

Redundancy

A summary of the rights and the obligations of employee and employer in redundancy events

Time off with pay for looking for work or training

An employee with 2 years' continuous service who is made redundant is entitled to reasonable time off during the period of notice, to look for work or arrange for training. The employer must pay the employee, at the appropriate hourly rate, to a maximum of two-fifths of a week's pay.

This right may be enforced, in case of the employer's failure to allow time off, by complaint to the Employment Tribunal within 3 months of the date when the failure occurred, but the Tribunal can allow a complaint out of time if there was a good reason for the delay. Where the claim is successful the Tribunal can award two-fifths of a week's pay.

What amounts to "redundancy"?

"Workplace Redundancy" arises when an employer is considering terminating one or more jobs (and thus employees) at a place of business, consequent on the employer's need for staff to perform work of that kind having diminished to the extent the employees services are no longer required. It is expected under the legislation that the employee's job will have "disappeared". Note that it cannot be regarded as a redundancy situation, should the employer immediately engage a direct replacement for the individual(s) just made redundant. This will likely be regarded as an unfair dismissal.

Handling Redundancies

Redeployments and redundancies are from time to time unavoidable when reviewing the staffing needs of a business. It is crucial then that any business gives early thought to forward planning for staffing needs, so that the future interests of the business are thoroughly thought through, job security is as far as possible assured, and staff morale is minimally compromised. Job insecurity is certain to undermine staff morale; feelings of helplessness, and disempowerment frequently spill over causing impaired work performance. Armed with accurate and dependable information however staff should have a better understanding of their likely future employment situation, and may show more willing to engage in constructive discussions and explore acceptable solutions. Some organisations will have pre-agreed policies that set out procedures to be followed in the event a need for redundancies arises. In the absence of prevailing policy, a reasonable practice should be determined to fit the circumstances then giving rise to potential redundancies.

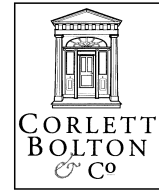
Thinking ahead

Preferably a policy should be drawn up in anticipation of the need for redundancies, rather than leaving such discussions to a time when redundancies are imminent and tensions in the workplace are already high. Employers should ensure, if possible, that employees are aware of how looming redundancies are to be treated at the workplace. Remember, failure to follow appropriate and reasonable procedures could result in employers facing claims for unfair dismissal.

Corlett Bolton & Co.

Douglas: 4 Finch Road, Douglas, Isle of Man IM1 2PT **Peel:** 32 Market Street, Peel, Isle of Man IM5 1AE
Tel: (01624) 676868 **Email:** mail@corlettbolton.com

Corlett Bolton & Co is the trading name of Corlett Bolton & Co Limited (Company Number 126261C)
Directors: SM Bolton, NJ Merritt Consultant: J Karran



Selection criteria for redundancy and the LIFO principle

Objective criteria as far as possible, properly defined and capable of being applied in an independent fashion, should be used to select those employees to be made redundant. This should help ensure employees are not unfairly selected for redundancy. It is crucial the chosen criteria are consistently applied to all employees in the given group, so as not to be viewed as arbitrary, and thus unfair.

Selection on a last in, first out “LIFO” basis is often viewed as a fair method of selection, as it is easy to apply and readily ascertained, and also understood by the employees. However, employers must be aware of the potential to lose workers with key skills the business really needs, while using this particular blanket method of selection. Employers could consider that in addition to the LIFO principle as a base means of selection, a secondary layer of criteria can be added, that while still objective help ensure the retention of a balanced workforce. These secondary criteria should be carefully considered, and great care should be taken to ensure the chosen criteria are not directly or indirectly discriminatory, for example on the grounds of race, religion or sexual orientation or gender.

Factors overriding the LIFO principle could include an employee’s:

- particular skills or qualifications
- high standards or work performance
- particular aptitude for specific sorts of work
- exemplary attendance and disciplinary records

Regardless of the criteria, the way in which they are applied should be fair and clear to all concerned. Drawing up criteria cannot in itself guarantee fair and reasonable selection, for while the criteria might be objective, selection may yet be unfair if arbitrarily, carelessly or mistakenly applied. Employers should always remember the need to demonstrate fair analysis of the comparative information on staff members, when applying criteria to those employees selected for redundancy.

Appeals

Employers should have an appeals procedure already in place to deal with complaints from those who feel that selection criteria have been unfairly applied, or their dismissal is unfair for another reason. It is essential therefore, that employees are made aware of the selection criteria decided upon, and understand how a decision was reached to select that individual for redundancy.

Unfair dismissal following redundancy

Employees dismissed for reasons of “redundancy” will be found to have been unfairly dismissed if it is shown they were selected for redundancy on any grounds where the employee:

- took or proposed to take any family leave;
- took action in the interests of health and safety;
- took or proposed to take annual leave;
- performed any function as a pension scheme trustee;
- made a protected disclosure;
- brought proceedings to enforce, or alleged the employer breached, a statutory right;
- exercised trade union rights including industrial action
- asked for flexible working;
- exercised the right to be accompanied to an enquiry or to accompany;
- being a part-time worker exercised or proposed to exercise the right not to be treated less favourably than a comparable full-time employee;

Corlett Bolton & Co.

Douglas: 4 Finch Road, Douglas, Isle of Man IM1 2PT **Peel:** 32 Market Street, Peel, Isle of Man IM5 1AE
Tel: (01624) 676868 **Email:** mail@corlettbolton.com

Corlett Bolton & Co is the trading name of Corlett Bolton & Co Limited (Company Number 126261C)
Directors: SM Bolton, NJ Merritt Consultant: J Karran



- racial or religious or sexual orientation occasioned the discrimination
- claimed the minimum wage;
- refused to work on Sunday under the Shops Act 2000
- was selected for redundancy on unfair grounds

Suitable alternative work

Employers must consider if employees likely to be selected for redundancy could be offered suitable alternative work within the organisation or, any associated companies. Where alternative work is available, an employee should be given adequate details to enable them to decide whether they wish to accept such an offer. Any number of factors including pay, status, location, work environment and hours of work might influence the employee's decision, and employers may wish to consider ways of accommodating the needs of that particular employee. Employers may consider the possibility for retraining the employee or also retaining them in a temporary capacity until permanent vacancies should arise. Any offer of alternative employment should clearly indicate how the new job differs from the old and must (by law) be made before the current contract of employment is terminated. An employee who unreasonably refuses an offer of suitable alternative work may lose any entitlement to a redundancy payment. However if an employee believes it reasonable for them to refuse the offer and the employer disputes this, it would be for the Employment Tribunal to decide.

Trial periods

Where the employee's duties under the "new job" are different to any extent to those previously undertaken a trial period of 4 weeks commences at the end of the previous contract for the "old job", unless the parties agreed in writing to a longer trial period. Should the employee reject the new job before the end of the trial period as it turns out to be an unsuitable alternative, they will be considered to have been made redundant from the date the previous job ended. However, if they unreasonably reject the new job, no redundancy payment is due to them. In the event of dispute the reasonableness of the refusal is a matter for the Tribunal to decide.

Unfair dismissal

Employers may face claims for unfair dismissal where they have:

- failed to properly consult with employees
- failed to consider any opportunities of alternative employment
- made redundancies where there is no genuine redundancy needed
- unfairly selected an individual for redundancy
- selected an individual for an inadmissible reason.

Notice of Termination of Employment

Where employees cannot be given the opportunity to work their period of notice or the employer doesn't want them to work during the notice period, employees would expect to be compensated by a payment in lieu of notice.

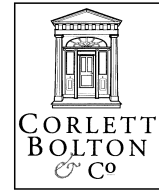
Redundancy payments

A payment is due to a redundant employee under the Redundancy Payments Act if the reason for the termination of employment is redundancy, and to be entitled to a redundancy payment the employee

Corlett Bolton & Co.

Douglas: 4 Finch Road, Douglas, Isle of Man IM1 2PT **Peel:** 32 Market Street, Peel, Isle of Man IM5 1AE
Tel: (01624) 676868 **Email:** mail@corlettbolton.com

Corlett Bolton & Co is the trading name of Corlett Bolton & Co Limited (Company Number 126261C)
Directors: SM Bolton, NJ Merritt Consultant: J Karran



should have been **actually** dismissed. It is therefore not a redundancy where the employee has resigned of their own accord. A redundancy payment could also be due where an employer has not actually dismissed the employee, but they have left as they were laid off (without pay) or put on short-time (and received less than half a week's pay). The individual must have been laid off or kept on short-time for at least 4 consecutive weeks or any 6 weeks in a continuous period of 13 weeks. A job lost on grounds of redundancy entitles that employee to receive payment due in lieu of unused leave, and the period of statutory or contractual notice to which they are entitled.

The relevance of length of service and the relevant date

Redundancy payments are only due to employees who have had a minimum of two years' continuous employment with their employer at the date of termination. The date is usually calculated as at the end of the contractual notice period. All years of service to normal retirement age are counted. Service is counted to the **relevant date**. This is defined as the date on which notice to terminate the employment contract ends. Under the Legislation an employee is entitled to a minimum of one week's notice for each complete year of service up to a maximum of 12 weeks, although a particular employee's contract of employment may in fact provide more generous terms, in which event those terms prevail. The **relevant date** is the date on which the notice, (under statute or contract) expires, which ever date is the later. Employers are obliged by law to provide employees with a written statement of how they have calculated their redundancy entitlement.

Employees who are not entitled to a statutory redundancy payment

Should an employee accept a job on the same terms as the previous one, or a suitable alternative, and the new job commences within 4 weeks of the termination of the original job, they will be regarded as having been continuously employed and no redundancy payment is due to them.

Employees also have no right to a redundancy payment under the Act if:

- employment ends on or after their 65th birthday
- the position carries a normal retirement age of less than 65 and the employee attains that normal retirement age on or before the termination of employment
- an apprentice's service terminates at the end of an apprenticeship contract
- they are one of certain groups such as certain domestic servants, share-fisherman, members of the Isle of Man Civil Service, holders of certain public offices, employees of an Isle of Man employer who normally work abroad, unless on the date of dismissal they were ordinarily resident in the Island, and employees on a fixed term contract containing a waiver of redundancy payment rights. **(Note that this list is not comprehensive and will require specific legal advice)**

Finding other work

An employee who is under notice of redundancy is entitled to a reasonable amount of time off (with pay) to look for alternative employment, provided that at the end of the notice period they have been continuously employed for two years or more. The employer and the employee should agree mutually convenient times for such time off. If an employer unreasonably refuses to allow time off, the employee can complain to the Employment Tribunal.

Employees who wish to leave early

Should an employee wish to leave before their notice ends (perhaps having secured other employment) and the employer has no objection a redundancy payment may still be payable.

Corlett Bolton & Co.

Douglas: 4 Finch Road, Douglas, Isle of Man IM1 2PT **Peel:** 32 Market Street, Peel, Isle of Man IM5 1AE
Tel: (01624) 676868 **Email:** mail@corlettbolton.com

Corlett Bolton & Co is the trading name of Corlett Bolton & Co Limited (Company Number 126261C)
Directors: SM Bolton, NJ Merritt Consultant: J Karran



Should the employer object to this early departure, the employer may issue a written request to the employee asking them to withdraw their application to leave early, and stating that if they do not so withdraw it the right to a redundancy payment may be contested. The Tribunal would consider the reasons given by the employer for refusing the employee's request, and the employee's reasons for wanting to leave early, and will determine whether the employee should receive all, part or none of their redundancy payment.

Voluntary redundancy and early retirement

This can be seen as the most acceptable method of selection, and one least likely to cause unhappiness amongst the remaining staff. Such arrangements may, however, be more costly to the employer in the short-term, as quite often the longest serving employees volunteer for redundancy. An important consideration is how to deal with volunteers the employer cannot afford to let go, due to the need to retain a good balance of skills and experience to protect the organisation's future skills base.

How redundancy payments are calculated

In general for employees of two or more years standing, the amount of a redundancy payment is calculated by multiplying the number of complete years' service by the amount of a week's pay. The amount of a week's pay is subject to an overriding limit, and may be increased from time to time by order of the Department of Trade and Industry. The calculation of what is due can be complicated by other factors such as an employee who is aged 64 at the date of redundancy. An employee is not entitled to a redundancy payment where normal retirement age is reached on the Saturday of the week in which their contract terminates. An employee within 12 months of attaining age 65, will have their redundancy entitlement reduced by 1/12th for each complete month expired since their 64th birthday, up to the relevant date. Entitlement therefore reduces to nothing at aged 65.

In addition an employee entitled to an occupational pension (in respect of the employment from which they are being made redundant) within 90 weeks of the date of their redundancy, may have their entitlement to a redundancy payment reduced or extinguished thereby. **(Note that Specialist advice should be sought on these aspects, which are both complex and variable)**

The payment **calculation date** is either

- the date on which the minimum notice required by statute was given, or
- if the notice under contract was longer, the date on which the minimum notice would have been given to end on the date the job ended, or
- the date the job actually ended, where no notice or inadequate notice was given.

Application for payment from an employer

Where an employer accepts liability for and makes the appropriate redundancy payment on the date of dismissal or soon after, there is no requirement for the employee to submit a written claim. However, where an employee believes they are entitled to a redundancy payment and have not received one, or believe they are entitled to more than they have received, they should initially discuss this with the employer, and if the dispute does not resolve in discussion, the employee should then make a formal written claim on the employer. Any claim must be made within 12 months of the date the employment was terminated. Any dispute about entitlement can be referred to the Employment Tribunal. (Note particularly that a claim for unfair dismissal however, should be referred to the Tribunal within three months of the event complained of.)

Corlett Bolton & Co.

Douglas: 4 Finch Road, Douglas, Isle of Man IM1 2PT **Peel:** 32 Market Street, Peel, Isle of Man IM5 1AE
Tel: (01624) 676868 **Email:** mail@corlettbolton.com

Corlett Bolton & Co is the trading name of Corlett Bolton & Co Limited (Company Number 126261C)
Directors: SM Bolton, NJ Merritt Consultant: J Karran



Claims against the National Insurance Fund and rebates to small employers

Where an employee believes they are due a redundancy payment, and have taken all reasonable steps (other than legal proceedings) to obtain a payment, but the employer has refused or failed to pay all or part of it, the employee may apply to the Department of Health and Social Security for a payment from the Manx National Insurance Fund. An employer who is obliged to make a redundancy payment under the Act may be eligible to claim a rebate from the Manx National Insurance Fund, where the staff compliment at their business does not exceed 40. **(We can advise you more fully on this aspect)**

For further information on redundancy or any other employment law issues, please contact us on (01624) 676868

This publication is intended only to provide a brief guide. It does not purport to be comprehensive or to provide legal advice.

May 2013

Corlett Bolton & Co.

Douglas: 4 Finch Road, Douglas, Isle of Man IM1 2PT **Peel:** 32 Market Street, Peel, Isle of Man IM5 1AE
Tel: (01624) 676868 **Email:** mail@corlettbolton.com

Corlett Bolton & Co is the trading name of Corlett Bolton & Co Limited (Company Number 126261C)
Directors: SM Bolton, NJ Merritt Consultant: J Karran