



# Redundancy Masterclass



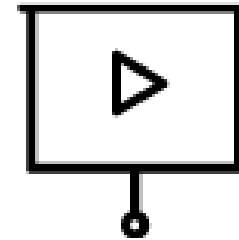
# Zoom Etiquette



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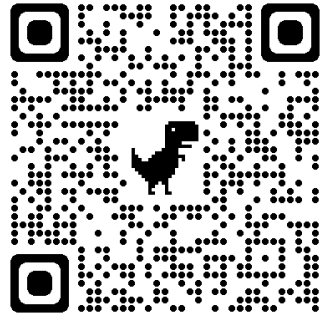


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# Introduction & Connect with Us



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# Agenda

1. The Definition of Redundancy
2. Tribunal Claims and Redundancy
3. Planning a Redundancy
4. Carrying out a Redundancy
5. Cost of a Redundancy
6. Step Guide
7. Practical Guidance
8. Case Study – P&O Ferries
9. Questions

# Definition of Redundancy

**Section 139(1) ERA 1996: the dismissal must be wholly or mainly attributable to:**

- **Business Closure** - the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him;
- **Work Place Closure** - the employer has ceased or intends to cease to carry on its business in the place where the employee was employed; or
- **Reduced requirement for employees to do work of a particular kind** - the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

*TUPE may overlap with redundancy but they are separate*

# Tribunal Claims and Redundancy

- 2 years service required (*except for automatic unfair*)
- Redundancy is a potentially fair reason for dismissal
- An employer must show that a dismissal is both:
  - Substantively fair (i.e. fair in all the circumstances)
  - Procedurally fair
- No mandatory process (*save for collective consultation*)
- Reasonableness is the key test
- ACAS guidance
- Polkey
- Discrimination claims
- Costs

# Planning a Redundancy

- What is the purpose of the redundancy?
- Who is at risk of redundancy?
- Consider an appropriate pool (*may be one person*)
- Are selection criteria required? (*If so, then they must be reasonable*)
- Selection criteria should be objective (*measurable*)
- Must not be discriminatory
- Design the criteria around the objective of the redundancy
- Potentially fair selection criteria include:
  - Performance
  - Attendance
  - Salary
  - Disciplinary records
- Can the criteria be agreed first?
- When will a cost saving be realised? (*Bear in mind peripheral costs*)
- Consider PR and external messaging



# Carrying out a Redundancy

- Employees should be warned and consulted about the redundancy
- Use “*at risk*” at all times until termination confirmed
- Allow a fair opportunity to challenge:
  - The redundancy itself
  - The basis on which they have been selected
  - The employee’s individual scores (if competitive)
- Consider those views properly and genuinely
- Views can be rejected on reasonable grounds
- Collective consultation - *proposal to make 20 or more employees redundant at one establishment within a 90-day period:*
  - *20 to 99 = 30 days before any dismissals take effect*
  - *100 or more = at least 45 days before*
  - *Notify Redundancy Payments Service using HR1 Form*
- Confirm dismissals after concluding consultation for all
- Appeals

# Cost of a Redundancy

- Statutory redundancy payment
  - Age x Length of Service x Weekly Pay (*subject to a statutory limit*)
- Contractual redundancy payment
- Notice pay
- Holiday pay
- Calculate payments during the consultation and discuss with employee
- Settlement agreements
- Compensation for unfair dismissal
- Management time and peripheral costs
- Indirect cost – *What do customers think? What do other employees think?*

# Step Guide - Outline

- Identify need for redundancies
- Consider TUPE and collective consultation
- Plan redundancy process and prepare draft paperwork
- Hold initial meeting and warning of redundancy (*town hall*)
- Carry out scoring exercise and provide scores to each employee
- Hold individual consultation meetings
- Hold further individual meetings as necessary
- Consider any available vacancies (*across entire group*)
- Meeting with each individual to confirm outcome
- Written confirmation of dismissal with reasons
- Appeal

# Practical Guidance

- Plan in advance
- Take legal advice
- Check availability of key stakeholders
- Involve direct managers when planning the redundancy
- Include absent employees (sick leave and mat leave) when planning
- Listen to the employees and respond appropriately
- Be open to changing the process mid-way through
- Consider settlement agreements early
- Consider other support for employees (e.g. EAP, Q&A documents)

# Case Study: P&O Ferries

On 17 March 2022, P&O Ferries (P&O) sacked approximately 800 employees without notice, and replaced them with cheaper agency workers. The employees were told, via three minute video recording that they were to be dismissed with immediate effect in order to secure the financial survival of the company.

What should they have done differently?

- Determine how many employees were being made redundant at a 'single establishment'.
- There was over 100 redundancies being proposed at one port, therefore P&O had an obligation to begin consultation with employee representatives at least 45 days prior to the first dismissal taking effect.
- P&O should have lodged a form with the government advising them of the number of redundancies being proposed, once again a minimum of 45 days prior to the first dismissal taking effect.
- During the consultation period, P&O should have held meetings to provide the employee representatives with information about the redundancies, including the reasons for such proposals.

# Any questions?



# Events

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**20 July – Disability in the Workplace**

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# Get in touch!

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