

PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 6

REDUNDANCY

What you need to know about:

Consultation

Notice periods and pay

Statutory redundancy pay

Suitable alternative employment

Transfer of undertakings

Unfair selection for redundancy

*Community
Legal Service*



Oct 2009

WHAT IS REDUNDANCY?

Redundancy is a form of dismissal. It occurs when you are dismissed **because your job no longer exists** at the place where you are employed. If you are offered suitable alternative work you are not redundant.

Redundancy usually occurs for one of the following reasons:

- * Your employer has ceased, or intends to cease, to carry on the business for which you are employed; or
- * Your employer has ceased, or intends to cease, to carry on the business in the place where you are employed, or
- * The requirements of the business for the employees to carry out work of a particular kind has ceased or diminished or is expected to diminish.

If you are dismissed because your employer needs to reduce the workforce, and your job is shared amongst remaining employees, you will still qualify for a redundancy payment. Your employer should however go through an objective selection (see below). It is not redundancy if your employer immediately takes on a direct replacement for you.

It is best practice for your employer to have a redundancy policy giving details for any agreed redundancy procedures. Such agreements should give details about retraining, transfers and redeployment. Smaller firms tend to adopt a procedure that simply consists of an intention to consult individual employees, paying particular attention to ways of avoiding or minimising redundancies and to adopting a fair and objective basis for redundancy selection.

CONSULTATION BEFORE REDUNDANCY

The purpose of consultation is to provide an early opportunity for all concerned to share the problem and explore the options. It can stimulate better co-operation between managers and employees, reduce uncertainty and lead to better decision making. When faced with a redundancy situation, trade union or employee representatives or individual employees may be able to suggest acceptable alternative ways of tackling the problem or, if the redundancies are inevitable, ways of minimising hardship.

Consultation is about finding ways of avoiding the dismissals, reducing the numbers of employees to be dismissed, and minimising the effects of

dismissals. Consultation should be undertaken by the employer with a view to reaching an agreement with appropriate representatives.

Further information regarding 'collective redundancy' can be found at the end of this leaflet.

CONSULTATION WITH INDIVIDUALS

Employers should ensure that employees are made aware of any agreed procedure and of the opportunities available for consultation and for making representations. Case law has found dismissals to be unfair where a union has been consulted but not the individual. It is therefore best practice that individuals who are to be made redundant are consulted, because they are more likely to react in a constructive way and may perhaps be able to suggest alternatives to redundancy.

NOTICE OF REDUNDANCY

If your employer decides to make you redundant, you have a statutory right to a minimum period of paid notice. You are entitled to this if you have worked for your employer for at least one month. Your employer must give you at least:

- * One week's notice if you have been employed continuously for one month but less than 2 years.
- * Two weeks' notice if you have been continuously employed for two years.
- * An additional week's notice for each additional complete year you have been employed up to a maximum of 12 weeks (so 3 years service means 3 weeks' notice, 4 years means 4 weeks' notice, and so on).
- * Your contract may oblige your employer to give you more than the minimum notice.
- * You should check what your contract of employment says about redundancy payments as it may state that you are entitled to enhanced redundancy payments.
- * You may be offered pay in lieu (instead) of notice. This may be tax free if not mentioned in your contract. This is a complicated area of law, contact PERS for more information.

* If you resign in writing, after being served with notice of redundancy, stating a date earlier than the date proposed by your employer, you may still be entitled to your full redundancy payment. Seek advice if your employer refuses to accept this.

TIME OFF DURING NOTICE. Once you have been given notice of redundancy, you have the legal right to reasonable **paid** time off to look for work or make arrangements for training. If you are ill or on maternity leave or your employer does not want you to work your notice your employer is still obliged to pay you.

STATUTORY REDUNDANCY PAY

To qualify for a statutory redundancy payment, you must have worked for your employer for 2 years. It does not matter how many hours a week you work.

The amount of your statutory (legal) redundancy payment depends on:

- * How long you have been continuously employed by your employer;
- * How your years of service relate to a particular age band; and
- * Your weekly gross pay.

Your “weekly pay” is what you would normally earn, up to £380 per week (from Oct 2009). This is the statutory maximum set by the Government. It normally changes in February, but due to the recession it increased in Oct 09 and not again till Feb 2011.

For each complete year of continuous service:

Up to the age of 21 you will receive half a week’s pay.

Between the age of 22 and 40 you will receive one week’s pay.

After the age of 41 you will receive one and a half week’s pay.

- * Reckonable service is limited to the last **20** years.
- * You can get up to a maximum of **30** weeks pay.

See the 'Ready Reckoner' to find the number of week's pay you are entitled to.

- * The maximum allowance for a week's pay is £380.
- * Redundancy payments up to **£30,000** are not taxable.
- * If you work irregular hours each week, your redundancy pay should be worked out as an average of your pay in the **12** weeks that you worked before the notice period began. Otherwise, your redundancy pay should be based on your normal pay. If your hours have been reduced temporarily or if you have been sick in the notice period, your redundancy and notice pay should still be based on your *usual* weekly pay.

Some employers pay more than the legal minimum. Check your contract of employment as it may state you are entitled to more than the statutory payments.

Certain absences – for example, caused by sickness, pregnancy or temporary shortage of work and lay off still count towards continuous service even if your contract of employment was suspended. However, days lost through industrial disputes should be discounted when calculating continuous service.

It is often important to know exactly when you have been made redundant or the **Relevant Date of Termination (RDT)**. This date can affect how much redundancy pay you will get. It is **usually** the date you stop working or your notice period ends. If you are paid in lieu of notice the date of termination would be at the beginning of your notice period.

Your employer should make payment soon after you have been dismissed. There is no need to make a claim unless your employer does not pay or tells you that you are not entitled to a payment. If this happens you must take “reasonable” steps to recover this amount. Such steps would be, in the first instance write to your employer, then, if that is unsuccessful, claim at an ET. You must act within 6 months of the RDT or end of your trial period. See 'Alternative Employment' below.

IF YOUR EMPLOYER CANNOT PAY

If your company 'goes bust', you can usually claim a statutory redundancy payment, plus unpaid notice and holiday pay and some unpaid arrears of your wages, from the Redundancy Payments Office (Freephone: 0845 145 00 04). You should be given information about this from your employer's representative (e.g. liquidator or receiver) who is dealing with the firm's closure. If they do not provide you with any information ask them for a claim form RP1. You should fill this in as soon as possible after your employment has ended and send it to the Redundancy Payments Office.

LAY OFF AND SHORT TIME WORKING

If you have been laid off for 4 weeks or on short-time working of less than

half your normal hours and you do not think it is worth waiting to see if the work returns, you may be able to claim a statutory redundancy payment. The rules are complicated. **PERS** has a factsheet about lay offs. It will give you the relevant advice and information about forcing your employer either to make you redundant or to allow you to return to work. Please contact us if you would like a factsheet.

OFFER OF ALTERNATIVE EMPLOYMENT

Employers do not have to make any redundancy payments if they offer you **suitable alternative work**. If you accept alternative employment you are allowed a **4 week trial period** to see if the work is really suitable. This trial period can be extended by **written agreement** where retraining is involved. If you turn the alternative job down before the end of the trial period and you have good reasons for this or are dismissed (for example because you are unable to carry out the duties of the new work or the training), you will be considered to have been made redundant from the date your original employment ended and you **retain your right to a redundancy payment**. NB To be suitable an offer must be made before your notice runs out and must take effect within 4 weeks of the old contract ending. Make sure the offer is in writing. The offer must be from your own or an associated employer. A job with a new employer would not count. If you consider the work is unsuitable, you have the right to turn it down and to claim your redundancy on the same terms as if you had not tried out the alternative work. If at the end of the trial period you are still in the job, you will be considered to have accepted it.

'Unsuitable' work can involve changes in pay, travelling time, skill requirements or status. However, there are no hard and fast rules, each case would be looked at on an individual basis. What may be classed as suitable alternative employment for one employee may be deemed as unsuitable for another. If you and your employer disagree about 'suitability', you can make a claim to an Employment Tribunal (ET). However, if the tribunal finds that the alternative offer *was* in fact 'suitable' and you were unreasonable in refusing it, you will not get your redundancy payment.

TRANSFER OF UNDERTAKINGS

If the firm you work for is sold to a new owner but the business carries on as normal (that is, there has been a transfer of undertaking - TUPE) then you will become the employee of the new owner and keep your continuity

of employment. You should not be made redundant or dismissed as a result of the transfer unless it can be justified for an 'economic, technical or organisational reason'. If you are made redundant as a result of such a transfer and are not sure which employer is liable for your redundancy then it is best to claim against **both employers**. This is a complicated area of law. Contact **PERS** for more information.

UNFAIR SELECTION FOR REDUNDANCY

If you believe you have been unfairly selected for redundancy, or if you think it is not a genuine redundancy situation, you may be able to claim unfair dismissal, provided you have **at least one year's service**. Before you take a claim to an ET, you must submit an appeal/grievance to your employer within **three months of your redundancy**. Remember, it is the job, not the person, that is made redundant. If your job or parts of it are absorbed into the jobs of other workers because of a reorganisation, it probably will be seen as a genuine redundancy. However, if your exact job is given to someone new, then you may have been dismissed, not made redundant.

Fair selection must be based on “reasonable” objective factors or selection criteria; for example, skills and experience of workers, and the needs of the business. It must be verifiable by reference to data such as records of attendance, efficiency and in some cases length of service. The latter method of selection is now becoming less popular because selection by length of service can have a detrimental impact on an employer’s skills base. Employers must take care if they use attendance records as a criteria for selection as it could discriminate against a disabled or a female worker who has had time off work connected with a disability or a pregnancy. It is 'automatically' unfair to select someone for redundancy because of their gender, race, religion, belief, sexual orientation, disability, or because they are pregnant or they work part time or because of a trade union activity.

Please look at **PERS** leaflet No. 11, **Dismissal**, if you think that you have been unfairly selected for redundancy.

EMPLOYEE DIES BEFORE PAYMENT IS MADE

In the event of your death before you receive your redundancy payment, it should be paid to your personal representative.

EMPLOYER DIES BEFORE PAYMENT IS MADE

If your employer dies and he is the only owner of the business and the business stops trading because he or she has died, his personal representative would be responsible for any redundancy payments due. If however the personal representative carries on the business and offers you a new job which is acceptable and starts within eight weeks, you will not be entitled to a redundancy payment.

If you do not make a written claim, or do not apply to an employment tribunal within six months, you may lose your right to a payment.

CHECK LIST

When you leave, your employer should give you:

- * Your redundancy pay
- * Any extra money they have agreed to give you, such as an ex-gratia or severance payment
- * Any payments in lieu of notice
- * Outstanding wages
- * Outstanding holiday pay
- * Any other money due to you eg pension fund
- * Your P45 and any references they have agreed to give you
- * Remember that the employer must follow the minimum **3 step dismissal procedure** (see above)

BENEFITS

Check whether you are entitled to any benefits. These may include Jobseeker's Allowance, Income Support, Working Tax Credit if you or your partner are still working, and help with housing costs and Council Tax. You cannot usually claim benefits until the end of your notice period. However, you should still 'sign on' as soon as you can so that you do not lose any National Insurance credits. Contact your local Jobcentre Plus or Citizens Advice Bureau for more help.

COLLECTIVE REDUNDANCY CONSULTATION

Apart from the good industrial relations benefits of consultation, employers must inform and consult a trade union or an elected employee representative before a 'collective redundancy' - that is, if they propose to dismiss 20 or

more staff by reason of redundancy within a period of 90 days. If the employer proposes to make between 20 and 99 employees redundant, then the consultation should begin at least 30 days before the first dismissal; if they propose to make 100 or more employees redundant, the employer must begin consultation at least 90 days before the first dismissal. Employers are also under an obligation to inform and consult on redundancy even when fewer than 20 employees are being made redundant. This means individual employees should be consulted.

Detailed requirements are laid down in regulations for electing employee representatives in situations where the employer does not recognise a trade union. Employers are required to consult with the ‘appropriate representatives’ of any of the employees who may be affected, directly or indirectly, by the proposed dismissals or by measures taken in connection with those dismissals.

The employer should provide employee representatives with enough information about the employer’s proposals so that they can take a useful and constructive part in the process of consultation. It may be handed to local employee representatives or may be sent by post to an address notified to the employer or, in the case of a trade union, to the address of the union’s head or main office.

An employer must therefore disclose certain information in writing. This should include, the reasons for the proposals; the numbers and descriptions of employees they are proposing to dismiss as redundant; the total number of employees of any such description; the proposed method of selecting the employees; the proposed method of carrying out the dismissals, taking account of any agreed procedure; including the period over which the dismissals are to take effect; the proposed method of calculating any redundancy payments.

An employer should communicate with workers as soon as possible about the situation and proposals to address it, or they may risk a redundant worker taking a case against them for unfair dismissal or for a “protective award”.

FURTHER HELP

The government provides a free **Redundancy Payments Office (RPO)** which can give you advice and information on all aspects of statutory redundancy pay, particularly if your employer is insolvent. You can contact them at:

Redundancy Payments Office - 0845 145 00 04 or
<http://www.insolvency.gov.uk/contactus/rp/officemap.htm>

If you want help looking for work, retraining or further education, contact your local Jobcentre Plus, Careers Service or Education Advice Service for Adults. They should all be listed in the phone book.

This leaflet is intended as a guide and is not a full statement of the law. Please seek advice before taking any action.

PERS has a complaints and comments procedure. Please contact us for a copy if you wish to make a complaint or comment about our services.

Redundancy payments ready reckoner for after 1 October 06

	Service (Years)																			
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
Age																				
18	1	1½	2																	
19	1	1½	2	2½																
20	1	1½	2	2½	3															
21	1	1½	2	2½	3	3½														
22	1	1½	2	2½	3	3½	4													
23	1½	2	2½	3	3½	4	4½	5												
24	2	2½	3	3½	4	4½	5	5½	6											
25	2	3	3½	4	4½	5	5½	6	6½	7										
26	2	3	4	4½	5	5½	6	6½	7	7½	8									
27	2	3	4	5	5½	6	6½	7	7½	8	8½	9								
28	2	3	4	5	6	6½	7	7½	8	8½	9	9½	10							
29	2	3	4	5	6	7	7½	8	8½	9	9½	10	10½	11						
30	2	3	4	5	6	7	8	8½	9	9½	10	10½	11	11½	12					

Service (Years)																			
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Age																			
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11½	12	12½	13			
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12½	13	13½	14		
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13½	14	14½	15	
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14½	15	15½	16
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15½	16	16½
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16½	17
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17½
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61*	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

* The same figures should be used when calculating the redundancy payment for a person aged 61 and above.

PAY & EMPLOYMENT RIGHTS SERVICE

**Unit 14 Batley Enterprise Centre • 513 Bradford Road
Batley • WF17 8LL**

01924 428030

www.pers.org.uk

Telephone advice is available from PERS at the following times:

Monday: 10am to 1pm

Tuesday: 10am to 4pm & 5.30pm to 7.30pm

Wednesday: 10am to 4pm

Thursday: 10am to 4pm

Friday: 10am to 1pm



PERS is an independent charity providing advice, information, training and consultancy on pay and employment rights.

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Company No 2201619
Registered charity 1097401