*
- does not undermine morale within the business to the extent that it cannot function effectively and profitably in the future.

For more information on dealing with redundancies, visit the B.E.R.R. website at www.B.E.R.R..gov.uk/er/redundancy.htm



Practical Guide to Handling Redundancies

By Mike Barnett, 2008

Legal Obligations Impacting Redundancy Dismissals

Individual consultation

Once an individual employee has been provisionally selected for redundancy, the Company should consult with him or her about the selection before deciding whether to confirm the selection decision. This is not only a matter of good employment practice but is also essential to avoid liability for unfair dismissal.

It is good practice for a manager to hold a preliminary meeting with the employee to break the news that he or she has been provisionally selected for redundancy. Whether or not a preliminary meeting is held, the employer should write to the employee confirming that the Company has provisionally selected him or her for redundancy and the basis for the selection, and invite the employee to a meeting to discuss the situation. It is good practice to allow the employee to be accompanied at that meeting. The employer must notify the employee of the result of the meeting and his or her right to appeal if the provisional selection for redundancy is confirmed.

Consultation gives the employee an opportunity to raise any issues that may be relevant to the selection decision. It may be, for example, that the employee has been selected for redundancy because of his or her poor work performance. The employee may be able to bring to the Company's attention events in his or her personal life or in his or her working relationships that explain the poor performance and may cause the Company to reassess the selection decision. This is also an opportunity to discuss with the employee whether he or she is interested in being redeployed within the business or in an associated Company, what work would be suitable, and what vacancies might be available.

It is advisable to keep a record of the content of consultation meetings.

Since 2004 [a new code of conduct changes the rules from April 2009] statutory dismissal procedures have been in force which impact on redundancy dismissal processes. Three steps must be followed:

- 1) write a letter explaining the issues
- 2) have a meeting to discuss the issues
- 3) conduct an appeal meeting if required

Failing to follow these steps can mean that any compensatory award at a tribunal is increased by between 10 and 50%.

If no selection pool is required the **Step 1** letter must set out the fact that there is a redundancy situation, why the redundancy possibility has come about and the fact that the employee is at risk of redundancy. In addition the step 1 letter needs to confirm, without unreasonable delay, the date and time of the meeting and set out the matters for consultation with the individual. These would include general consultation with the individual about the proposed redundancy any alternatives he or she may have to redundancy: to consider any suitable alternative employment, attaching a list of any such vacancies in the business. The employee has the right to be accompanied by a work colleague or an accredited trade union representative that should be set out too.

Step 2 is the meeting itself at which all angles must be explored before action is taken, that is to say dismissal. The employee should be offered every opportunity to raise his or her concerns. The employer needs to give proper consideration to items raised and should go away and investigate, if appropriate, and arrange further meetings. Step 2 includes informing the employee that he or she is to be made redundant following this up with a second letter including all redundancy pay entitlements. The right of appeal should be confirmed, however, a timeframe should be set of say five working days within which to

appeal. An appeal outside the timeframe set should not be automatically dismissed as the employer must consider whether the employee's delay was reasonable.

Step 3 of the statutory procedure requires that the timing and location of the meeting must be reasonable so an employer needs to provide advanced notice and obtain the employee's confirmation. An appeal should be heard within five working days normally as all steps within the procedure must be taken without unreasonable delay. A more senior manager or a different manager, perhaps from a different area, should hear the appeal unless the size of the organisation is such that this is impossible. Both the employer and the employee are afforded the opportunity to explain their cases. The right to be accompanied applies and the decision should be communicated to the employee without unreasonable delay.

Where there is redundancy selection from a pool full opportunity needs to be given to an employee to have explained the unit of selection, factors, weightings, scoring system and the individual's own score but not any other employee's score as that would contravene Data Protection legislation.

Summary - the law on redundancies

In summary, to abide by the law on redundancies, you need to:

- make sure you are dealing with a genuine redundancy situation
- consult with employee/union representatives for a minimum period and notify government authorities if you are proposing 20 or more redundancies at one establishment within a 90-day period
- comply with any contractual redundancy policy
- come up with selection criteria that are as objective as possible
- apply the selection criteria fairly
- neither directly or indirectly discriminate on any unlawful basis when selecting for redundancy, nor select on prohibited grounds
- warn and consult employees at risk of redundancy and give them a fair opportunity to challenge the proposal to make them redundant
- hold at least one meeting with each employee to discuss their redundancy, write to them beforehand setting out the reasons why you are considering their redundancy and confirm your decision and the reasons for it in writing
- offer a right of appeal against redundancy
- search for alternative employment within the company and (where there is one) the group
- give employees on maternity leave priority when offering suitable alternative vacancies
- give redundant employees notice of dismissal or a payment in lieu of notice
- make statutory redundancy payments and any enhanced redundancy payments that you are contractually bound to pay
- allow employees time off during their notice periods to look for new work
- make statutory redundancy payments to employees who resign during their notice period for good reason, such as securing a new job

Sourcing Professional Support

Mike Barnett Human Resources can provide individual and group programmes to suit both Executive and managerial levels as well as other white or blue-collar positions.

All programmes comply with the relevant codes of practice for outplacement work.

Visit the website at www.hrweb.co.uk for more details about the services we can provide or call us to discuss your requirements.