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REDUNDANCY BRIEF

Purpose:

The purpose of this briefing is to inform employers in the community sector of the legal requirements which should be taken into account when considering redundancies.

The most important thing to remember about redundancy is that it is about the **job role**, not the person performing it and that is why it is important to carry out meaningful consultation at every stage of the process. Redundancy occurs where the need for work of a particular kind has ceased or diminished in that particular Organisation. The focus, therefore, in a redundancy situation is on the work rather than the people carrying it out.

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Consultation & Engagement

If a company is in the situation where redundancy is becoming a real possibility then the obligation is to start consulting at that time as to whether or not there should be any redundancy and what alternatives there are to resolve the situation. All relevant information must be provided to employees. An Organisation needs to consult with the workforce about the nature of the problem and what they need to achieve so that suggestions for reaching that can be considered. Remember that this consultation is supposed to be meaningful so no decision should have taken place at this stage.

There are 2 stages to redundancy consultation:

1. The first is whether or not the post should go. When considering if the post should go, Organisations need to consider if this is a temporary reduction in work or a longer term difficulty
2. The second is whether or not the post holder should go. One will not necessarily follow on from the other depending on how the organisation is to be restructured or reorganised.

Examine Alternatives:

- Look at alternatives such as placing people on lay off or short time working. Lay – Off occurs where the services of an employee are not required because of a lack of work carried out by that employee. The employer must give notice that the break in employment is of a temporary nature otherwise the employee could claim statutory redundancy. Most contracts of employment allow for this option. Short – Time occurs where there is a reduction in the amount of work available leading to a reduction in the amount of hours worked to less than 50% of normal weekly working hours.
- Other options can include seeing if staff will agree to a reduction in hours so that cuts can be made without anyone losing their employment. Investigate if employees will be willing to take a pay cut to avoid a redundancy situation. Remember that any changes to terms and conditions of employment must have the agreement of employees. If there is no way around making the posts redundant the next consideration is whether or not the post holder should be made redundant.

Collective Redundancy

A collective redundancy situation applies to organisations with at least 20 employees where in any 30 days, the number of redundancies is:

5 Employees in an organisation with 20 – 50 Employees.
10 Employees in an organisation with 50 – 100 Employees
10% of the workforce in an organisation with 100 – 300 Employees.
30 Redundancies in an organisation with 300 or more Employees.

There are legal requirements placed on organisations in a collective redundancy situation such as:

1. Notify the Department of Enterprise Trade & Employment at least 30 days in advance.
2. Notify Staff and decide on a consultation format.
3. Commence a 30 day consultation with a clear end date.
4. Provide a facility to amend plans where valid options have been highlighted.

Redundancy Selection

At this point organisations need to work very carefully on identifying the correct selection pool, and consider alternatives such as voluntary redundancies. This occurs where employers ask for volunteers for redundancy. These people are eligible for the statutory redundancy payment if they fulfill the normal conditions.

In the Selection Process Employers Must:

1. Use Fair and Objective Selection Criteria.

2. Document the Financial Case for Redundancy.
3. Identify the future needs of the Organisation.
4. Investigate the possibility of any precedent set e.g. LIFO.
5. Prepare a new Organisation Chart.
6. Draw up new Job Descriptions.

A key issue in respect of selection for redundancy is that the selection process must be seen to be fair and non-discriminatory. None of the nine grounds specified in Equality Legislation can be taken into account in the Redundancy selection process. Should an individual feel that they have been unfairly dismissed by reason of unfair selection for redundancy, then it is open to that individual to take a case to the Rights Commissioners under the Unfair Dismissal Acts or the Equality Tribunal for discrimination.

Redundancy Payment

Redundancy is where an employee's position ceases to exist and the employee is not replaced. Any employee aged 16 or over with 104 weeks' continuous service with an employer is entitled to a statutory redundancy payment.

The statutory redundancy payment is two week's gross pay per year of service up to a ceiling of €600 per week plus one week's pay, which is also subject to the ceiling of €600, tax-free. For information on how to calculate an employee's entitlements please go to the redundancy calculator (http://www.entemp.ie/employment/redundancy/calculator.htm) on the Department of Enterprise, Trade and Employment website.

The employer should pay the full redundancy payment to the employee before he/she leaves. The Employer can then make a claim to the Department of Enterprise Trade & Employment for a 60% rebate following payment of a statutory redundancy lump sum. An employer should, within six months of such payment, submit the comprehensive redundancy form **RP50.** Where Form RP50 indicates that the employee received less than the full statutory redundancy lump sum, the Department then requests the employer to pay the shortfall before processing the rebate form. **This delays payment of the rebate,** so an avoidance of underpayments to employees in the first instance facilitates **the more rapid paying of the rebate by the Department.**

Treatment of Short-time Wages (i.e. working *for less than half a week* or earning less than *half a week's wages* e.g. a 2 day week)

When a person is put on **short-time** i.e. working less than half the number of hours they are normally expected to work in any week or earning less than half their normal weekly earnings, e.g. a 2 day week, the gross wage for the calculation of a redundancy lump sum is based on a **full week's pay.**

Treatment of employees on Reduced Working Hours

When a person is put on **reduced working hours** by their employer e.g. a three day week or a 4 day week, (as opposed to a 2 day week as per above – short-time) the redundancy entitlement is

calculated on the basis of a full week, provided the employee was put on reduced hours **within one year (52 weeks)** ***before*** **being made redundant.**

If they were made redundant **after the first year** of reduced working hours and if it is clear that the employee **fully accepted** the reduced working hours as being his/her normal working week, never requesting a return to a full time week, then the employee is deemed to have accepted the reduced hours as his/her normal week. In this situation the gross pay for redundancy purposes **is based on the reduced working hours.**
On the other hand, if the employee never accepted the reduced working hours as his/her "normal" hours and was constantly seeking to be put back on full time working, he/she could then be deemed not to have accepted his/her reduced hours as normal. In these circumstances his/her redundancy entitlement should be calculated at his/her full-time rate of pay.

Where an employee himself/herself makes a request to be placed on reduced working hours, for his/her own reasons, and the employer agrees, then the redundancy entitlement is based on the reduced hours.

Maternity Leave and Additional Maternity Leave for redundancy calculation purposes

Dealing with employees on Maternity Leave has proven to be problematic for many Organisations. Maternity Leave is classified as "Protected Leave" and as such an employee cannot be given Notice of Redundancy while on maternity leave or additional maternity leave. Under the Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004, the date of an employee's dismissal or termination of employment in a redundancy situation under the Redundancy Payments Acts 1967 to 2003 is deemed to be the date of her expected return to work as notified to her employer (or his/her successor) under the maternity protection legislation above. **Maternity leave, which at present is 26 weeks, has always been fully reckonable for redundancy calculation purposes.**

Additional maternity leave of 12 weeks, protective leave or natal care absence within the meaning of the Maternity Protection Act 1994 and the Maternity Protection (Amendment) 2004 are all reckonable for redundancy calculation purposes in respect of redundancies notified/declared since 10th April, 2005, being the date of the coming into operation of Section 12 of the Redundancy Payments Act 2003.

Regarding employees declared redundant on or after 10th April, 2005, there is no question of any maternity leave or additional maternity leave being non-reckonable in the period **prior to the last 3 years** of service, ending on the date of termination of employment. Thus, **all periods of absence** due to maternity or additional maternity leave arising before the last 3 years of employment are fully reckonable for such employees.

PLEASE NOTE THAT non-reckonable service applies only to the **final 3 years ending with the date of termination of employment** in respect of redundancies notified/declared after 10th April, 2005 i.e. the date of the coming into operation of Section 12 of the Redundancy Payments Act, 2003. There is no question of non-reckonable service in respect of redundancies notified/declared **prior to this 3 year period.**

So if a person has been employed for example, 20 years, there will be no non-reckonable service in respect of the first 17 years. Any non-reckonable service will only be included in respect of the last 3 years.

Examples of Non-Reckonable Service include:

1. Absence in excess of 52 Weeks by reason of Occupational Accident or Disease as specified in the Social Welfare (Consolidation) Act 1993. The first 52 weeks are fully reckonable.
2. Absence in excess of 26 Weeks by reason of any other illness not as above. The first 26 weeks are therefore fully reckonable.
3. Absence by reason of Lay – Off by the Employer.
4. Absence from work by reason of a strike.

Parental Leave for Redundancy Calculation Purposes

For statutory redundancy calculation purposes, parental leave, which at present is 14 weeks, is already fully reckonable under the Parental Leave Act 1998. This has been reinforced under Section 12 of the Redundancy Payments Act 2003 in respect of redundancies notified/declared since 10th April, 2005, with specific provision being made whereby parental leave and *force majeure* leave within the meaning of the Parental Leave Act 1998 are fully reckonable for statutory redundancy purposes.

Adoptive Leave for Redundancy Calculation Purposes

Since 1st March, 2007, **24 weeks** of absence due to Adoptive Leave has been fully reckonable for redundancy calculation purposes, up from 20 weeks since 1st March 2006. Additional adoptive leave of 16 weeks from 1st March 2007, up from 12 weeks is also fully reckonable for redundancy purposes. Of course, with respect to redundancies notified on or after 10th April, 2005, any adoptive leave taken **before the last 3 years** of employment will be **fully reckonable** – the 3 year rule therefore applies.

Enhanced Redundancy Payments

Employers should be aware that it is open to employees to try and negotiate an enhanced redundancy payment and so where possible employers should make provision for redundancy payments above the statutory requirement. Employees and their Trade Unions have taken cases to the Labour Court and have been successful in securing enhanced redundancy payments for employees. The Labour Court will examine the employers' ability to pay in deciding such cases.

Notice Requirements

The employer must still give the employee notice of dismissal for redundancy. He/she can do so by giving **Part A (Notification of Redundancy) of Form RP50** to the employee. However, when claiming the rebate, the employer must complete and submit the **new Form RP50.**

Employees are entitled to notice as per the Minimum Notice Act or Contract of Employment prior to termination of employment. If the employer is unable to provide the appropriate notice he/she can pay the notice in lieu. Employees who are unable to obtain their correct redundancy

payment and/or minimum notice entitlement may make a claim to the Employment Appeals Tribunal.

The term "Protective Notice" is one widely used in Redundancy Situations. Legally there is no such thing. It is used in situations where employers communicate to employees that it expects people to be made redundant at a certain stage unless there is a change in circumstances. It is used in the context of providing information to employees to alert them to the prospect of redundancies but is not a legal entity.

The Social Insurance Fund (SIF)

In the first instance it is up to the employer to pay the statutory redundancy lump sum to all eligible employees. The Social Insurance Fund (SIF) finances the 60% redundancy rebate payment to employers who pay their eligible employees their full statutory redundancy entitlements. However, where the employer is unable to pay or refuses or fails to pay, the Department steps in and makes a payment from the (SIF)

In a situation where an Organisation provides the Minister with concrete evidence of its inability to pay its employees their statutory redundancy entitlements e.g. audited accounts/bank statements, the Minister will make the payment from the Social Insurance Fund and will subsequently seek repayment of the amount concerned, less the 60% rebate which the company would have been entitled to if it had been in a position to make the payment in the first place.

In the case of an employer simply refusing to pay a redundancy lump sum, the Minister will have the payment made from the Fund and will then endeavour to recover the full amount from the employer. Under Section 43 of the Redundancy Payments Act 1967 such amounts owing to the Fund are recoverable as debts due to the State and, without prejudice to any other remedy, may be recovered by the Minister as a debt under statute in any court of competent jurisdiction.

A few Do's and Don'ts to keep in mind

Do

- Consult with all staff at all stages before making any decisions
- Consider alternative suggestions
- Use objective selection criteria based on skills requirements.
- Avoid potentially discriminatory criteria
- Provide details of all alternative employment

Don't

- Make decisions based on the individual
- Use redundancy to deal with capability/conduct issues
- Use subjective criteria which cannot be justified.
- Make decisions before speaking to staff.
- Limit the details of alternative roles.