

REDUNDANCY, SHORT-TIME AND LAY-OFF PROCEDURES

Redundancy occurs where jobs are lost due to circumstances such as the closure of the business or a reduction in the number of employees. Employers are obliged to follow certain procedures when an employee becomes redundant. The Redundancy Payments Acts 1967-2012 provide a minimum entitlement to a redundancy payment for employees who have a set period of service with the employer.

RULES

In addition to the provisions in the legislation as regards collective redundancies employers must follow certain fair procedures that is, to give at least 2 weeks' notice and on the date of dismissal pay the redundancy payment are also various procedures with regard to selection for redundancy, alternative work and time off.

Employees need to have worked 104 weeks to achieve a payment entitlement.

SELECTION FOR REDUNDANCY

In selecting an employee for redundancy, an employer should apply selection criteria that are reasonable and are applied in a fair manner. Employees are entitled to bring a claim for unfair dismissal if they consider they were unfairly selected for redundancy or consider that a genuine redundancy situation did not exist.

The most equitable way to apply redundancy selection is to develop a selection matrix to identify the capabilities required within the company in order to ensure that the reason for redundancy is objective however if a previous redundancy situations utilized a last in, first out selection it may be difficult to change the selection process.

ALTERNATIVE WORK

As with any dismissal, an employer must act reasonably in a redundancy situation. There is a requirement for consultation with the employee before the decision is made. In addition, an employer should consider all options including possible alternatives.

Alternatives which involve a loss of status or worsening of the terms and conditions of employment are not generally considered reasonable. Similarly, an offer that involves travelling an unreasonable distance to work may also be considered a justifiable reason to refuse an offer.

An employee may take up an alternative on trial for up to 4 weeks. Where the alternative involves a reduction of 50% or more in hours or pay, working under the new arrangements for up to 52 weeks will not count as an acceptance.

If an employee accepts a new contract or re-engagement with immediate effect and the terms do not differ from those of the previous contract, they will not be entitled to claim redundancy. This also applies if they refuse such an offer unreasonably.

A justifiable refusal of an offer of alternative work, followed by dismissal may entitle the employee to seek statutory redundancy or make a claim for unfair dismissal.

Any offer of alternative work should be given in writing and the employee is entitled to the full details of the offer.

NOTICE FROM THE EMPLOYER

Employers must provide a minimum of 2 weeks' notice of redundancy. This notice period goes up depending on the period of service.

| PERIOD OF SERVICE | NOTICE REQUIRED |
|---------------------|-----------------|
| Between 2-5 years | 2 weeks |
| Between 5-10 years | 4 weeks |
| Between 10-15 years | 6 weeks |
| Over 15 years | 8 weeks |

LAY-OFF, SHORT-TIME WORKING AND REDUNDANCY

If the business reduction is expected to be resolved in a short an employer may lay off or put employees on short time for several weeks.

Under Section 11 of the Redundancy Payments Acts 1967–2012 a lay-off situation arises where the employer is unable to provide work for employees but believes this to be a temporary situation and gives notification of the lay off before the work finishes.

A short-time situation arises where, due to a reduction in the amount of work to be done, weekly pay is less than half the normal weekly pay or the hours worked are reduced to less than half the normal weekly working hours. This must be a temporary situation and the employer must notify employees before the reduction starts.

RULES

The employer should explain to the employees the reason for the lay off or short-time working and keep employees informed of the situation during this time. In both cases these must be temporary situations and the employer must notify employees to this effect before they start.

The best way to do this is by using Part A of form RP9 (pdf). If the employer fails to notify employees of the lay off or short-time working, there could be a claim for statutory redundancy payment aThe employer can lay off or put employees on short time if it is in the contract of employment or if it is custom and practice in the workplace. Otherwise the employer should not lay off or put employees on short time without their agreement. However, if employees do not agree they may be made redundant.

SELECTION OF EMPLOYEES

When selecting employees for lay off or short-time working an employer should apply the same standard of selection criteria as for redundancy.

SOCIAL WELFARE PAYMENTS

If an employee is laid off or are on short-time working they may be entitled to Jobseeker's Benefit or Jobseeker's Allowance.

If they are getting Family Income Supplement this may be affected by the reduction in the working hours.

CLAIMING REDUNDANCY

If a lay-off or a short-time situation exists and has continued for 4 weeks or more, or for 6 weeks in the last 13 weeks, an employee may give their employer a notice in writing of their intention to claim redundancy under the Redundancy Payments Acts 1967-2012. If the period of lay-off or redundancy has ended, this claim must be made within 4 weeks.

Unless the employer gives the employee a counter-notice within 7 days of receiving the employees notice, the employee may be entitled to a redundancy payment if they qualify for redundancy.

If the employer gives a counter-notice within the allotted time, it must be to the effect that within 4 weeks of the date of the employee's claim for redundancy, it will be possible to offer the employee not less than 13 weeks' work without lay off or short time.

Employees should note that if they claim redundancy in this way, they are considered to have left their job voluntarily and therefore will lose any right to notice from their employer under the Minimum Notice and Terms of Employment Acts 1973-2005. However, if they have been laid off and are subsequently made redundant by their employer, they do not lose their notice entitlements.

NOTICE

When an employer gives notice, an employee's notice entitlement is based on their full-time work. When employees are put on short-time work, their contract of employment is suspended. When the employer decides to invoke redundancies, he or she must re-activate contracts of employment in order to dismiss employees on grounds of redundancy.

Where employees were made redundant and are not required to work out their notice, they are entitled to payment in lieu of notice which is the normal pay for that notice period. This means that notice entitlement is based on the hours of work in the contract of employment, not on the short-time hours of work.

DURATION OF LAY OFF OR SHORT TIME

If an employee does not wish to claim redundancy but the lay-off or short-time situation continues, the question arises as to whether it is a temporary situation. If it becomes apparent that it is no longer temporary, then the situation is now a redundancy rather than a lay-off or short-time working. It is the employer who initially decides whether or not there is a redundancy situation. If there is a dispute about this it should be referred to the Workplace Relations Commission.

SEASONAL WORKERS

In the case of workers who have been laid off for an average period of more than 12 weeks during the 4 years prior to redundancy, the provisions relating to lay off above will not apply until the end of that average period. If you are a seasonal worker, therefore, there will normally be no question of redundancy until the usual commencement time of your seasonal work. If you are not then re-employed, the question of redundancy arises, but not until then.

TIME OFF

An employee being made redundant is entitled to reasonable paid time off in order to look for a new job.

LEAVING BEFORE YOUR NOTICE EXPIRES

Between receiving notice of redundancy and the date employment ends, an employee may give their employer notice that they wish to leave before the end of their notice period. Employees do this by completing form RP6 (pdf) and giving it to their employer. It is up to the employer's discretion as to whether to grant the request or not. Employees leaving during the notice period without their employer's agreement may affect their entitlement to a redundancy payment.

REDUNDANCY PAYMENT

The statutory redundancy payment is a lump-sum payment based on the pay of the employee. All eligible employees are entitled to:

- Two weeks' pay for every year of service over the age of 16 and
- One further week's pay

The amount of statutory redundancy is subject to a maximum earnings limit of €600 per week (€31,200 per year).

Pay refers to current normal weekly pay including average regular overtime and benefits-in-kind, but before tax and PRSI deductions, that is gross pay. The statutory redundancy payment is tax-free.

Redundancy entitlements can be calculated here:

<https://www.welfare.ie/en/Pages/secure/RedundancyCalculator.aspx>

TAXATION OF LUMP SUMS

If the employee receives a lump sum in compensation for the loss of employment, part of it may be tax-free. The statutory redundancy lump sum is always tax-free.

EMPLOYER INSOLVENCY

In the first instance it is up to the employer to pay the statutory redundancy lump sum to all eligible employees. However, where the employer is unable to pay or refuses or fails to pay, the employee can apply for direct payment from the Social Insurance Fund.

Where employment has been terminated due to the insolvency legislation provides for the payment of certain outstanding entitlements in relation to pay. Under the Insolvency Payments Scheme these may be paid by the Department of Social Protection out of the Social Insurance Fund and levied against the employer.