

January 2016

## **Collective Redundancies and Reorganisations**

### **United Kingdom**

#### **Summary**

In the UK, special provisions apply to collective redundancies. There is no absolute prohibition on dismissal – technically, the employer can do as it likes – but there are financial penalties, while failure to notify the UK Government is a criminal offence.

#### **When do the provisions apply?**

The provisions apply where an employer is proposing to dismiss 20 or more employees at one establishment within a 90 day period. In this context, “redundancy” means a dismissal which is not connected with the individual concerned. This would include a reduced requirement for employees to carry out work of a particular kind, a site closure, and also a proposal to dismiss and re-engage employees on new terms and conditions.

#### **What are the requirements?**

Prior to making collective redundancies, an employer must:

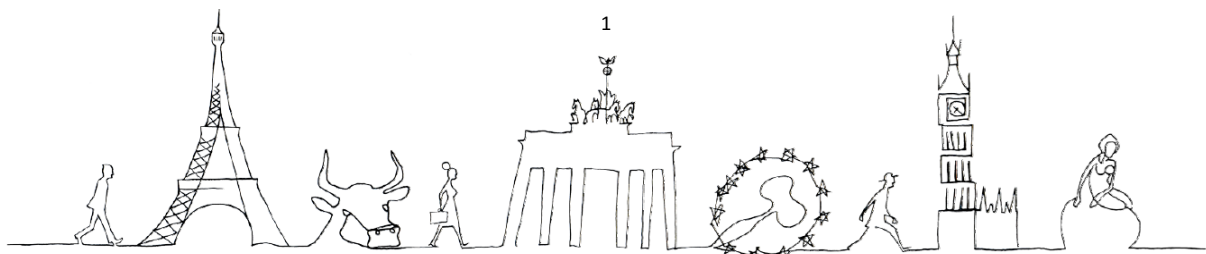
- consult appropriate representatives; and
- notify the UK Government.

Consultation must begin in good time and, where 100 or more redundancies are proposed, consultation must begin (and the UK Government must be notified) at least 45 days before the first dismissal takes effect. For between 20 and 99 redundancies the minimum period is 30 days.

#### **Who are “appropriate representatives”?**

If there is a recognised trade union, the trade union must be consulted. In other cases, the employer must consult with representatives directly elected by the affected employees, or with an appropriate standing body of representatives elected or appointed for some other purpose, for example under information and consultation legislation.

We would also recommend the employer consults individually with potentially redundant employees. This is not a requirement of the collective redundancy legislation, but is relevant to claims of unfair dismissal (touched on below).



### **What sanctions apply if the process is not followed?**

Failure to comply with the consultation process can lead to a protective award of up to 90 days' gross pay for each affected employee. The award is not based on loss of earnings, but on the seriousness of the employer's default.

In addition, failure to notify the UK Government is a criminal offence, punishable by a fine of up to £5,000.

### **Are certain employees protected from dismissal?**

No. Even if the information and consultation requirements are not fulfilled, and even if the dismissals are unfair or discriminatory, they are still effective. Generally speaking the only remedy is monetary.

### **How do I choose which employees to dismiss?**

Certain selection criteria would be unlawful under wider employment law, for example if a business decided to dismiss based on the employee's age or gender. Employees on maternity, additional paternity, shared parental or adoption leave are also entitled to be offered any suitable vacancies in preference to other employees.

That aside, employers are free to choose criteria but (particularly given the risk of claims for unfair dismissal) as far as possible they should be objective and capable of independent verification, rather than simply being based on someone's personal opinion. Selection criteria should also be discussed with any recognised trade union at the start of the consultation process. Typically, selection criteria include performance, ability, skills, length of service, attendance and disciplinary records.

In addition, employers are required to consider whether there are any suitable vacancies which potentially redundant employees could apply for. This is again aimed to demonstrate a fair procedure and to help avoid unfair dismissal claims.

### **Unfair dismissal**

All employees with two years' service have the right not to be "unfairly dismissed". This right applies to all dismissals – for example, dismissals for poor performance are also caught. In the context of collective redundancies, however, unfair dismissal claims tend to focus on the procedure followed by the employer. The broad requirement is that the procedure is reasonable.

Compensation for unfair dismissal is primarily based on net loss, and is capped at one year's salary, or approximately £80,000, whichever is the lower.

### **What will it cost?**

Aside from statutory redundancy payments, there are no direct costs for making redundancies, although the minimum consultation and notice periods can result in significant costs.



Employees with two years' service are (almost always) entitled to a statutory redundancy payment, calculated as follows:

- 1.5 week's pay for each year of service when the employee was aged 41 or over;
- 1 week's pay for each year of service between the age of 22 and 40;
- 0.5 week's pay for each year of service under the age of 22.

For these purposes, a week's pay is capped (the current cap is £475).

Redundant employees, regardless of their length of service, are also entitled to notice in accordance with the terms of their contract. This is in turn subject to certain minimum periods, roughly one week's notice for each complete year of service, up to a maximum of 12 weeks' notice.

Employees may also be entitled to receive enhanced redundancy payments under the terms of their contract (whether the term is express or implied, for example as a result of custom and practice) or any collective agreement.

### **Are staff required to work during the consultation process?**

Employees who are under notice of dismissal by reason of redundancy are entitled to reasonable time off during working hours to look for a new job or to arrange training for future employment. They are entitled to be paid for up to a maximum of 40% of one week's pay.

That aside, employees are required to work, in accordance with their contract of employment, until their employment ends. There is no general right for employees to be released early. Depending on the terms of the contract, however, an employer may be able to:

- place the employee on garden leave; or
- terminate the contract with immediate effect (once the 30 / 45 day consultation period has expired) and pay the employee in lieu of his/her notice period.

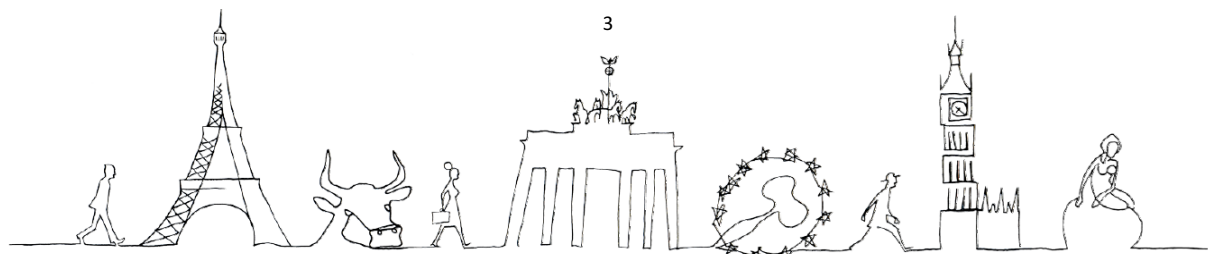
In addition, an employer may allow employees to take an additional period of paid leave during the consultation process.

### **Can I ask employees to sign a waiver?**

Employers often enter into settlement agreements with individual employees to compromise potential or actual claims. However, the employee has to be independently advised on the terms and effect of the settlement agreement (usually by their own solicitor) for the agreement to validly waive statutory claims – for example, claims for unfair dismissal or discrimination. It is common for employers to pay the cost of this legal advice, and the employer would also have to offer an incentive for the employee to sign the waiver.

Claims for failure to inform and consult cannot be compromised through settlement agreements, although they can be compromised through the state body, ACAS.

### **Do I need consent from a public authority?**



No. While the employer needs to notify the UK government, it does not need to obtain consent for the dismissals.

**Can disgruntled employees bring claims?**

Yes. Employees can bring claims for unfair dismissal, and/or for a failure to inform and consult, before the employment tribunals. Such claims generally need to be brought within three months.

*This material is for general information only and is not intended to provide legal advice.*

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