

# Labour Relations Agency

**Improving employment relations**

## Advice on handling redundancy

October 2007

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We have written this guide to help anyone dealing with or affected by redundancy. It gives unbiased advice to employers, employees and their representatives. We have provided legal information for guidance only, so you should not consider it to be a complete statement of the law. It may be wise to get legal advice.

## **Contents**

	<b>Page</b>
<b>Introduction</b>	<b>5</b>
<b>Redundancy</b>	<b>5</b>
<b>Avoiding redundancies</b>	<b>7</b>
<b>Setting up a redundancy procedure</b>	<b>7</b>
<b>Contents of a redundancy procedure</b>	<b>8</b>
<b>The advantages of an agreed redundancy procedure</b>	<b>9</b>
<b>The procedure in practice</b>	<b>10</b>
<b>The advantages of consultation</b>	<b>10</b>
<b>Consultation – legal responsibilities</b>	<b>11</b>
<b>The Information and Consultation of Employees Regulations (Northern Ireland) 2005</b>	<b>12</b>
<b>Consultation – good practice</b>	<b>12</b>
<b>Consultation with individuals</b>	<b>13</b>
<b>Giving information – legal responsibilities</b>	<b>13</b>
<b>Further areas for consultation – good practice</b>	<b>14</b>
<b>Failure to consult</b>	<b>14</b>
<b>Protective award</b>	<b>15</b>
<b>Rights of employees’ representatives</b>	<b>15</b>
<b>Selection criteria</b>	<b>16</b>
<b>The importance of being unbiased</b>	<b>16</b>
<b>Unfair selection for redundancy</b>	<b>17</b>
<b>Statutory disciplinary and dismissal procedures</b>	<b>19</b>
<b>Non-compulsory selection criteria</b>	<b>20</b>
<b>Compulsory selection criteria</b>	<b>20</b>

<b>Applying the selection criteria</b>	<b>21</b>
<b>Appeals procedure</b>	<b>22</b>
<b>Suitable alternative work</b>	<b>22</b>
<b>The offer</b>	<b>23</b>
<b>Trial period</b>	<b>24</b>
<b>Time off to look for new work, or for training</b>	<b>24</b>
<b>Other help available</b>	<b>25</b>
<b>Notes</b>	<b>26</b>
<b>Appendix 1 Redundancy agreements: a checklist</b>	<b>28</b>
<b>Appendix 2 An outline of redundancy payments</b>	<b>32</b>
<b>Appendix 3 An outline of redundancy law</b>	<b>35</b>
<b>Where to get advice and more information</b>	<b>36</b>

## Introduction

To become or continue to be successful, organisations need to:

- constantly review their products and methods of work;
- successfully apply new technology; and
- review their current staff levels.

The ability to continue to be competitive in world markets depends on this. However, it is inevitable that staff will sometimes have to be moved to another department within the organisation or made redundant. A poorly thought-out approach to managing change can result in uncertainty, which affects the organisation's performance and, if redundancies cannot be avoided, may lead to financial and emotional costs to the people affected.

The aim of this guide is to provide guidance for employers, trade unions and employee representatives on the best way to handle redundancies. The guide emphasises the importance of:

- planning work and staffing levels to avoid or to reduce the need for redundancies;
- having an agreed procedure for handling redundancies; and
- being fair and consistent when deciding which employees should be made redundant.

This guide covers the possibility of offering redundant employees other work, counselling or other help. We hope that the guide will help improve employment relations by making sure that as few people as possible are made redundant, and that where redundancies are unavoidable, decisions are made fairly and consistently.

However, this booklet is not a guide to current law on redundancy (see note 1 on page 26). In particular, it is not intended to give advice on the rights of employees when businesses are transferred or sold. Guidance on this can be found in the Department for Employment and Learning's employment rights booklet 11, 'Employment rights on the transfer of an undertaking'.

## Redundancy

Redundancy has two different meanings for the purposes of employment law in Northern Ireland. One meaning is used for entitlement to redundancy payments and the other meaning is used for the right to be consulted.

For entitlement to redundancy payments, under the Employment Rights (Northern Ireland) Order 1996, redundancy arises when employees are dismissed because:

- the employer has stopped, or plans to stop, carrying on the business for the purpose which the employee was employed for;
- the employer has stopped, or plans to stop, carrying on the business in the place where the employee was employed;
- the business no longer needs as many employees to carry out particular kinds of work, or this is likely to be the case in the future;
- the business no longer needs as many employees to carry out particular kinds of work in the place where the employees were employed, or this is likely to be the case in the future.

For the purposes of the right to be consulted, which applies when an employer plans to make 20 or more employees redundant over 90 days or less, the law defines redundancy as: 'dismissal for a reason not related to the individual concerned or for a number of reasons all of which are not so related'. This definition might include, for example, a situation where redundancies are not related to the behaviour or capability of the individuals but are part of a reorganisation where there is no reduction in the overall number of people employed because the employer has recruited new staff.

If an employer is considering making an employee redundant, they must follow a standard dismissal procedure as set out in the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004. This involves:

- writing to the employee;
- setting out the reasons for the redundancy;
- meeting the employee to discuss the redundancy; and
- holding an appeal if the employee asks for one.

The procedure does not apply to some collective redundancies. For more information, visit the Department for Employment and Learning's website at [www.delni.gov.uk](http://www.delni.gov.uk), and the Labour Relations Agency's website at [www.lra.org.uk](http://www.lra.org.uk) for the code of practice on disciplinary and grievance procedures.

## Avoiding redundancies

Management is responsible for deciding the size and most efficient use of the workforce. By carefully developing a strategy for managing human resources:

- the organisation will be disrupted as little as possible;
- job losses will be avoided or reduced; and
- the process of change will be managed effectively.

Effective human resource planning can help to work out existing and future staffing needs. This can improve job security for employees and avoid short-term solutions which are inconsistent with longer-term needs.

Management should consult recognised trade unions or employee representatives about the effect on staff of measures designed to improve efficiency. It is important to make sure that everyone concerned understands these measures and that there is no uncertainty about future employment. This could be done through a joint consultative committee, works council or other similar representative group. Matters such as staffing levels, company expansion or ways to make the organisation more efficient, should be discussed through these groups.

Such a committee would normally meet regularly and consider information on the organisation's current performance, trading position and future plans, so trade union or employee representatives can monitor the need for changes in the size of the workforce.

It is also good practice to provide appropriate information for individual employees when it is needed. This is particularly important where there are no recognised trade union or employee representatives.

## Setting up a redundancy procedure

Employers normally deal with redundancies in one of the following three ways.

- **An 'ad hoc' approach** where there are no formal arrangements, with the practice varying according to the circumstances of each redundancy.
- **A formal policy** setting out the approach management will follow when considering redundancies. In these cases, the trade union or employee representatives will not have agreed the contents of the policy.

- **A formal agreement** setting out the procedure to follow when considering redundancies. The procedure will be the result of negotiation and agreement between management and trade union or employee representatives.

In the interests of good employment relations, it will be sensible to consider setting up a formal procedure on redundancy. Management will normally be responsible for this, but they should aim to involve trade union officials, employees and their representatives.

If possible, the procedure should be drawn up before redundancies need to be considered, so that the people involved can think about the long-term considerations rather than having to deal with immediate issues. Employers should make sure that all employees know about the procedure, perhaps by including details in the company handbook.

All employers should produce a formal policy on redundancy as this will help to make sure that employees know the procedure to be followed before redundancies are necessary. Whichever approach is followed should be a reasonable one. If employers do not follow appropriate and reasonable procedures, they may be liable for claims of unfair dismissal, even if they have good reasons for dismissing employees.

## **Contents of a redundancy procedure**

We recommend full and effective consultation when drawing up a redundancy procedure. This will:

- prevent unjustified fears and suspicions;
- avoid people thinking that members of staff are going to be made redundant very soon; and
- allow trade union and employee representatives to contribute their views and ideas.

Depending on the size and type of organisation, the contents of a formal procedure on redundancy would normally contain the following information.

- An introductory statement about maintaining job security, wherever possible.
- Details of the consultation arrangements with any trade union or employee representatives (see the section on consultation).
- The measures for reducing or avoiding compulsory redundancies.

- General guidance on the selection criteria to be used where redundancy cannot be avoided (see the section on selection criteria).
- Details of the severance terms (compensation paid by the employer to an employee whose employment is ended because their job no longer exists – see note 2 on page 26).
- Details of any relocation expenses.
- Details of any conditions that are difficult to cope with (for example, possible loss of pay).
- Details of appeals procedures.
- The policy on helping redundant employees receive training or search for other work.

The measures for reducing or avoiding compulsory redundancies may include:

- achieving a reduction in the number of employees by not replacing those who leave;
- restrictions on recruitment;
- the possibility of job share;
- retraining and moving staff to other parts of the organisation (see the section 'Help to find other work');
- reducing or removing the need for overtime;
- introducing short-time working or temporary lay-off (see note 3 on page 26), where this is provided for in the contract of employment or by an agreed change to its terms; and
- looking for people to take early retirement or voluntary redundancy.

## **The advantages of an agreed redundancy procedure**

For management, a redundancy procedure provides a joint agreement for avoiding or reducing redundancies, and for making people redundant when this is inevitable. It reduces both the likelihood of conflict and the possibility of misunderstanding. It also encourages better planning and helps the process of change, for example, when new technology is being introduced.

For employees, and their trade union or employee representatives, the advantage of an agreed procedure is that it will help to make sure they are treated fairly. An agreement giving details about retraining and transfers shows the company's commitment to continued employment and concern for the welfare of its employees. It is likely to reduce the fear of the unknown and increase the sense of stability and security of employment. It gives the trade

union an opportunity to influence management policy by agreeing the measures to be followed to avoid or reduce redundancies.

## **The procedure in practice**

The procedure needs to be flexible so it can be applied to different redundancy situations. This will be particularly true in choosing selection criteria and designing measures to avoid redundancies. It is especially important to make sure that the balance of skills and experience within the remaining workforce is appropriate to the company's future needs.

All employees should be told about any agreed change to a redundancy procedure. Employers should get agreement from the trade union or employee representatives before making any changes to the procedure and, where possible, the procedure should say why the change is necessary. The procedure should be reviewed from time to time, to make sure that it is working fairly.

If an employer wants to make people redundant on worse terms than those previously applied, we strongly advise the employer to make sure that individual employees agree to the changes in their contracts. Employers cannot always rely on an existing collective agreement with the trade unions to make these changes.

The principles of good practice given in this section, and throughout this guide, apply to all employers, regardless of the size of the organisation. However, the detailed arrangements will be different to take account of changes in circumstances. Small firms, in particular, may follow a policy or agree a procedure that simply includes an intention to consult individual employees, paying particular attention to ways of avoiding or reducing redundancy, and to being unbiased when deciding who to make redundant. This will give management (and employee representatives where appropriate) some flexibility in deciding the best course of action when people have to be made redundant. There is a checklist of items that should be included in redundancy agreements in Appendix 1.

## **The advantages of consultation**

The purpose of consultation is to give everyone involved an early opportunity to share the problem and discuss the options. It can encourage 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 reducing hardship. The employer will then be in a better position to decide whether the needs of the business can be met in some way other than by making people redundant.

## **Consultation – legal responsibilities**

Apart from the good employment relations benefits of consultation, employers who plan to make 20 or more employees redundant over a period of 90 days or less must consult representatives of any recognised independent trade union. If there is no trade union recognised, they must consult other elected representatives of the affected employees (see note 4 on page 26). Employee representatives may be elected solely for the purpose of being consulted about specific redundancies, or they could be part of an existing consultative group. Detailed obligations are set out in regulations for electing employee representatives in situations where the employer does not recognise a trade union. For more information, see the Department for Employment and Learning's employment rights booklet 4 'Redundancy consultation and notification' at [www.delni.gov.uk](http://www.delni.gov.uk).

Employers must consult the appropriate representatives of any of the employees who may be affected (directly or indirectly) by the proposed redundancies, or by any measures taken in connection with those redundancies.

The consultation should include ways of:

- avoiding the redundancies;
- reducing the number of employees to be made redundant; and
- reducing the effects of the redundancies.

The employer must carry out the consultation with a view to reaching agreement with appropriate representatives on these issues. This duty applies even when the employees to be made redundant are volunteers. If the employer fails to keep to the consultation responsibilities, this could lead to a claim for compensation, known as a 'protective award'.

Consultation should begin in good time and be completed before any redundancy notices are issued (see note 5 on page 26).

Also, consultation must begin:

- at least 30 days before the first person is made redundant, if 20 to 99 employees are to be made redundant at one organisation over a period of 90 days or less; or
- at least 90 days before the first person is made redundant, if 100 or more employees are to be made redundant at one organisation over a period of 90 days or less.

## **The Information and Consultation of Employees Regulations (Northern Ireland) 2005**

The Information and Consultation of Employees Regulations (Northern Ireland) 2005 are designed to give employees in larger firms rights to be informed and consulted on an ongoing basis about certain issues relevant to the business in which they work. This includes decisions on collective redundancies. Employees have the rights given by the Information and Consultation of Employees Regulations as well as the redundancy consultation rights. An employer planning to make collective redundancies must follow the requirements described above, even if they already have separate consultation arrangements as a result of the Information and Consultation Regulations (a 'pre existing' agreement). For example, if a recognised trade union is representing employees who are affected by planned 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 Information and Consultation Regulations. Where there is a 'negotiated' agreement, there will be a separate group of employees' representatives under the Information and Consultation Regulations. If the 'standard' information and consultation arrangements in the Information and Consultation Regulations apply to an employer, he or she does not need to consult employees' representatives under those arrangements if he or she notifies those representatives in writing on each occasion that the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply.

### **Consultation – good practice**

In all organisations, regardless of size and the number of employees to be made redundant, employers should consult appropriate trade union or employee representatives as soon as, and as fully as, possible. Employers should consult them at an early enough stage to allow discussions as to whether the planned redundancies are necessary at all. The consultation process should happen before the redundancy programme is announced to

the public. Notices ending employees' employment should not be issued until the consultation has been completed.

## **Consultation with individuals**

Employers should make sure that their employees know about any agreed procedure and the opportunities available for consultation and discussion. Case law has shown that redundancy is unfair where a union has been consulted but not the individual. It is best practice to consult the individuals who are going to be made redundant, no matter what size the organisation is. They are more likely to react positively after being consulted and may be able to suggest alternatives to redundancy.

## **Giving information – legal responsibilities**

By law, employers must give the appropriate representatives the following information about plans for redundancies so that they can get involved in the consultation process.

- The reasons for the plans.
- The number and descriptions of employees it plans to make redundant.
- The total number of employees employed at the organisation in question.
- How employees will be selected for redundancy.
- How and when redundancies will be made, taking account of any agreed procedure.
- How redundancy payments will be worked out.

The information may be handed to local employee representatives or may be sent by post to an address given to the employer. In the case of a trade union, it will be sent to the address of the union's head or main office.

## Further areas for consultation – good practice

As well as those areas outlined above and in the interests of good employment relations practice, matters on which employers may want to consult employees and, where appropriate, negotiate will usually cover:

- the effect on the contract and earnings where transfer or downgrading is accepted rather than redundancy;
- defining the conditions for choosing which employees will be made redundant and how these conditions will be applied – for example, will it be appropriate to choose people from across the whole organisation or from a particular department?;
- arrangements for travel, removal and related expenses, where work is accepted in a different place;
- whether a redundant employee may leave during the notice period, or postpone the date of the end of the notice without losing any entitlement to a statutory redundancy payment;
- whether an employee can keep any company benefits when they are made redundant; and
- any extension of the length of the four-week trial period in a new job.

Negotiation might also cover special arrangements for transferring apprenticeships. Only as a last resort should apprentices be treated as part of the workforce for the purposes of redundancy selection.

## Failure to consult

There may be special circumstances that mean it is not reasonably practical to fully meet the minimum conditions you must meet by law for consultation or giving information (the statutory requirements). Each case is judged on its particular facts, but in all circumstances employers must do all they can reasonably be expected to do to meet the requirements.

If an employer fails in any way to meet the requirements to consult people about planning redundancies, a trade union or, in cases where no trade union is recognised, an elected employee representative can make a complaint to an industrial tribunal. If there is no appropriate trade union or other elected

employee representative, any employee who has been or may be made redundant may make a complaint.

The complaint must be made either before the last of the redundancies or within three months after the last of them. In exceptional circumstances, the tribunal can allow a longer period for a complaint to be made.

An officer from the Labour Relations Agency may help reach a solution, whether or not an application has been made to an industrial tribunal. If a settlement is not reached and the tribunal finds the union's complaint justified, a protective award may be made in favour of the employees concerned.

## **Protective award**

A protective award means that employers must pay their employees their normal week's pay for a period of time called the 'protected period'. The tribunal will fix the length of that period, depending on what is fair and taking account of the employer's failure to meet their responsibilities. The maximum length of the protected period is 90 days in all cases where 20 or more people are to be made redundant.

The protected period begins either on the date on which the first of the dismissals is made or on the date of the tribunal award, whichever comes first.

## **Rights of employees' representatives**

**(See note 6 on page 26)**

Representatives of employees have particular rights and protections which allow them to carry out their work properly. The rights of trade union members, including 'officials', are set out in separate legislation, but they are generally the same as those of other elected representatives, and include paid time off for duties in relation to redundancy information and consultation.

Laws concerning elected representatives say the following (see note 7 on page 26).

- Employers must allow representatives to talk to affected employees, and provide them with accommodation and facilities if necessary.
- Representatives and candidates for election have a right to reasonable time off with pay to carry out their work and to

receive Northern Ireland Committee of the Irish Congress of Trade Unions accredited training in connection with their work.

- Representatives and candidates for election have a right not to be dismissed or treated less favourably because of their position or activities. The dismissal of an elected representative or candidate for election will be automatically unfair if it is wholly or mainly related to the employee's position or activities as a representative.
- Any employee is unfairly dismissed if the main reason for the dismissal is that he or she took part in an election of employee representatives for collective redundancy purposes. An employer must not treat an employee less favourably because he or she took part in an election of a representative.

Elected representatives or, where appropriate, candidates for election can make a complaint to an industrial tribunal concerning these rights. An officer from the Labour Relations Agency may help reach a solution, whether or not an application has been made to an industrial tribunal.

## **Selection criteria**

Employers should agree the selection criteria with employees' representatives. The criteria should be unbiased, fair and consistent. The employer should put an appeals procedure in place for those employees who feel that the selection criteria have been unfairly applied in their case.

## **The importance of being unbiased**

As far as possible, unbiased criteria, precisely defined and capable of being applied in an independent way, should be used when deciding which employees should be made redundant. The purpose of having unbiased criteria is to make sure that employees are not unfairly selected for redundancy. Examples of such criteria include attendance record, disciplinary record, experience and capability. Employers must apply the chosen criteria to all employees consistently, no matter how big the business or organisation.

## Unfair selection for redundancy

An employee who has been made redundant will be found to have been unfairly dismissed if he or she was unfairly selected for redundancy:

- for taking part in trade union activities, or for joining or not joining a trade union;
- for carrying out duties as an employee representative or candidate for election for the purposes of consulting people on redundancies or business transfers;
- for taking part in an election of an employee representative for collective redundancy purposes;
- for taking action for health and safety reasons, as a recognised health and safety representative, or as an employee in particular circumstances;
- for taking part (or planning to take part) in consultation on specific health and safety matters or taking part in elections for representatives of employee safety (see note 8 on page 27);
- for carrying out, or planning to carry out, the duties of an occupational pension scheme trustee;
- for carrying out, or planning to carry out, the duties of a workforce representative for the purposes of the Transnational Information and Consultation of Employees Regulations 1999 and the Information and Consultation of Employees Regulations (Northern Ireland) 2005;
- for taking legally organised industrial action lasting eight weeks or less (or more than eight weeks in certain circumstances);
- for asserting an employment right they had by law;
- for maternity-related reasons;
- for refusing, or planning to refuse, to work on Sundays;
- for a reason relating to rights under the Working Time Regulations 1998;

- for a reason relating to rights under the National Minimum Wage Act 1998;
- for a reason relating to rights under the Maternity and Parental Leave etc Regulations 1999;
- for making a protected disclosure within the meaning of the Public Interest Disclosure Act 1998;
- for a reason relating to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- for a reason relating to the Fixed-term Workers (Prevention of Less Favourable Treatment) Regulations 2002;
- for a reason relating to the Tax Credits Act 2002;
- for using the right to be accompanied at a disciplinary or grievance hearing; or
- for asking for flexible working arrangements.

A redundancy may also be found to be discriminatory under:

- the Fair Employment and Treatment (Northern Ireland) Order 1998;
- the Fair Employment Code of Practice;
- the Sex Discrimination (Northern Ireland) Order 1976;
- the Disability Discrimination Act 1995 and the associated Code of Practice;
- the Race Relations (Northern Ireland) Order 1997; and
- the Employment Equality (Age) Regulations (Northern Ireland) 2006;

if the person was chosen because of their religion, political opinion, sex, marital status, race, disability, sexuality or age.

A redundancy may also be considered automatically unfair if the reason or main reason is redundancy but the circumstances apply equally to other employees who have not been chosen.

Employers need to show that in choosing a particular employee, they had compared him or her in relation to the agreed selection criteria with those others who might have been made redundant and that, as a result, the employee was fairly selected. A claim for unfair selection may also arise where the employer has failed to undertake a reasonable search for alternative work throughout the organisation.

Employers should take particular care to make sure that selection criteria do not discriminate against anyone because of their age, sex, race, disability, sexuality, religion or political opinion. For example, choosing part-timers for redundancy may be considered to be indirect discrimination against women. In these circumstances employers must show that the choice is justifiable, for example, by showing that it is not practical to fit part-timers who are almost all female into revised shift patterns. Making women redundant because they are pregnant will also be considered unfair.

## **Statutory disciplinary and dismissal procedures**

If an employer is considering making an employee redundant, there is a minimum procedure they must follow by law. This involves:

- writing to the employee;
- setting out the reasons for the redundancy;
- meeting the employee to discuss the redundancy; and
- holding an appeal where necessary.

The procedure does not apply to some collective redundancies. For more information, visit the Department for Employment and Learning's website at [www.delni.gov.uk](http://www.delni.gov.uk) and the Labour Relations Agency's website at [www.lra.org.uk](http://www.lra.org.uk), for the Code of Practice on disciplinary and grievance procedures.

## **Non-compulsory selection criteria**

### **Voluntary redundancy**

One acceptable method is for employees to volunteer to be considered for redundancy and for the employer to choose from the list of volunteers those employees who are to be made redundant (see note 9 on page 27). This will have a less demoralising and disruptive effect on the workforce. 'Voluntary redundancy' is generally more expensive as longer serving employees are more likely to volunteer and so will need higher redundancy payments. Also, it is not uncommon to offer better redundancy payments to encourage people to leave. In situations where more people volunteer to leave than necessary, employers should consider how some employees will react if they are not chosen and think about the best way to deal with this.

Another important thing to consider is the gap in skills and experience which may be created by accepting those employees who volunteer for redundancy and which might affect the future success of the company or organisation.

The volunteers may include some people who might be expected to contribute most to future success. One way of overcoming these difficulties would be to gain agreement from trade union and employee representatives to limit applications for redundancy to certain categories. In practice, many agreements confirm management's right to decide whether a particular employee should be allowed to leave.

## **Compulsory selection criteria**

Where voluntary redundancy or early retirement has not produced suitable volunteers, employers should consult trade union or employee representatives to consider the criteria to be used when enforcing redundancies. It is important that criteria used in choosing people for redundancy are unbiased and applied consistently.

Some of the selection criteria commonly used include:

- skills or experience;
- standard of work performance or aptitude for work; and
- attendance or disciplinary record.

Selection based on skills or qualifications will help to keep a balanced workforce appropriate to the future needs of the business. Formal qualifications and advanced skills should be considered, but not on their own. It may be appropriate for other skills and aptitudes to be taken into account.

The standard of work performance or work skills of those to be chosen may be an important consideration. However, case law shows that there should be some unbiased evidence to support selection on this basis, for example, by referring to the company's existing appraisal system.

If attendance or disciplinary records (see note 10 on page 27) are to be used as a basis for choosing people for redundancy, it will be necessary to make sure that they are accurate and not indirectly discriminatory. Before choosing people because of their attendance, it is important to know the reasons for and extent of any absences. This is particularly important when considering sickness absence. Employers should look carefully at how long employees are off sick, for example, whether an employee has had one continuous period of sickness or whether the absences were for shorter periods but over a longer period of time.

Absences relating directly to an employee's pregnancy or disability should be ignored. Managers and employee representatives should follow a consistent approach and have clear rules about discipline, absence, timekeeping and holidays.

Whatever selection criteria are chosen, employers need to make sure that they do not directly or indirectly discriminate against anyone because of their age, race, sex, disability, sexuality, religion or political opinion.

## **Applying the selection criteria**

The most important consideration for the future of the company is to maintain a balanced workforce after people have been made redundant. Specific skills, flexibility, adaptability and an employee's approach to work may be the most relevant considerations to the future success of the business.

However, using criteria is not enough to guarantee fair and reasonable selection. Even though the criteria may be unbiased, the choice will still be unfair if they are carelessly or mistakenly applied. Employers will need to show that they have compared the information relating to all employees in the relevant unit when using the criteria.

Selection criteria should be reasonably applied in the light of the circumstances of the individual. The Disability Discrimination Act 1995 makes it illegal for an employer to treat a disabled person less favourably because of a reason relating to their disability, without a justifiable reason. Employers must make reasonable adjustments to working conditions or the workplace where that would help a particular disabled person. Employers

should take account of this law when considering making a disabled person redundant.

## **Appeals procedure**

Management should consider developing a redundancy appeals procedure to deal with complaints from employees who feel that selection criteria have been unfairly applied in their case.

This can be achieved by involving a more senior member of management, or by setting up a committee of management and trade union or employee representatives, to consider individual complaints and find solutions. An advantage of having a procedure like this is that complaints about choosing people for redundancy may be sorted out internally without them having to be passed to industrial tribunals.

## **Suitable alternative work**

Employers should consider whether they can offer employees likely to be affected by redundancy suitable alternative work. If alternative work is available within the employer's own organisation or with an 'associated' company, the employee should be given enough details to allow him or her to decide whether to accept or not. Employers should search for alternative employment throughout the group of which the company forms a part, if possible and appropriate.

It is up to the employee to decide whether the alternative work is suitable. However, an employer should be aware that the following factors may influence their decision.

### **Pay**

Wherever possible, earnings should be protected against a fall in the current rate of pay. Or, there may be opportunities for employees to earn more (for example, productivity bonuses on top of the salary).

### **Status**

Any loss of status may be eased by allowing the employee preferential treatment if the original job becomes available again (but beware of equality issues).

## **Location**

The employer should consider the disruption likely to be caused by a change of location and any extra expense involved. Any increase in travelling time should be considered in relation to the employee's health and personal circumstances.

## **Working environment**

This may be especially important for those employees who suffer a health complaint or physical or mental disability.

## **Hours of work**

Any change in an employee's hours of work, for example in shift patterns, may be considered unsuitable if it fails to take account of the individual's personal circumstances.

An employer may also consider the possibility of keeping the employee on temporarily until permanent vacancies arise. This is particularly appropriate where vacancies arise regularly (beware of equality issues).

## **The offer**

Industrial tribunals have said that it is the employer's responsibility to show that they have offered their employees an alternative job.

Any offer should be put in writing, even if the employer believes that it may be rejected. The offer should show how the new employment differs from the old, and by law must be made before the employment under the previous contract ends. The offer must be for the new job to start either immediately after the end of the old job or after an interval of not more than four weeks.

Employees who unreasonably refuse an offer of suitable alternative employment may lose any entitlement to redundancy pay. Refusal may be unreasonable where the differences between the new and old jobs are small or where the employee assumes that there will be differences between the new and old jobs, for example, travelling time or working conditions. Refusal may be reasonable if the new job would cause domestic upheaval, for example, if there was a considerable change in working hours or a need to move house. In deciding whether to accept an offer of alternative employment, it will be sensible for employees to bear in mind the availability of other employment if they refuse the offer.

## **Trial period**

By law, an employee who is under notice of redundancy has a right to a trial period of four weeks in an alternative job where the conditions of the new contract are different from the original contract. The trial period begins when the previous contract has ended and ends four weeks after the date on which the employee starts work under the new contract.

The trial period will give the employee a chance to decide whether the new job is suitable without necessarily losing the right to a redundancy payment. The four-week trial period can be extended for retraining purposes by an agreement which is in writing, shows the date on which the trial period ends and sets out the employee's terms and conditions after it ends. If the employee works beyond the end of the four-week period or the jointly agreed extended period, any redundancy entitlement will be lost because the employee will be considered to have accepted the new employment. Employers should tell the employee about this when they offer them the alternative job.

The employer should also use the trial period to assess the employee's suitability. If the employer wants to end the new contract within the four weeks for a reason connected with the new job, the employee will have the right to a redundancy payment under the old contract. If the dismissal was due to a reason unconnected with redundancy, the employee may lose that entitlement.

## **Time off to look for new work, or for training**

Employees who are under notice of redundancy and have been continuously employed for at least two years qualify for a reasonable amount of time off to look for another job or to arrange training. The employer does not have to pay more than two-fifths of a week's pay, no matter how much time off they give the employee. Where possible, employers should extend this support to all employees who are affected by redundancy. The time off, which is agreed, must be allowed before the period of notice ends (see note 11 on page 27).

Other measures may include the following.

- Contacting the local Jobcentre which provides a free service for bringing together employers with vacancies and people looking for work. Jobcentre staff can also give details of training opportunities available. For larger scale redundancy programmes, employers may find it helpful to discuss with

Jobcentre staff the possibility of providing facilities on site for interviewing redundant employees.

- Contacting other local employers to find out if they have any vacancies which they could offer to the redundant employees.

Redundancy can be a traumatic experience for employees, especially for those who have worked for many years in a stable environment. Some employees will have special difficulties to deal with, even though they may have received payments above the minimum allowed by law. Where possible, employers should consider cases of hardship and, where practicable, find ways of helping them.

## **Other help available**

It is good practice to give redundant employees as much information as possible to help them at this difficult period of their working lives. This information may include:

- the financial effects of redundancy on the individual (redundancy pay, pension payments and state benefits);
- how to fill in application forms and present themselves at job interviews;
- the importance of discussing the effects of redundancy with their family as early as possible;
- how to search for appropriate vacancies in the press and follow up opportunities; and
- the importance of being prepared to consider a wide range of other jobs.

Employers may also consider providing counselling to help redundant employees. Counselling is a skilled task and it is sensible to use a trained counsellor or welfare officer to carry out the interviews, ideally before people are made redundant. Where it is not practical to employ a trained counsellor, human resource managers may be given appropriate training for the task. Where possible, some support and advice should still be available to redundant employees after they have left the organisation.

## Notes

**1** The various legal conditions relating to redundancy are outlined in Appendix 3. See also the Department for Employment and Learning's booklet employment rights 4 'Redundancy consultation and notification'. You can download this from [www.delni.gov.uk/index.cfm/area/library/site/ERLegislation/Directory/67](http://www.delni.gov.uk/index.cfm/area/library/site/ERLegislation/Directory/67).

**2** As well as any redundancy payment entitlement, employees who are made redundant should be given the period of notice, or payment instead of notice, they are entitled to by law and in line with their contracts of employment.

**3** Employees who have been laid off or put on short-time working either for four weeks in a row or for any six weeks in a 13-week period, can give their employer notice in writing that they are going to claim redundancy pay. Within set time limits, employees should also end their employment by giving one week's notice (or the minimum period of notice as set out in their contracts of employment). (See Part XII Chapter III of the Employment Rights (Northern Ireland) Order 1996.)

**4** By law, employers also have a duty to tell the Department for Employment and Learning if they plan to make 20 or more workers redundant at one workplace over a period of 90 days or less.

Employers may contact the Department for Employment and Learning by letter or using form HR1, which is available from the Redundancy Payments Office or any Jobcentre. For more guidance on the law relating to redundancy, see also the Department for Employment and Learning's booklet employment rights 4, 'Redundancy consultation and notification'. You can download this from [www.delni.gov.uk/index.cfm/area/library/site/ERLegislation/Directory/67](http://www.delni.gov.uk/index.cfm/area/library/site/ERLegislation/Directory/67).

**5** European Court of Justice Case C-188/03 Irmtraud Junk v Wolfgang Kühnel.

**6** See also the Department for Employment and Learning's booklet employment rights 31, 'Union membership and non-membership rights'.

**7** See the Employment Rights (Northern Ireland) Order 1996 and the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations (Northern Ireland) 1999. See also the Department for Employment and Learning's booklet employment rights 4, 'Redundancy consultation and notification'.

**8** See the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996. (SR number 511).

**9** An employee who expects to be made redundant, but leaves before being given notice, will not be regarded as redundant and so will not be able to claim a redundancy payment. (See Secretary of State for Employment v Greenfield EAT 147/89.)

**10** See our guide, 'Advice on managing absence from work'.

**11** For more guidance on the amount of time off, payment for time off and how to make a complaint, see the Department of Employment and Learning's booklet employment rights 9, 'Time off for job hunting or to arrange training when facing redundancy'.

## **Appendix 1**

### **Redundancy agreements: a checklist**

The following paragraphs are provided as a checklist for employers and employee representatives of the areas commonly covered in redundancy agreements. Each organisation is unique and every agreement should be tailored to meet the circumstances of the case.

It is provided only to show examples of good practice, but can be used to draw up a redundancy agreement.

#### **Introduction**

Redundancy agreements normally begin with a statement of intent by both sides towards maintaining secure employment, wherever possible.

#### **Example**

It is the policy of Company X to make sure, as far as possible, that all employees have secure employment.

However, we recognise that there may be changes in competitive conditions, organisational needs and technological developments which may affect staffing needs. It is the agreed aim of the company and the trade union or employee representatives to maintain and improve the efficiency and success of the company to protect the current and future employment of our employees. We, in consultation with the trade union and employee representatives, will try to reduce the effect of redundancies by giving staff enough time and help to find alternative employment. Where compulsory redundancy cannot be avoided, we will handle the redundancy in the most fair, consistent and sympathetic way possible, and reduce as far as possible any hardship that the employees concerned may suffer.

#### **Consultation**

The following areas are usually covered.

- A commitment to keep local trade union or employee representatives informed as fully as possible about staffing needs and any need for redundancies.
- The period or periods of consultation agreed (which may be more than the minimum needed by law).

- Information which trade union or employee representatives will be consulted on, and a commitment to consider any other proposals with a view to reaching agreement on ways of avoiding redundancies, reducing the number of employees to be made redundant and how to reduce the effect of the redundancies.
- Giving information needed by law, including:
  - the reasons for the proposals;
  - the number and descriptions of employees an employer is planning to make redundant and the total number of such employees employed by the company;
  - the way in which employees will be selected for redundancy;
  - how the redundancies will be carried out, including the period over which people will be made redundant; and
  - how the amount of the redundancy payments will be worked out.

Other areas to consult on may include, for example:

- the effect on earnings where transfer or downgrading is accepted instead of redundancy;
- arrangements for travel, removal and related expenses where work is accepted on another site owned by the company;
- arrangements for reasonable time off with pay to find other work or to make arrangements for training;
- help with looking for another job; and
- arrangements for transferring apprenticeships.

### **Measures to avoid or to reduce the number of redundancies**

This section may include details of how every effort will be made to reduce the number of possible redundancies, for example, by:

- natural wastage;
- restricting the recruitment of permanent staff;
- filling vacancies from among existing employees, taking account of equality law;
- reducing overtime by as much as possible;
- reducing the hours of work, for example, by using short-time working; and
- training, retraining or moving employees for different work either at the same or at a different location.

### **Selection criteria**

If, having taken any of the above steps, there are still more employees than necessary, details should be given about how employees will be chosen for redundancy, and by whom. For example, selection may be based on:

- the skills, experience and ability of the employee;
- the standard of work performance;
- the attendance or disciplinary record of the employee; and
- voluntary redundancy.

It is usual to include a statement giving a commitment to a fair, consistent, unbiased and non-discriminatory selection procedure.

### **Help with finding another job**

An acknowledgement should be included recognising the right employees have, by law, to time off to look for work or arrange for training for new employment.

### **Counselling**

Larger companies may want to provide facilities for a counselling service on site to give those employees who are to be made redundant:

- financial advice;
- guidance on how to find another job;
- advice on filling in application forms; and
- guidance on going to interviews.

### **Severance payments**

Details should be provided about how severance pay will be calculated and how commission, overtime payments, holiday pay and time off not taken will be paid.

## **Appeals and hardship**

The procedure for dealing with the right of appeal and cases of hardship should be explained. This right of appeal should be in line with the procedures set out in the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004. For more information, visit the Department for Employment and Learning's website at [www.delni.gov.uk](http://www.delni.gov.uk) and the Labour Relations Agency's website at [www.lra.org.uk](http://www.lra.org.uk), for the code of practice on disciplinary and grievance procedures.

## **Reviewing and ending the agreement**

Details should be given about regularly reviewing the agreement and the procedure for ending it.

## **Appendix 2**

### **An outline of redundancy payments**

The redundancy payments scheme is managed under Part 12 Chapter I of the Employment Rights (Northern Ireland) Order 1996. For more guidance, see the Department for Employment and Learning's booklet, employment rights 3, 'Redundancy payments'.

#### **Who qualifies for a redundancy payment?**

A redundancy payment is due only if the worker is an employee. For example, self-employed people, freelance agents or partners do not qualify

The employee must have at least two years' continuous service.

#### **Who does not qualify for a redundancy payment?**

The following groups of employees do not qualify.

- Merchant seamen, former registered dock workers involved in dock work (covered by other arrangements) or share fishermen.
- Crown servants, members of the armed forces or police services.
- People on fixed-term contracts of at least two years' service who have chosen not to use their rights to redundancy (as long as the fixed-term contract has not been agreed, extended or renewed after 1 October 2002, in which case they would be entitled to a redundancy payment).
- Apprentices who are not employees at the end of their training.
- A domestic servant who is a member of the employer's immediate family.

#### **What are the payments?**

For each complete year of service, up to 20 employees are entitled to:

- half a week's pay for each year of service under age 22;
- one week's pay for each year of service at age 22 but under 41; or
- one and a half week's pay for each year of service at age 41 or over.

### **What is a week's pay?**

A week's pay is that which the employee is entitled to under his or her terms of the contract at the 'calculation date'. The 'calculation date' is the date on which the employer gives the employee the minimum notice to which he or she is entitled to by law. If the pay varies (for example, piecework where the employee is paid for the amount of a product they produce), the amount of the week's pay is averaged over the 12 weeks before the 'calculation date'. There is a maximum limit on the amount of a week's pay that may be considered. This figure is reviewed every year, and you can find out the current limit by contacting us (see the contact details on page 39). Employers may, of course, pay more than the minimum allowed by law.

### **How does an employee claim a payment?**

There is no need for the employee to make a claim unless the employer fails to pay or disputes the employee's entitlement. In either case, the employee must raise their concerns with the employer and wait 28 days before making a claim to an industrial tribunal which must be made within six months of the date the job ended.

### **What if the employer cannot pay?**

If the employer has cash-flow problems that are so serious that making the redundancy payment would damage the business, the Department for Employment and Learning (DEL) can make arrangements to pay the employee direct from the National Insurance Fund. The employer is expected to pay back the payment as soon as possible, in instalments if necessary.

If the employer is insolvent, DEL will again make the payment and the employer's share will be recovered from the assets of the business. For more information, see DEL's booklet employment rights 5, 'Your rights if your employer is insolvent'. You can get this from any Jobcentre or download it from [www.delni.gov.uk](http://www.delni.gov.uk).

**Will employees have to pay tax on their redundancy pay?**

Employees do not have to pay tax on their redundancy payment, but the employer may set it against tax as a business expense.

## Appendix 3

### An outline of redundancy law

**a** The redundancy consultation and notification conditions are contained in Part XIII of the Employment Rights (Northern Ireland) Order 1996, as amended by the Transfer of Undertakings (Protection of Employment) 2006. This guide also explains how these conditions fit with new duties under the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (SR 2005 No. 47). Those conditions include the EC Collective Redundancies Directive (98/59/EC).

**b** The parts relating to the rights of elected representatives who are not members of a trade union (for the purposes of the legal right to consult over redundancies) and candidates for election not to be dismissed, treated unfairly and to have reasonable time off with pay are contained in the Employment Rights (Northern Ireland) Order 1996. Similar parts relating to the rights of representatives of independent trade unions are also contained in the Employment Rights (Northern Ireland) Order 1996. Further conditions on rights for representatives, candidates for election and anyone taking part in the process are contained in the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**c** The parts relating to the right not to be unfairly dismissed (because of unfair selection for redundancy) are contained in the Employment Rights (Northern Ireland) Order 1996.

**d** The parts relating to time off to look for work or to make arrangements for training are contained in Section 80 (1) a and b of the Employment Rights (Northern Ireland) Order 1996.

**e** The redundancy payments scheme is managed under Part XII Chapter I of the Employment Rights (Northern Ireland) Order 1996, as amended.

**f** The parts relating to employment rights on the transfer of an undertaking (the transfer of an undertaking or business or part of an undertaking or business, which is in the United Kingdom to another person) are contained in the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**g** The parts relating to the standard dismissal and disciplinary procedures are contained in the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations 2004.

## Where to get advice and more information

### **Labour Relations Agency**

Phone: 028 9032 1442 (Belfast)

Phone: 028 7126 9639 (regional office – Londonderry)

Website: [www.lra.org.uk](http://www.lra.org.uk)

### **Department for Employment and Learning**

Redundancy Payments Freephone: 0800 5858111

Website: [www.delni.gov.uk](http://www.delni.gov.uk)

### **Equality Commission for Northern Ireland**

Phone: 028 9050 0600

Website: [www.equalityni.org](http://www.equalityni.org)