

## Collective Redundancy Frequently Asked Questions

### 1. What is a collective redundancy?

A collective redundancy means the dismissal for redundancy reasons over any period of 30 consecutive days of at least:

- Five persons in an establishment normally employing more than 20 and less than 50 Employees.
- Ten persons in an establishment normally employing at least 50 but less than 100 Employees.
- Ten percent of the number of Employees in an establishment normally employing at least 100 but less than 300 Employees.
- Thirty persons in an establishment normally employing 300 or more Employees.

### 2. If the situation is making 2 of 3 people redundant. Is this a "collective redundancy"?

No. It is only where the threshold has been reached as outlined under question 1 that a collective redundancy applies.

### 3. Is there much difference in the procedure and law in relation to make an individual person redundant?

Where a collective redundancy situation does not apply there is no requirement to provide the Minister with written notice at least 30 days before the first dismissal takes effect nor is the consultation period timebound by the 30-day requirement. However, best practice should apply insofar as the employer engages in meaningful consultation to discuss the proposals, explore all alternatives and any means of mitigating the risk of redundancy. Advice should be sought in order to engage in an individual redundancy so as to mitigate the risks that arise in such a process.

### 4. What makes a redundancy genuine?

A genuine redundancy is taken to exist where one of the following arise:

- The Employer ceases to carry on the business for which the Employee was employed or ceases to carry on the business at the same place where the Employee was employed.
- The work for which the Employee was employed has ceased or the requirement to perform that work has reduced.
- The Employer has decided to carry on the business with fewer or no Employees. Work may be reallocated to other Employees.
- The work which the Employee performed is to be performed in a different way and the Employee is no longer qualified to undertake the work.
- The Employee's work is to be undertaken by another person who is sufficiently qualified and capable to undertake other work for which the Employee is not sufficiently qualified or trained.

## 5. What is the employer obliged to do in a collective redundancy situation?

When an employer proposes to implement collective redundancies they must, under the Protection of Employment Act 1977-2014 (as amended):

- Give the Minister for Employment Affairs and Social Protection written notice of their proposals at the earliest opportunity and at least 30 days before the first dismissal takes effect.
- The Act also provides that an Employer contemplating collective redundancies, must, with a view to reaching an agreement, similarly consult the representatives of the Employees affected not later than 30 days before the first dismissal takes effect.

## 6. What are the repercussions if a letter informing of the collective redundancy is not sent to the Minister?

Failure to notify the Minister in accordance with the legislation can leave an employer liable to a fine of up to €5,000. If any collective redundancies take effect before the expiry of the 30 days which begins on the day that notification is given to the Minister, the employer shall be guilty of an offence and liable to conviction on indictment to a fine not exceeding €250,000.

## 7. What is reckonable service for redundancy purposes?

An absence from work while on maternity leave, additional maternity leave, adoptive leave, additional adoptive leave, parental leave, force majeure leave and Carer's leave. Any absence that is authorised by the Employer, e.g. Career Break, Annual Leave, Public Holiday leave etc.

## 8. What is non-reckonable service for redundancy purposes?

Non-reckonable service is only confined to the last three years of employment before redundancy. The following absences are all deemed to be non-reckonable for statutory redundancy calculations:

- An absence greater than 52 consecutive weeks by reason of occupational injury/illness;
- An absence in excess of 26 weeks by reason of an ordinary illness/injury;
- An absence by reason of lay-off by the Employer;
- An absence by reason of strike.

## 9. What happens if an Organisation cannot pay the Statutory Lump Sum?

In the event that an Employer is unable to pay the statutory redundancy amount, they must be able to prove this by sending in the following information along with a signed RP50 to the Department of Social Protection. A letter from an Accountant or Solicitor stating that the Organisation is not in a position to pay and accepting liability for the 100% owing to the Social Insurance Fund, and documentary evidence i.e. Audited accounts/statement of affairs. The statutory redundancy payment will then be processed and paid to the employee through the Social Insurance Fund.

## 10. How are Employee Representatives elected?

It is up to the employees to decide how they elect their Employee Representatives. It is recommended that a suggestion is made for the election to take place by a show of hands or by discussion and consensus and nominees must be affected employees. It is recommended that an Employee Representative is elected from each Department to represent all the affected group of employees as a whole. It is suggested that there be between 1 and 2 representatives from each Department.

## **11. What does an Employee Representative do?**

The primary role of an Employee Representative is to take an active part in collective consultation meetings with the business by:

- receiving written and oral information regarding the plans and the reasons for the plans;
- communicating this information to the Employees they represent;
- discussing the possibility of avoiding the proposed redundancies or reducing the numbers affected;
- discussing any measures such as re-training or re-deployment;
- discussing the basis on which Employees may be made redundant;
- representing the views and opinions of the Employees they represent in any consultation process;
- taking reasonable steps to ensure that the views of the affected Employees are taken into account as part of any consultation process;
- reporting back to the Employees on the outcome of any meetings with the organisation; and
- maintaining appropriate confidentiality around this process in relation to any external third parties.

## **12. What information must the employer provide to the employee representatives?**

The legislation requires the employer to give the employee representatives all relevant information relating to the proposed redundancies. The legislation sets out the specific information that must be given to employees in writing. The employer is also required to provide copies of all information supplied to the Employee Representative to the Minister as soon as possible.

## **13. What happens if an affected employee is offered another job and plans to leave during the collective consultation period?**

The normal process would apply i.e., the employee would resign in the normal way. There would be no entitlement to redundancy payments if an employee resigns during the consultation period prior to the conclusion of the process.

## **14. What should be discussed at the collective consultation meetings?**

The consultation must include a discussion or further explanation on the proposals, exploration of all suitable alternatives, anything that may mitigate the risk of redundancy and the basis on which the employees will be selected for redundancy.

## **15. What happens when different working conditions are offered as an alternative to redundancy?**

As a general rule, where the terms and conditions offered are different from those of the existing job, the offer must be of “suitable employment” for that employee. Otherwise it would seem that a redundancy situation is involved i.e. where there is a material deterioration in the terms and conditions of employment.

**16. Can an employer issue notice of redundancy to employees prior to the conclusion of the 30-day consultation period?**

No, in accordance with a new insertion (Section 16(2)) of the Protection of Employment (Exceptional Collective Redundancies) Act, 2007 notice of dismissal cannot be provided to an employee prior to the conclusion of the consultation period. If any collective redundancies take effect before the expiry of the 30 days, which begins on the day that notification is given to the Minister, the employer shall be guilty of an offence and liable to conviction on indictment to a fine not exceeding €250,000.

**17. What is the present standard formula for calculating a redundancy payment?**

Under the Redundancy Payments Acts, an eligible Employee who is declared redundant on or after 25th May 2003 is entitled to two weeks statutory redundancy payment for every year of service over 16 years of age. A bonus week is added to this. All of this is based on gross pay subject to the “ceiling” of €600.

**18. Is a redundancy lump sum payment taxable?**

A statutory redundancy lump sum, which under the law must be paid, is entirely tax-free. Only a payment above and beyond the statutory payment (an ex-gratia payment) is taxable, but only when it goes over a certain limit and in accordance with the Tax Consolidations Acts.

**19. Can an Employee be made redundant while on Maternity Leave or on Additional Maternity Leave?**

No. Notice of Redundancy cannot issue when a person is on Maternity Leave or indeed on Additional Maternity Leave.

**20. What is the minimum period of notice required for redundancy?**

The main requirement, in accordance with the legislation, is that there must be at least 2 weeks’ notice. All of the longer periods of notice come under the Minimum Notice and Terms of Employment Acts 1973 to 2005 or contractual notice, whichever is the greater.

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**For further information or advice, please contact the designated HR & Employment Helpdesk at [thewheelhrhelpdesk@adarehrm.ie](mailto:thewheelhrhelpdesk@adarehrm.ie) or via telephone on (01) 5394661 Monday – Friday 9.00am- 5.00pm**