

Redundancy seminar 30th April 2020 10 am _ KO and MW

MARK : Karen Please can you talk us through the redundancy process for small scale redundancies of up to 19 staff?

KAREN:

If you do find that redundancies are a possibility within your business, firstly you should identify how many people you may be proposing to make redundant and whether or not you have a redundancy policy in place. If you do have a redundancy policy in place, then I would suggest that you follow this and ensure that it complies with ACAS guidelines. If you do not have a redundancy policy then I am going to talk you through eleven steps that we recommend companies follow if you are considering making up to 19 people redundant. If you are proposing large scale redundancies of 20 staff and over which are known as collective redundancies then we suggest that you consult Workplace directly for any assistance and we can work with you as legal requirements regarding collective consultation apply such as consulting for a minimum period and letting the redundancy Payment Service know the plans before the consultation starts.

MARK: Ok thanks Karen, let's go through the 11 steps Karen is now going to take us through the steps and the first is Making a redundancy plan

KAREN

Step one of the 11 steps we recommend you take is

1. Making a redundancy plan

A redundancy plan will help you manage each stage of the redundancy process. It should show how the company will :

- avoid compulsory redundancies
- consult with staff
- select staff for redundancy
- give staff notice
- working out redundancy payments
- supporting staff and plan for the future

Where applicable companies should work with staff representatives - for example trade unions - to develop your plan if it's a large or complex redundancy situation. Having an agreed plan allows companies to easily share information with all its staff and help them understand what's happening. It's particularly useful when you explain your proposed changes during the consultation phase.

Once you have made your redundancy plan you should then move onto step 2 which is demonstrating how the company is going to try to avoid compulsory redundancies

MARK: ok so on to step 2 Avoid compulsory redundancies

Karen:

2. Avoid compulsory redundancies

It may be possible that the company can avoid job losses by planning ahead and looking at other options available to the business.

Last Thursday I discussed options that may be available to businesses as opposed to looking at making staff redundant. This could include retraining employees to do other jobs in your business, restructuring the business, short term working or using a lay off clause and laying off staff if they had the relevant clauses in their contract of employment, offering voluntary redundancy or early retirement, consulting with employees and both parties agreeing to flexible working such as temporarily reducing workers hours/job shares/working compressed hours/homeworking, looking at staff benefits, staff possibly taking unpaid leave, staff taking holidays, letting go of temporary or contract workers, limiting or stopping overtime, or not hire any more employees.

Please be mindful that if you are considering offering voluntary redundancy or early retirement that you do not pressure anyone or single them out. It must always be the employees choice to volunteer and make it clear that it voluntary redundancy or early retirement is not automatically given and the company must have a fair way of selecting staff for either. The company could also offer an enhanced redundancy package over and above the statutory minimum if you want to encourage staff to volunteer.

MARK: what if you have exhausted these options and redundancies look likely?

KAREN

If you have exhausted these options and still envisage that you may have to look at redundancies you should then move onto step three we recommend at this stage consulting with your employee.

MARK: Ok on to Step 3

3. Consult with your employees

Consulting with your employee means sitting down with employees to explain your planned changes and get their feedback and input. Your plans must not be finalised at this stage and you should aim to include any employees' suggestions or ideas you agree with.

MARK: What about the corona virus situation?

KAREN

During coronavirus you must still consult your employees. It's likely that you'll need to do this remotely. There is no legal requirement to consult face to face. Perhaps look at options such as Microsoft, zoom, facetime, skype, telephone to communicate with staff but you should obtain their consent in the first instance to ensure that they are happy to consult in this way.

You must also consult trade unions or employee representatives especially during large-scale ('collective') redundancies. You must also ensure that you consult with employees who are on any other type of leave such as maternity leave.

During the consultation period you must get the information ready that you are going to share and during the consultation period you should let the employees know in writing:

- why you need to make redundancies
- the number of employees at risk and which jobs are at risk
- how you will select employees for redundancy

- how you plan to carry out the redundancies, including timeframes
- how you will calculate redundancy pay
- details of any agency workers you're using

You should ideally have a trained person to lead the consultation and a clear way of presenting your redundancy plan

It's imperative here that you do not present a finalised redundancy plan to the staff and you must include in your total of employees any voluntary redundancies or employees you propose to move into other roles.

There are no rules for how long the consultation should last. It can last longer than the minimum periods listed above if it's a large or complex redundancy situation. You do not need to reach agreement for the consultation to come to an end. You simply need to show that the consultation was genuine and that you aimed to reach agreement. You must be able to show that you've listened to your employees and that you responded to questions and suggestions.

MARK: That's great so far what do step 4 look like

Karen : Step 4 looks at

4. What types of things businesses need to discuss at the consultation

Consultations allow you to explain why you're planning on making redundancies. In return it allows employees to discuss:

- ways to avoid or reduce redundancies
- how to reduce the impact of redundancies
- how the organisation can restructure or plan for the future
- how employees are selected for redundancy

You must consider and respond to any suggestions made by employees. You can reject any ideas you do not think are reasonable but you should explain your reasons why. It's important to document all discussions and the reasons for your decisions. You might not always be able to avoid redundancies but by working with employees you'll often be able to save jobs and come away with a better idea of how the business can plan for the future.

You should try at all times to be as open as possible with employees, unions and employee representatives. This will allow employees to feel part of the conversation. You should give employees the right level of detail so that they understand the proposals that you are making and so they are not confused. If there are employee representatives then you would normally consult with employees individually afterwards. If there are no employee representatives then we would recommend consulting with staff individually.

MARK: right then Step 5

5. Selecting employees for Redundancy

You must select employees for redundancy in a fair way and not discriminate against any individuals or groups. It's a good idea to use a selection criteria to help you choose which employees to make redundant.

MARK: How can you ensure you minimise the risk of discriminating against an employee?

KAREN

You should aim to base the criteria on an employees:

- standard of work
- skills, qualifications or experience
- attendance record (but do not include absence relating to disability or maternity)
- disciplinary record

You must not select employees because of their:

- age
- disability
- gender reassignment
 - marriage or civil partnership status
 - pregnancy or maternity leave
- race
- religion or belief
- sex
- sexual orientation
- family related leave - for example parental, paternity or adoption leave
- role as an employee or trade union representative
- membership of a trade union
- part-time or fixed-term employee status
- pay and working hours, including the Working Time Regulations, annual leave and the National Minimum Wage

During the coronavirus pandemic, you must not select employees for redundancy just because they're shielding. This could be seen as disability discrimination.

MARK: Great We now move onto step six which is

6. Agreeing criteria with employees

You should consult employees to identify and agree a selection criteria. For example, you could sit with employees to work out the skills and experience needed for your business in the future. The more open and collaborative your selection process is, the more your employees will trust that it's fair.

MARK: Step seven sees us advising you to ensure that you

Karen :7. Select employees in a fair way

It's a good idea to score employees against all the agreed selection criteria. This will help you avoid relying on one particular criteria and can lower the risk of discriminating against employees.

It will also help you be objective when selecting employees, easily share with staff how the selection process works and will allow you to explain your decisions at any employment tribunals should an employee choose to make a claim against the business. The business could request employees reapply for their jobs and you score them at interview using the selected criteria which would ensure you were selecting people in a fair way. You would then score you employees and select the employees for redundancy on this basis.

MARK: So At this stage would you recommend setting up An Appeals process ?

Karen 8.Appeals process

You should set up an appeals process for employees who feel they have been unfairly selected. This can reduce the chances of someone making a claim against you to an employment tribunal. You should explain in your redundancy plans how someone can appeal. You might meet with employees face-to-face to listen to their concerns or ask them to write a letter or email explaining why they do not agree with your decision.

You should then move onto step 9 which is

9. To give employees notice as to whether or not their position within the business has been made redundant

You can only make an employee redundant once you've finished consulting with everyone. It's best to tell an employee face-to-face that you're making them redundant and to follow up with confirmation in writing.

If their position is not redundant then this should be confirmed to them and also in writing as to when they will be required to return to work in their existing or new role. If it's a new role an offer letter, job description and contract of employment should be provided to them straight away in line with the new legislation that came in post April 2020.

At this meeting you should advise them the reason for them being made redundant along with what their notice will be, whether they are entitled to statutory redundancy pay and what it is, their leaving date, whether they are being paid in lieu of notice, how you calculated their redundancy pay, any other monies they are owed such as holiday pay, how and when you will pay them, how you will retrieve any work items they may have or any items work may have of the employees and how they can appeal and who the appeal person is. It should ideally be someone who has not been involved in the redundancy process.

In relation to their notice companies should check the employees contract of employment as to what notice period they are entitled to. However, the minimum statutory notice periods are 1 week for between one month and two years service, one weeks for every full year worked between 2 to 12 years and a maximum of 12 months statutory notice for anyone with 12 full years or more. Whats within the employees contract of employment and how you provide the employee with the confirmation of the redundancy will depend on when their notice starts from.

MARK: So that would move us to Step 10 is how to help you work out the employees Redundancy pay

- KAREN :10. Redundancy pay

You must pay redundancy to employees who have an employment contract and have worked for 2 full years. If you have typed staff across then normally their notice period with their previous employer should be included in the service they have accrued. You must pay at least the statutory amount to your employees. How much pay each employee gets is very much dependant upon their age and how long they have worked for the business but is capped at 20 years service. Statutory redundancy is capped at £538 unless an employer decides to pay additional redundancy pay. The maximum total amount of redundancy pay is £16140.00

If an employee is over 41 then you pay them 1.5 weeks pay (capped at £538) for each year of work after their 41st birthday. If they were under 41 for any period of their service then you would calculate their redundancy payment at their normal weekly pay capped at £538.

An employee is entitled to one weeks pay for each year of work after their 22nd birthday capped at £538 and half a weeks pay for each year of work before their 22nd birthday.

Please ensure you check your employees contract of employment as you may have to pay more than the statutory amount.

If your employees pay changes week to week then calculate it on the average weekly pay according to acas for the previous 12 weeks but it may be prudent to base this on the previous 52 weeks weekly average pay. If the employees did not work a while week during this time due to sickness then replace it with an earlier week.

Ideally, unless agreed in writing with your employee statutory redundancy pay which is tax free up to £30000 should be paid no later than an employees final day. Other contractual payments such as notice pay, holiday accrual etc should be subject to the usual tax and NI deductions.

If making redundancy payments puts your business at risk you can always discuss with your employees being made redundant and agree in writing to pay them over a period of time. You could also ask the Redundancy Payments Service (RPS) for financial help. If you're insolvent you can get **the** RPS to make your redundancy payments and recover the debt from your assets.

MARK: And the final step what you should think about how to support your staff and plan for working life without these staff

KAREN: 11. what you should think about how to support your staff and plan for working life without these staff

Redundancy can create difficult situations and conversations within the business. You should also think how to support

- employees at risk of redundancy

- managers who are breaking the news
- the people leading the consultation
- employee representatives
- staff that are staying on

It's often forgotten that those staying on experience stress from seeing colleagues and friends being made redundant. They will also be part of a changing organisation and might feel uncertain about what the business and their roles will look like in future.

You can support staff by providing:

- counselling
- additional face-to-face meetings
- help getting financial advice
- clear plans for the future of your organisation
- help finding work for another company

You must allow staff a reasonable amount of time off to look for another job or training if:

- you're making them redundant
- they've worked for 2 full years (including the notice period)

You must pay employees who take time off to look for new work. The most you need to pay for the whole notice period is 40% of one week's pay. This is the total amount and not the amount per week.

If the situation is handled in the right way it can make a big difference to:

- how staff react and cope with being made redundant
- the morale of staff who are staying on
- the success of the planned changes and future of the organisation

Remember, at the end of this and when the company has undertaken whatever measures it must undertake in order to survive and move forward, you are going to have to bring those that have survived the restructures or the reduced hours of work get back to work. As referred to in last weeks webinar, morale may be low, people will be uncertain and it could take a while getting back to normal. Some employees may still have children who are off school that they may need support with. This is why I keep reiterating that it is imperative that you invest in the services of a HR professional or some other person who is able to guide you through this and the aftermath. Those of you who have experience of restructures will know in many circumstances it is managing the changes that have been made over the forthcoming 6-12 months than it was to make the decisions in the first place.

MARK: Can the grant be used to substitute redundancy payments?

KAREN:

The latest guidance from the government confirmed that [grants cannot be used to substitute redundancy payments](#). HMRC will continue to monitor businesses after the scheme has closed.

MARK: Thank you Karen