BIS | Department for Business Innovation & Skills

REDUNDANCY CONSULTATION AND NOTIFICATION

Guidance

2006

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Summary

An employer proposing to make collective redundancies is required to consult in advance with representatives of the affected employees, and to notify the projected redundancies to the Department for Business, Enterprise and Regulatory Reform. A collective redundancy situation arises where twenty or more employees are to be made redundant at one establishment within a period of ninety days or less. Consultation must be completed, before any notices of dismissal are issued to employees. A complaint of failure to consult may be made to an employment tribunal, and must normally be brought within three months of the last of the dismissals. Where a complaint is upheld, the tribunal may make a protective award to employees of up to 90 days' pay. In addition, the Government has made a small legislative change to make clear that notifications to the Department for Business, Enterprise and Regulatory Reform must be made before any redundancy notices are sent to affected employees. This change will be effective from 1 October 2006.

Outline of provisions

Introduction

This document gives general information about the statutory redundancy consultation and notification provisions contained in Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992[1] (TULR(C) A 1992). It also explains how these obligations fit with new duties under the Information and Consultation of Employees Regulations 2004[2]. It is only intended to serve as a guide, and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. In addition, readers should be alert to the possibility of developments in case law that may affect the rights described.

Who is covered by the provisions?

The provisions apply to all employers and employees except those described below. They apply regardless of how long employees have worked for their employer or for how many hours a week they are employed.

Who is not covered by the provisions?

The provisions do not cover:

- anyone who is not an employee - for example, an independent contractor or freelance agent;
- members of the police service and armed forces;
- masters and crew members engaged in share fishing who are paid solely by a share in the profits or gross earnings of a fishing vessel;
- Crown servants and Parliamentary staff;
- employees employed for a fixed term of three months or less, or engaged for a specific task which is not expected to last more than three months, unless in either case the job actually lasts for more than three months.

What is a collective redundancy situation?

A collective redundancy situation arises where an employer proposes to dismiss as redundant twenty or more employees at one establishment within a ninety-day period. For these purposes, the definition of "redundancy" differs slightly from the one used to establish entitlement to statutory redundancy

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[1] the provisions have been amended by the Trade Union Reform and Employment Rights Act 1993, the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 (SI 1995 No. 2587), the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 (SI 1999 No. 1925) and the Collective Redundancies (Amendment) Regualtions 2006 (SI 2006 No. 2387). The provisions implement the EC Collective Redundancies Directive (98/59/EC)

[2] Statutory Instrument 2004 No 3426

payments. It means a dismissal for a reason unrelated to the individual employee concerned. This might occur, for example, where a business or plant closes down, or where an employer no longer needs as many employees to carry out a particular task. It might also occur where dismissals are to take place in a reorganisation or reallocation of work, but where there is no overall reduction in the number employed because the employer is taking on new recruits.

The obligations may apply even when an employer intends to offer alternative employment on different terms and conditions to some or all of the employees, with the result that the number actually dismissed is less than twenty; this will be the case if employees are to be redeployed on such radically different terms and conditions that accepting the new posts amounts to dismissal and re-engagement.

The obligations apply to compulsory redundancies, but in some circumstances may also apply to “voluntary” redundancies if an employee has no real choice whether to stay or to leave. If the employer is contemplating 20 or more redundancies and is not sure whether there will be sufficient volunteers, or whether some of the redundancies can be avoided, then the obligation to consult employees and to notify the Department for Business, Enterprise and Regulatory Reform will apply.

Employers are under no specific legal obligation to consult employee representatives or notify the Department in cases falling below the twenty-redundancies threshold. However, they may be at risk of successful unfair dismissal claims if they fail to warn and consult individual employees who are to be dismissed in such cases, fail to apply dispute resolution procedures when required[3], or fail to adopt a fair basis for selection or to take reasonable steps to redeploy such employees.

Who must be informed and consulted?

An employer proposing to make collective redundancies *must* first consult appropriate representatives of any employees who may be affected by the dismissals (or by measures taken in connection with them). Where those affected are represented by an independent trade union recognised for collective bargaining purposes, the employer must inform and consult an authorised official of that union. This may be a shop steward or a district union official or, if appropriate, a national or regional official. The employer is not required to inform and consult any other employee representatives in such circumstances, but may do so voluntarily if desired. A trade union may be recognised for one group of employees in a company, but not for another.

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[3] See guidance on the Employment Act 2002 (Dispute Resolution Regulations) which came into force in October 2004

Where employees who may be affected by the proposed dismissals, or by measures taken in connection with them, are *not* represented by a trade union as described above, the employer must inform and consult other appropriate representatives of those employees. These may be either existing representatives or new ones specially elected for the purpose. It is the employer's responsibility to ensure that consultation is offered to appropriate representatives. If they are to be existing representatives, their remit and method of election or appointment must give them suitable authority from the employees concerned. For example, where redundancies are to take place among, say, sales staff, it would clearly not be sufficient for the employer to inform and consult a committee of managers set up to consider the operation of a staff canteen; but it would be appropriate to inform and consult representatives elected or appointed as a result of the Information and Consultation of Employees Regulations 2004. It may also be appropriate to inform and consult a committee of employees, such as a works council or staff forum, that is regularly informed or consulted more generally about the business's financial position and/or personnel matters. If the representatives are to be specially elected ones, certain election conditions must be met. These are described below.

In non-union cases, where affected employees fail to elect representatives, having had a genuine opportunity to do so, the employers concerned may fulfil their obligations by providing relevant information to those employees directly.

Employees may be affected by the proposed dismissals, or by measures taken in connection with them, even though they themselves are not to be dismissed. In the event of a dispute, whether or not any particular employee or class of employees was affected would be for an employment tribunal to decide. For further details, see the sections below on 'Redress in cases where employers have failed to meet their information and consultation obligations' and 'Complaints to employment tribunals'.

What are the election rules applying in cases where employee representatives are to be specially elected?

The rules are:

a) The employer shall make such arrangements as are reasonably practical to ensure that the election is fair.

b) The employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees, having regard to the number and classes of those employees.

c) The employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees.

d) Before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable relevant information to be given and consultations to be completed.

e) The candidates for election as employee representatives are affected employees on the date of the election.

f) No affected employee is unreasonably excluded from standing for election.

g) All affected employees on the date of the election are entitled to vote for employee representatives.

h) The employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them; or, if there are to be representatives for particular classes of employees, for as many candidates as there are representatives to be elected to represent their particular class of employee.

i) The election is conducted so as to secure that -

    - so far as is reasonably practicable, those voting do so in secret, and

    - the votes given at the election are accurately counted.

Where an employee representative is elected in accordance with these rules but subsequently ceases to act as such and, in consequence, certain employees are no longer represented, another election should be held satisfying the rules set out at (a), (e), (f) and (i) above.

Is there any minimum period for consultation?

The employer must begin the process of consultation in good time **and complete the process before any redundancy notices are issued**.[4]

In addition, consultation must begin at least:

- thirty days before the first of the dismissals takes effect (that is, when the employment contract is terminated)[5] in a case where between 20 and 99 redundancy dismissals are proposed at one establishment within a period of ninety days or less;

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[4] This point was confirmed by the European Court of Justice in Case C-188/03 Irmtraud Junk v Wolfgang Kühnel. For further guidance please see the section What does this mean in practice?

[5] the 30 day period continues to be counted back from the date when the first of the dismissals takes effect, not from the date when redundancy notices are issued

- ninety days before the first of the dismissals takes effect (that is, when the employment contract is terminated)[6] in a case where 100 or more redundancy dismissals are proposed at one establishment within a period of ninety days or less.

An employer who has already begun consultations about one group of proposed redundancy dismissals and later finds it necessary to make a further group redundant does not have to add the numbers of employees together to calculate the minimum period for either group.

In a case where employee representatives are to be specially elected, the employer will need to ensure that the election is completed and the representatives are in place (having had an opportunity for appropriate training if necessary) in time to allow the consultation process to be completed before any redundancy notices are issued.

Individual periods of notice

Individual notices of dismissal may not normally be issued to employees in a collective redundancy situation until the consultation process has been completed in accordance with these statutory requirements (but see the section below on 'Special circumstances'). The required notice period will depend on what an individual's contract of employment provides for, subject to the minimum periods set out in section 86 of the Employment Rights Act 1996.[7]

What information must be disclosed?

The employee representatives will need enough information about the employer's proposals to be able to take a useful and constructive role in the process of consultation. An employer must therefore disclose certain information *in writing*. This must be:

- handed to each of the appropriate representatives; or
- 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.

The employer must disclose:

- the reasons for the proposals;
- the numbers and descriptions of employees it is proposed to dismiss as redundant;

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[6] the 90 day period continues to be counted back from the date when the first of the dismissals takes effect, not from the date when redundancy notices are issued

[7] at least one week's notice if employed for between one month and two years, one week's notice for each year if employed for between two and twelve years, and twelve weeks' notice if employed for twelve years or more

- the total number of employees of any such description employed by the employer at the establishment in question;
- the proposed method of selecting the employees who may be dismissed;
- 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, other than those required by statute, that the employer proposes to make.

Scope of consultation

The consultation is to include ways of avoiding the redundancy situation or dismissals, of reducing the number of dismissals involved and mitigating the effects of the dismissals. Consultation should be genuine and must be undertaken with a view to reaching agreement with the employees' representatives. Employers and employee representatives should work together to try to find common solutions.

Special circumstances

There may be special circumstances where it is not reasonably practicable for an employer to meet fully the requirements for minimum consultation periods or disclosure of information. In such circumstances, employers must do all that is reasonably practicable toward meeting the requirements.

It does *not* count as 'special circumstances' for these purposes if the decision leading to the redundancies was taken by a controlling body (e.g. a head office or parent company) that had not supplied the necessary information or had not supplied it in time.

Stock Exchange rules

Stock Exchange rules do *not* preclude employee representatives being informed and consulted in advance where collective redundancies are planned in connection with a restructuring (e.g. a plant closure or a takeover) which may involve price sensitive information. Provision can be made for employee representatives to be subject to confidentiality constraints for a specified period, but at the same time be sufficiently informed to hold meaningful consultations with the employer.

Relationship with the Information and Consultation of Employees (I&C) Regulations 2004

The I&C Regulations 2004[8] give employees in larger firms rights to be informed and consulted on an on-going basis about issues in the business they work. This includes decisions on collective redundancies. The rights given by the I & C Regulations are in addition to the consultation rights that

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[8] Statutory Instrument 2004 No. 3426

are the subject of this guidance. An employer proposing to make collective redundancies must comply with the requirements described in this guidance, even if they have established separate consultation arrangements as a result of the I&C Regulations. For example, if a trade union is recognised in respect of employees affected by proposed collective redundancies, the employer must consult representatives of that union, even if there is a separate group of employees' representatives set up as a result of the I&C Regulations. Where there is a separate group of employees' representatives set up as a result of the I&C Regulations, the employer would only have to consult that group if s/he had agreed to do so as part of a 'negotiated agreement' made under the I&C Regulations. An employer who is subject to the standard information and consultation provisions in the I&C Regulations need not consult employees' representatives under those provisions if s/he notifies those representatives in writing on each occasion that the TULR(C)A 1992 consultation duties are triggered that s/he will be consulting under TULR(C)A 1992.

What does the consultation process mean in practice?

(a) When should consultation begin?

Consultation with employee representatives must begin in good time and at least 30 or 90 days before the redundancy notices take effect i.e. the day on which employees actually leave their posts (see below). Consultation must begin when the employer is 'proposing' the redundancies. In other words, he should not have come to a definite decision to make employees redundant and the employee representatives should still be able to influence the outcome. Where the employer is proposing to dismiss between 20 and 99 employees, consultation must begin at least 30 days before the redundancy notices take effect. Where the employer is proposing 100 or more redundancies, the consultation must begin at least 90 days before the redundancy notices take effect. Where there are no employee representatives, the employer should begin the process of electing employee representatives as quickly as possible (discussed above).

(b) When does consultation end?

Statute does not specify a time-limit within which consultations must be completed. This will *always* depend on the circumstances of each case. Whilst consultation must start at least 30 or 90 days before the redundancy notices take effect, it is not necessary that consultation should last for all of that time. Further, where consultation has not been completed by the end of the 30 or 90 day period, employers should continue the consultation beyond the 30 or 90 day period.

However, it is not necessary for the parties to have reached agreement for the consultation to be complete, although it is necessary for both parties to have undertaken genuine consultation *'with a view to reaching agreement'*. This means that the employer should be willing to engage actively with the employee representatives when discussing alternative options. Consultation would normally be expected to cover ways of reducing the redundancies, or of mitigating their effects. For example, consultation may cover alternative work patterns, job share proposals etc. The consultative process should continue until the issues have been aired and parties have had a reasonable amount of time to comment on information provided and the proposals or counter-proposals which have been made. It is important for the employer and employee representatives to show that they have acted reasonably throughout their dealings and it is a good practice for parties to keep signed copies of any meeting minutes. In addition, the speed of the consultative process is likely to depend, among other things, with the amount of resource devoted to it. For example, employee representatives should be able to work more quickly, where they have access to good facilities to undertake their work and communicate smoothly with other employees.

(c) When should redundancy notices be issued?

Redundancy notices can be issued only when the consultation has been *completed*. In other words, the consultation has either resulted in agreement with employee representatives, or has otherwise reached its conclusion. If consultation has been completed within the 30 or 90 day period, the employer

may issue the notices at that point. As referred to above, employers should consult beyond the 30 or 90 day minimum where the consultations are not yet complete.

(d) When do the redundancy notices take effect?

Redundancy notices take *effect* at the end of the employee's contractual or statutory notice period (whichever is the greater).[9] The redundancy notices do not take effect at the time that they have been served upon the employee. Therefore, the date from the beginning of the consultation to when the employee is actually made redundant (if appropriate) must be *at least* 30 or 90 days, but in some cases it could be longer where the combination of the consultation and the notice exceeds the period.

This timetable can be shortened where an employee might have decided to leave early or take voluntary redundancy. For example, employment can be terminated before the end of the statutory or contractual notice period where an employee has agreed to take a payment in lieu of notice.

Hypothetical examples of the consultation timetable

Example 1: An employer is proposing to make 25 employees redundant, at one establishment over a period of 90 days. The minimum period between when consultation must begin and when the any redundancies take effect is therefore 30 days. Although both parties undertake meaningful consultation, it is not complete until day 45. At this point, the employer may issue employees with their notices of dismissal.

The actual period for the redundancies to take effect would vary according to the circumstances of individual employees. For example, Employee A[10] has been with the business for just 2 months and his contract of employment does not refer to a notice period. However the statutory minimum notice period is one week, which means that the minimum period before the redundancy can take effect is 52 days (45 days consultation plus 7 days notice). Employee B has been with the company for 13 years and his contract of employment contains a 28 day notice period. However, the minimum statutory notice period for an employee with at least 12 years' continuous employment is 12 weeks (84 days). This means that the minimum period before the redundancy can take effect is 129 days (45 days plus 84 days).

Example 2: An employer is proposing to make 125 employees redundant, at one establishment over a period of 90 days. The minimum period between when consultation must begin and when any of the redundancies take effect is therefore 90 days. The consultations are concluded after 65 days with an

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[9] S86 of the Employment Rights Act 1986 provides for minimum periods of notice where an employee has been continuously employed for a period of one month or more. Further guidance on notice periods can be found at: Rights to notice and reasons for dismissal.

[10] Neither Employee A or B has accepted payments in lieu or otherwise agreed to leave early

agreement to reduce the number of redundancies to 100. The employer may then issue the notices of dismissal.

Again, the actual period for the redundancies to take effect would vary according to the circumstances of individual employees. For example,

Employee A[11] has been with the business for 5 years, but his contractual notice of employment is 6 weeks (42 days). In this case, the minimum period before the redundancy notice can take effect will be 107 days. In practice, the employer and employee may agree to terminate the relationship earlier than this).

Employee B has worked with the business for 10 years and also has a 6 weeks contractual notice period (42 days). However, because he has worked for 10 years, his statutory notice period of 70 days is greater than his individual notice period. Therefore, the earliest period the redundancy can take effect is 135 days (65 days plus 70 days).

[11] Neither Employee A or B has accepted payments in lieu or otherwise agreed to leave early

Rights of employees and their representatives

Introduction

Employees and their representatives have certain rights and protections to enable them to participate fully, effectively and without fear of victimisation in the process of consultation. These are described below.

Protection against unfair dismissal and other detrimental treatment

It is automatically unfair for the employer to dismiss any employees wholly or mainly because of:

- their participation as a candidate in an election;
- their status or activities as representatives;

It is also unlawful for the employer to take other detrimental action, short of dismissal, against any employees on these grounds.

Access and facilities

The employer is required to allow employee representatives reasonable access to their constituent employees and to such accommodation and other facilities.. What is appropriate will vary according to the circumstances but it is important for employers to recognise that communication systems vary from workplace to workplace, and it might be appropriate for an employer to provide the representative with workspace, access to telephone and email etc in order to carry out their consultation duties.

Right to reasonable time off with pay

Employee representatives - whether trade union or not - have a statutory right to reasonable time off with pay during their normal working hours to perform their functions, and also to undergo appropriate training to enable them to do so. The legislation does not specify the amount of time off that it is reasonable to allow since this will vary according to the circumstances. Payment should be at the appropriate hourly rate for the period of absence from work. This is normally arrived at by dividing the amount of a week’s pay by the number of normal working hours in the week.

Redress where rights of employee representatives are infringed

Representatives or candidates who are dismissed or subjected to a detriment as a result of their activities may make a complaint to an employment tribunal (see section of this document on complaints to employment tribunals for further details). A complaint will not normally be considered unless it is made within three months of the date when the alleged infringement occurred (although in exceptional cases where the tribunal considers that it was not reasonably practicable for a complaint to be made in time it can allow a longer period).

If the tribunal finds that a dismissal was unfair, it may order the employer to reinstate or re-engage the employee or make an appropriate award of compensation. If it finds that other unlawful detrimental treatment occurred, it may order that compensation be paid.

If the tribunal finds that the employer has failed to allow employee representatives reasonable access or appropriate facilities, it shall make a declaration to that effect and may make a ‘protective award’ of compensation (see section of this document on redress in cases where employers have failed to meet their information and consultation obligations for further details).

If the tribunal finds that a representative was unreasonably refused time off, it shall make a declaration to that effect and award to the representative an amount equal to the pay to which he or she would have been entitled if time off had not been refused. If the tribunal finds that a representative did not receive appropriate pay for time off, it shall order the employer to pay the amount due.

Redress in cases where employers have failed to meet their information and consultation obligations

Introduction

An employee may make a complaint to an employment tribunal that an employer has failed to meet the requirements under TULR(C) A to inform and consult (see section of this document on complaints to employment tribunals for further details). Complaints about a failure relating to the election of employee representatives may be made by any of the affected employees or by any of the employees who have been dismissed as redundant. A complaint about any other failure relating to employee representatives may be made by any of the representatives to whom the failure related. A complaint about a failure relating to trade union representatives may be made by the trade union. In any other case, a complaint may be made by any of the affected employees or by any of the employees who have been dismissed as redundant

A complaint will not normally be considered unless it is made within three months of the date on which the last of the dismissals takes effect (although in exceptional cases where the tribunal considers that it was not reasonably practicable for a complaint to be made in time it can allow a longer period).

Where the tribunal finds a complaint justified it will make a declaration to that effect. In appropriate cases, whether or not the employees are still employed, the tribunal may take steps to safeguard the employees' remuneration by making a 'protective award'. It can do this at the same time as it makes the declaration or later, after a further application to the tribunal.

Protective award

The employer is required to pay employees covered by a protective award their normal week's pay for each week of a specified period, known as the protected period, regardless of whether or not they are still working. To be covered by an award, they must be employees whom the employer plans to dismiss or has already dismissed as redundant and they must be employees in whose case the employer has failed to comply with the consultation requirements under TULR(C) A. The protected period will begin with the date on which the first dismissal takes effect or the date of the tribunal award - whichever is earlier. The length of the period will be determined by the tribunal, taking into account the extent of the employer's failure to consult and any extenuating circumstances. It is however subject to an upper limit of ninety days in all cases.

How is 'a week's pay' calculated for these purposes?

A week's pay is calculated by reference to a certain date which is known as the 'calculation date'.

The calculation date for computing payments under a protective award is:

- where the employee is dismissed before the date of the award - the same date as the calculation date for computing a redundancy payment, whether or not the employee is entitled to a redundancy payment;

- where the employee is still in employment - the date on which the award was made.

The method of calculation is similar to that used for the purposes of statutory redundancy payments.

The payment under the protective is in addition to any payment that an employee is entitled to under a contract of employment (or as damages for breach of that contract) for any part of the protected period.

Cases where employee has received Jobseeker's Allowance or income support

The employer must deduct from the award and repay to the Department for Work and Pensions an amount equivalent to any Jobseeker's Allowance or income support that the employee has received for any part of the protected period. The tribunal, when it makes the protective award, will advise the employer that certain information should be sent to the nearest Jobcentre Plus office within a specified period. On receipt of this information the Jobcentre Plus will advise the employer on a document called a 'recoupment notice' of the amount of benefit that has been paid. A copy of this notice will be given to the employee. Only after the employer has received this notice, or a letter stating that recoupment is not appropriate, can any part of the award be paid to the employee.

Conditions of entitlement

Employees who are still employed will be paid under a protective award only when they would be entitled to be paid under their contract of employment or under their statutory rights during a period of notice. For this purpose the whole remaining part of their employment is treated as if it were a statutory period of notice. This means that employees who go on strike, or are absent from work without good reason, or are granted unpaid leave at their own request, or have time off from work under certain provisions of the Employment Rights Act 1996, will not be entitled to payment. But employees who are absent under contractual holiday arrangements, or because they are ill, because of pregnancy or childbirth, or because of adoption, parental or paternity leave will be entitled to payment. They will also be entitled to payment during any period where the employer has no work available for them.

Employees who are fairly dismissed for a reason other than redundancy, or who give up their job during the protected period without good reason will, however, lose their right to payment for the rest of the protected period.

Offer of renewed or new employment

An employer may offer an employee re-engagement, either in the old job or in different but apparently suitable work, before the end of the protected period.

An employee who refuses such an offer without good reason will lose the right to payment for the rest of the protected period.

Right to a trial period

An employee who accepts an offer of alternative work is allowed a trial period to see if the work is really suitable. For the purposes of calculating continuity of employment this trial period is regarded as starting from when the employee's old job ends even where there is in fact a gap between jobs. The trial period will normally continue for four weeks after the employee starts work but may be extended by agreement between employer and employee in order to retrain the employee for the new work. Employees who leave their work with good reason or who are dismissed (for example because they are unable to carry out the duties of the new work or the training) during the trial period retain their rights to payment under the protective award. If, however, they give up the work or training without adequate reason or the employer dismisses them fairly for reasons unconnected with the changed terms of employment - misconduct, for example - they will lose their right to payment for the rest of the protected period.

Extension of trial period for retraining

The trial period may be extended to retrain the employee for the new work, by agreement between the employer and the employee. Such agreements must be made before the employee starts the new work; must be in writing; and must specify the date that the trial period ends and terms and conditions of employment that will apply after that date.

Employees have a right to a trial period if they start a different job with their employer at any time during the protected period and it makes no difference whether the employer offers them work before or after the end of the old job.

What redress is available if an employer fails to pay money due under a protective award?

If an employer fails to pay money due to an employee under a protective award, the employee has a right to complain to an employment tribunal. (See Section of this document *Complaints to employment tribunals for further details*).

A complaint must normally be made within three months of the last day for which there has been an alleged failure to pay (although in exceptional cases where the tribunal considers that it was not reasonably practicable for a complaint to be made in time it can allow a longer period).

If the tribunal is satisfied that the complaint is justified it will order the employer to pay the employee or employees concerned the money due to them under the award.

Notification to the Department for Business, Enterprise and Regulatory Reform

Introduction

An employer who proposes to dismiss twenty or more employees as redundant at one establishment within a period of ninety days or less has a statutory duty to notify the Secretary of State for Department for Business, Enterprise and Regulatory Reform. This is so that government departments and agencies and the Jobcentre Plus Rapid Response Service can be alerted and prepared to take any appropriate measures to assist or retrain the employees in question. The same definition of a collective redundancy situation apples as for the consultation obligations - see section of this document: *What is a collective redundancy situation?*

Is there any minimum period for notification?

A notification must be made a specified minimum time before the first dismissal takes effect. In addition, from 1st October 2006 employers will also be required to notify the Secretary of State before giving notice to terminate an employees contract.[12] The date of notification is the date on which it is received by the Department for Business, Enterprise and Regulatory Reform.

The minimum times are:

- if between twenty and ninety-nine employees may be dismissed as redundant at one establishment within a period of ninety days or less - at least thirty days and in any event, before giving notice to terminate an employees contract;

- if one hundred or more employees may be dismissed as redundant at one establishment within a period of ninety days or less- at least ninety days and in any event, before giving notice to terminate an employees contract.

These periods are the same as the minimum periods permitted for consultation with employee representatives. An employer who has already notified one group of proposed redundancy dismissals and later finds it necessary to make a further group does not have to add the numbers of employees together to calculate the minimum period for either group. There is no obligation to notify redundancies of fewer than twenty employees within a period of ninety days or less, but employers may nevertheless wish to consider doing so in borderline cases - particularly if the numbers involved are uncertain.

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[12] This is to reflect the decision of the European Court of Justice in Case C-188/03 Irmtraud Junk v Wolfgang Kühnel. Section 193 of the Trade Union and Labour Relations (Consolidation) Act 1992 has been amended by the Collective Redundancies (Amendment) Regulations 2006 SI 2006/2387

What information must be disclosed in the notification?

The Department for Business, Enterprise and Regulatory Reform requires information in writing about the employer's proposals. Employers may notify by letter or by form HR1, which can be obtained from any Redundancy Payments Office. The information required is similar to that which the employer must disclose to employee representatives for consultation purposes (see section on employers' information and consultation obligations of this document). In addition, the notification must state when and with whom such consultation began.

The notification should be sent by post or delivered by hand to the office indicated on form HR1. If the employer's proposals change significantly after the notification has been given - for example, if the numbers to be dismissed increase by twenty or more or if the dismissal dates are to be brought forward or delayed - the Department should be informed. Employers must give or send a copy of the notification to the representatives with whom they are required to consult about the proposed redundancies. The Secretary of State has powers to obtain further information if necessary. When notification has been received in the form required, a formal acknowledgement will be sent to the employer.

Special circumstances

There may be special circumstances where it is not reasonably practicable for the employer to meet fully the requirements for minimum notification periods. In such circumstances, the employer must take all reasonably practicable steps toward meeting the requirements and explain why they cannot be met in full. However, it is not sufficient simply to state that it was not possible to comply because a controlling body (e.g. a head office or parent company) had not supplied the necessary information or had not supplied it in time.

Penalty for non-compliance

If an employer fails to give the required notification to the Department, the Secretary of State may institute legal proceedings that could lead, on summary conviction, to a fine of up to £5,000 (this upper limit is subject to review from time to time).

Complaints to employment tribunals

Application forms and explanatory leaflets for making employment tribunal complaints may be obtained from any local Jobcentre Plus office. Advice may also be obtained from the Advisory, Conciliation and Arbitration Service (Acas). When the tribunal receives the completed application form it will send a copy of it to an Acas conciliator who, if conciliation is possible, will attempt to get both sides to reach a settlement. Information given to a conciliator in the course of his or her duties is treated as confidential. It may not be divulged to the tribunal without the consent of the person who gave it. If no settlement is reached, the tribunal will hear the case. Hearings are conducted informally. The parties may claim travelling and other expenses, including loss of earnings, within certain limits. They have the option to be represented by a solicitor or by any other person of their choosing, such as an official of a trade union or an employers' association. Such representation is not required, however.

Further information

The Department for Business, Enterprise and Regulatory Reform's Redundancy Payments Service (RPS) administers the notification provisions and can give more information. The address to contact is:

The Insolvency Service
Redundancy Payments Office
Cobalt Square
83-85 Hagley Road
Edgbaston
Birmingham
B16 8QG

Helpline: 0845 145 0004

The Advisory, Conciliation and Arbitration Service (Acas) can help with queries about informing and consulting employee representatives.

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