

Employment & Employee Benefit

How to Manage a Redundancy Process

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We set out below a brief guide for employers on how to conduct a redundancy process which should assist employers in implementing redundancies whilst minimising the risk of potential litigation.

The Decision

Whenever an employee is dismissed from their employment, there is a risk that they will claim that they have been unfairly dismissed. However, the Unfair Dismissals Act provides that it is a defence to an unfair dismissals claim for an employer to show that a genuine redundancy was the reason for the dismissal. For this reason, it is important for any employer considering implementing redundancies to keep records of the process which resulted in them making employees redundant. Any such notes or records may prove useful in the event of a subsequent claim by a former employee. To defend a claim the employer should be able to show that they did not immediately opt for redundancies without first looking at any possible alternatives. The consideration given to all of these options should be recorded so that a Tribunal or a Court can see, at a future date, that alternatives were considered.

Before making employees redundant employers should review their employment contracts and staff handbooks to establish whether there are any special clauses in either document in the event of redundancies. At the same time the company should also look at any previous redundancies in the company to ascertain how employees were selected for redundancy and the formula used for calculating their redundancy lump sum.

If the employer comes to the conclusion that redundancies are the only option it should approach the employees or their appointed representatives. They should be invited to put forward alternative proposals and those proposals should be carefully considered by the employer. If the employer concludes that the proposals are without merit, the employees or their representatives should be advised of this (and why) and only then should notice be served on the employees.

Collective Redundancies

There are important notification and consultation procedures which must be followed by an employer where the number of redundancies in a 30 day period exceeds the following thresholds

- 1 5 persons from a work force of 21-49;
- 2 10 persons from a work force of 50-99;
- 3 10% of a work force of 100-299;
- 4 30 persons from a work force of 300 or more.

The employer is obliged to advise the employee representatives of the possibility of redundancies and must investigate the possibility of avoiding the proposed redundancies or of reducing their numbers or consequences.

The consultation must cover the following issues:

- 1 the possibility of avoiding the proposed redundancies;
- 2 the possibility of reducing the number of employees affected by redundancy;
- 3 the action that can be taken to mitigate the circumstances of the employees made redundant by employing social measures aimed, for example, re-deploying or re-training employees made redundant; and
- 4 the basis on which it will be decided which particular employees will be made redundant.

For the purpose of consultations under this Act, the employer must supply the employees' representatives with all relevant information in writing relating to the proposed redundancies including:

1. the reasons for the proposed redundancies;
2. the number, and descriptions or categories of employees whom it is proposed to make redundant;
3. the numbers of employees, and descriptions or categories, normally employed;
4. the period during which it is proposed to effect the proposed redundancy;
5. the criteria proposed for the selection of the employees to be made redundant; and
6. the method for calculating any redundancy payments other than those statutorily required.

Notification to the Minister for Enterprise, Trade & Employment

The Act also requires prior notification to the Minister for Enterprise, Trade and Employment. Employers should be aware that redundancies cannot be implemented until 30 days after notification to the Minister. An employer who makes an employee redundant before the expiration of the 30 day period is guilty of a criminal offence and liable on conviction to a fine up to €250,000.

The employer must supply the Minister with copies of all information supplied to the employees as soon as possible. The notification supplied to the Minister must also be copied to the employees' representatives affected, who may forward any observations they have relating to the notification to the Minister.

If an employer fails to engage in consultation with employees then they may be fined up to €5,000 and in addition each employee affected could seek an award of up to four weeks salary through the Rights Commissioner service.

Selection

Selecting employees for redundancy can be a difficult issue for employers. If the redundancy is genuine then it is the issue of selection which is likely to create the greatest opportunity for an Unfair Dismissals claim. It is not unusual for a redundant employee to claim that they were unfairly dismissed on the basis that there were other employees who could or should have been made redundant instead of them. For this reason it is advisable for employers to make and retain notes relating to the selection of the employees for redundancy. The employer must make their decision based on objective criteria, for example it could include length of service, experience, skillset or attendance record. The criteria adopted by the employer may be established from precedent from previous occasions. The traditional policy of "last in, first out" may still exist in some workplaces, however increasingly employers are using other criteria such as those mentioned earlier.

Employee entitlements

Employees must receive 14 days actual notice in writing from their employer if the employer is to qualify for a rebate from the Social Insurance Fund. This rule applies even if it is agreed that the employee will be paid in lieu of their remaining notice.

During the two weeks' redundancy notice period the employee is entitled to reasonable paid time off to look for new employment, or to make arrangements for training for future employment.

An employee with 104 weeks continuous service is entitled to a redundancy lump sum payment. The lump sum payment is calculated as follows:

- 1 two weeks' pay (subject to a ceiling of €600) for each year of continuous employment since the age of 16;
- 2 in addition, the equivalent of one week's normal pay subject to the statutory ceiling.

A redundancy calculator is available on the web-site of the Department of Enterprise Trade and Employment www.entemp.ie and this should be used to determine actual entitlements of each employee.

Employees should be provided with a Form RP50 which constitutes the notice of redundancy, the employee's acceptance of the redundancy notice and statutory redundancy payment and can be used by the employer to claim for a rebate of 60% of the statutory redundancy payment.

Employers rebate

An employer who makes a lump sum payment to an employee is entitled to a rebate from the Irish Government of 15% of the statutory component of each lump sum payment made provided the company has given the employee two weeks' notice of redundancy.

Ex gratia payments

In the case of any redundancy package, the minimum statutory lump sum benefit is rarely regarded as sufficient by employee. There is a general expectation of ex gratia payments in addition to the statutory redundancy lump sum.

The extent of the ex gratia element in any severance package is affected by the particular circumstances of the redundancy. It is not unusual to see ex gratia payments of 4-6 weeks for every year of service and depending on the industry and this may be either in addition to, or inclusive of, the minimum statutory lump sum entitlement. Also, the ex gratia payments will usually disregard the earnings limit of €600 per week. There is no government rebate in respect of the ex gratia element of any severance package.

Conclusion

By planning the implementation of redundancies carefully and keeping employees informed at each stage, it is possible to affect redundancies and avoid subsequent litigation. The key is to record why redundancies were unavoidable and the basis upon which the employees were selected for redundancy. At the same time, employers need to be aware of the consultation and notification requirements which apply when collective redundancies are implemented.

For more information, please contact:

Paul Gough
Associate, Employment and Employee Benefit Group
Eugene F. Collins
Telephone: 353 1 202 6400
Email: pgough@efc.ie

Author: Paul Gough