



# GUIDE TO REDUNDANCY PROCEDURES

## Notification to the Department for Business Enterprise and Regulatory Reform (BERR)

An employer proposing to dismiss as redundant between 20 and 99 employees at one establishment, within a period of 90 days or less, is required to notify BERR in writing of the proposal at least 30 days before the first of the dismissals takes effect. For 100 or more proposed redundancies at one establishment, within a period of 90 days or less, notification must be at least 90 days before the first of the dismissals takes effect. Notification must be made before any redundancy notices are sent to employees. There is a standard form on which to notify BERR.

Unless there are special circumstances which mean that the employer could not comply with this requirement, the employer is liable to conviction and to a fine of up to £5,000 for failure to notify. Even if there are special circumstances, the employer must still do what it can to comply with the notification requirement.

## Collective Consultation

Where an employer is proposing to dismiss as redundant between 20 and 99 employees at one establishment, within a period of 90 days or less, it must start consulting with appropriate representatives in good time and at least 30 days before the first dismissal

takes effect. For 100 or more proposed redundancies at one establishment, within a period of 90 days or less, consultation must begin at least 90 days before the first dismissal takes effect. Even if the employer is proposing to offer alternative employment to some or all of the employees, these employees count towards the numbers affected and the collective consultation requirements will be triggered. The employer should complete the consultation before giving any notices of dismissal.

The appropriate representatives are union representatives (where there is a recognised trade union for the category of employees affected), other existing representatives appropriate and authorised for this purpose, or specially elected representatives. If representatives have to be elected, this must be borne in mind when managing the 30 (or 90) day timetable referred to above. There are conditions laid down by statute for the conduct of elections, eg the representatives should themselves be affected employees. It is the employer's responsibility to ensure a fair election.

The consultation should cover ways of:

- avoiding the dismissals;
- reducing the number of employees to be dismissed;

- mitigating the consequences of the dismissal;

and should be undertaken by the employer with a view to reaching agreement with the appropriate representatives. This requirement, however, only means that the consultation should be conducted in good faith with these objectives in mind, rather than there being any obligation on the part of the employer to accept the position or proposals of the representatives.

For the purposes of consultation, the employer should disclose in writing to the appropriate representatives:

- the reasons for its proposals;
- the numbers and descriptions of employees whom it proposes to dismiss as redundant;
- 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, with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and

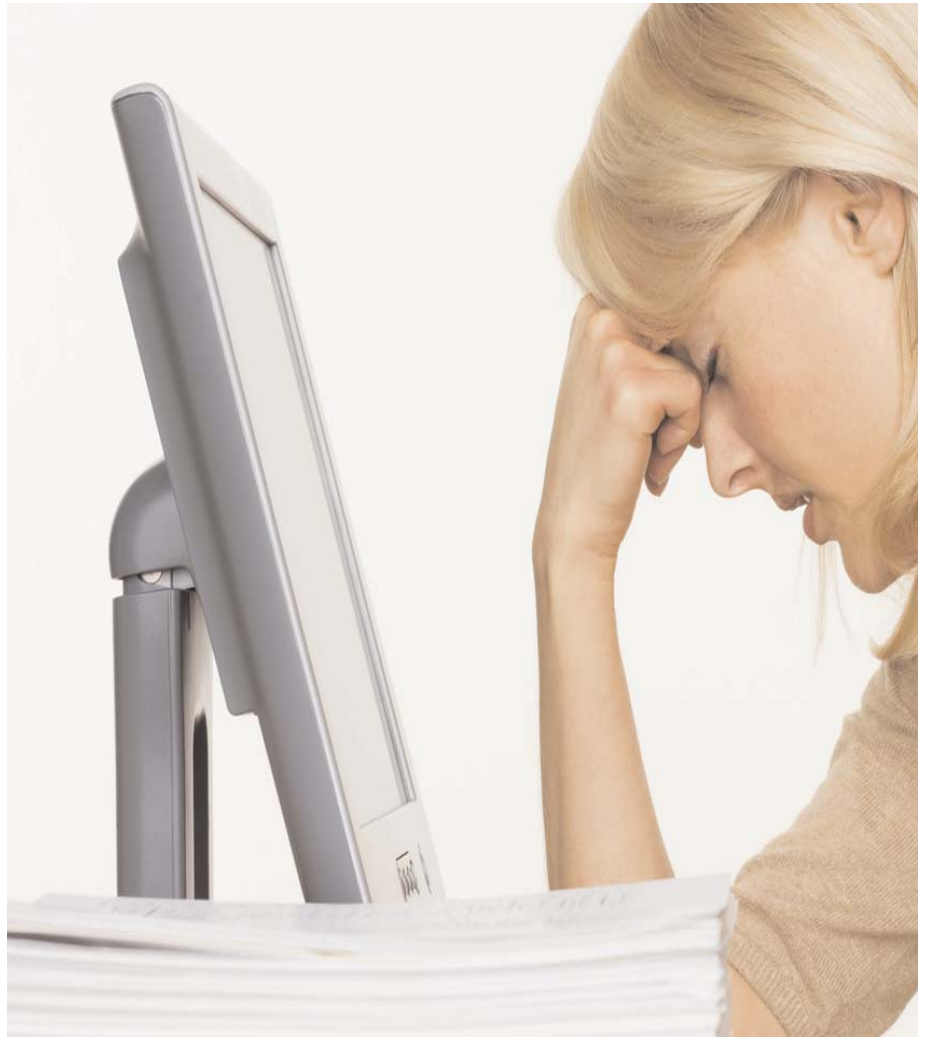
- the proposed method of calculating the amount of any redundancy payment (over and above statutory redundancy payments).

Bearing in mind that consultation should begin 30 (or 90) days before the first dismissal takes effect, this information should be provided at the earliest opportunity. Failure to comply with these obligations can lead to tribunal claims and awards of up to 90 days' pay per employee. Again a "special circumstances" defence is available, for example if the employer had to act quickly and a full 30 (or 90) day consultation would have made a material difference to the employer's position. Again, the employer must still do what it can. The introduction of the Information and Consultation of Employees Regulations 2004 means that employers may now have a duty to collectively consult employee representatives about issues which may give rise to a redundancy situation at a much earlier stage.

### Individual Consultation

Parallel with the obligations of collective consultation set out above, every employee with at least a year's continuous service has an individual right not to be unfairly dismissed. In relation to redundancy this involves warning and consulting with the individual about the proposal to terminate his/her contract by reason of redundancy before notice of such termination is given. The two forms of consultation (individual and collective) can be conducted simultaneously.

There is no fixed period of consultation required with an employee before notice of termination by reason of redundancy is given. The progress in the collective consultation, however, particularly insofar as it relates to the proposed method of any



selection that has to take place, may have an effect on the timing of consultation with individuals. The consultation of individuals should involve an explanation of, and opportunity to challenge, how the employee has been selected and the consideration of possible alternative employment.

When conducting individual consultation employers should follow the minimum statutory procedures for dealing with dismissals under The Employment Act 2002 (Dispute Resolution) Regulations 2004. The employer should put the reasons why it is

considering dismissal in writing, arrange a face to face meeting with the employee and then inform the employee of its decision and of his/her right to appeal. An appeal meeting should be held and the employee should be informed of the outcome of that appeal.

**This Guide is intended to be a general guide to redundancy procedures. If you have any specific questions about your own circumstances, please contact a member of our Martineau's Employment & Pensions Group for definitive advice on T: +44(0)870 763 2000 or E: jane.byford@martineau-uk.com**