

12CP BARRISTERS EMPLOYMENT

FACT 8

REDUNDANCY

In these straightened economic times, it is important that employees understand their rights when their employer is contemplating making redundancies. It is equally important for employers to know what procedures and principles to apply during this process so as enable them to make necessary but difficult decisions about future staffing levels with the peace of mind that they are acting lawfully and reducing the risks of facing claims before the Employment Tribunal.

When contemplating making cut backs to staff, businesses need to carefully consider whether a redundancy situation exists in law. Most commonly, a redundancy situation will arise where the requirement for employees to carry out work of a particular kind has been removed or reduced or is expected to do so in the future.

Employees with two years + service are entitled to a redundancy payment and have the right to complain to an Employment Tribunal that their dismissal was unfair.

In a redundancy case, Tribunals will not usually find that an employer has acted reasonably unless he warns and consults any employees affected or their representatives, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy, for example by redeploying the employee within his own organisation.

Employers must establish a “pool” of employees from which to select those that will be made redundant. Employers generally have a fairly wide discretion when choosing what pool to adopt but must be able to explain why they have excluded certain employees from this pool if they do the same or similar work from those employees up for selection.

In most cases, employers must seek to establish criteria to use to select employees from the pool for redundancy which, so far as possible, do not depend solely upon the opinion of the person making the selection. It assists if these criteria can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

Lastly, employers should try as far as reasonable to find alternative work within their own organisation and where appropriate within other companies in the same group.

If you are having problems we can help at all stages of this redundancy process, from the drafting of redundancy policies / selection criteria for employers or advising employees in preparation for a dismissal or appeal hearing to advising either side on how best to avoid litigation by mediation / conciliating a settlement and ultimately representing the parties at trial if necessary.