

Redundancy

Is it genuine and how can you challenge this?

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With redundancies still commonplace, many employees are choosing to challenge their redundancy or redundancy payout knowing that it may be a long time before they secure another position. It is worth reflecting on the legal conditions that make a redundancy genuine. If you lose your job and there is a failure by your employer to follow a correct process, this could put you in a strong bargaining position to demand an enhanced redundancy. You ultimately have the right to apply to an employment tribunal for compensation.

If there is to be a genuine and legally watertight redundancy, the following must apply:

1. Your old job must have disappeared.

If you are dismissed because of redundancy, this means that your employer needs to reduce the number of staff that are employed. This will be either because the place where you work is closing down, or because there is no longer the need (or expected to be the need) for you to carry out the particular kind of work that you do. Normally your job must have disappeared. It is not a credible redundancy if your employer immediately takes on a direct replacement for you working full time in your old role. It is acceptable though, for your employer to amalgamate your role with a number of different roles so a new position is created, and have someone else chosen to work in that position.

2. Your employer must properly consult with you.

Consultation must be carried out within a reasonable time and should not be a mechanical exercise where a decision is presented to an employee as a mere formality. Where more than 100 people are being made redundant within 90 days from the same establishment (this can mean within the same department in which you work), there is a minimum consultation period of 90 days before the first dismissal can be made and notices of redundancy sent out. This reduces to 30 days where between 20 and 99 staff are being let go. Some employers will choose to pay an additional lump sum within the redundancy package to reflect this minimum consultation periods rather than go through the actual process.

They would otherwise be ordered to pay this sum anyway as a penalty by the employment tribunal. Consultations must be completed before notices of dismissal are sent out.

3. The process that selected you for redundancy must be fair and transparent.

You should be selected in accordance with any customary arrangement or agreed procedure. If no such arrangement or procedure exists, there should be a transparent selection process which means scoring employees against a range of criteria, such as performance and leadership skills, length of service and future potential to your employer.

It is not usually acceptable to make someone redundant solely on the grounds of their cost unless they have been offered the chance to reduce their salary first. You are entitled to see the selection criteria used and the scorings of you and your colleagues, although the actual names of your colleagues can be blanked out for data protection reasons.

4. You should be considered for suitable alternative jobs.

Your employer must consider what other roles could be available and whether it is practical to retrain you for that position. You should not adopt a passive role in this regard. Many employers will not be forthcoming in providing alternative roles even where they clearly exist. If you are aware of such role, then bring this to the attention of your employer and make it clear you would like to apply for it. Failure by the employer to properly consider this could give you a right to claim unfair dismissal.

5. Right to appeal.

Finally, you should be given the right to appeal the redundancy after you have been dismissed. There is usually a period of up to 5 days for you lodge an appeal asking for your employer to reconsider the redundancy, although you must have reasonable grounds for doing so. You will not be surprised to hear that the majority of appeals are not successful. Employers seem to have a knack of always being able to justify the decision by commercial necessity.

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Are you able to challenge the redundancy payment offered to you?

The simple answer is, yes, and this is often the far better route for both employers and employees as it provides finality for both. Most challenges for an enhanced payment will be based upon a failure by the employer to follow all or part of the above process. The same challenges are of course, used for an appeal.

The main challenges I see at present are based on an employers failure to properly select the employee who is to be made redundant. It is easy for an employee to say that the employer has selected the wrong person and that employee has never been picked up on his or her work for example- and this can often be justified on the evidence. The difficulty which ultimately arises for that employee however is where an objective selection criteria and scoring has been implemented, a tribunal would be reluctant to overturn this unless it was blatantly a sham.

An additional challenge that is often made is on the basis that you have not been offered what is the custom and practice of payments previously (or presently) made to other staff. Employers are usually bound by such custom and practice.

There are also some employees whose positions are clearly not redundant at all. The real reason for their dismissal may be more down to other factors such as a breakdown of relationship with a line manager, performance issues never previously brought to the attention of that employee, or where there has been long-terms sickness. Some employers will take advantage of the harsh economic times and utilise the redundancy label to have a wider shake up of staff rather than go through the more difficult task of getting rid of people on other grounds.

As always, be aware of your rights and seek professional advice at an early stage. Employers can be receptive to negotiations on the level of redundancy payout where a credible argument by the employee can be made. They will not particularly want their former employees pursuing employment tribunal cases, which will not be great for their reputation with existing staff or in the wider public forum. At the same time, it is fair to say that in these harsh economic times, many employers have little difficulty in justifying the need to cut staff- even if a full correct process was not followed. You will often be faced with credible justifications from your employer . Don't forget you only have a period of 3 months from the termination of your employment in which to make a claim to an employment tribunal otherwise that right will be lost for good. It is amazing how many times I am approached with someone who has been stewing over their dismissal for 6 months or longer before seeking legal advice, and who might otherwise have had a good claim.

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