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# Myerson **Employment**

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**Our guide to redundancy for employers**

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# Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

## Why Myerson?

Our Employment Solicitors offer clear and confidential advice to businesses facing employment issues.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Employment Team** by clicking [here](#).



# Redundancy Guide

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## What is redundancy?

A genuine redundancy arises where the employer's requirement for employees ceases or diminishes.

This can arise because there is a reduced requirement for employees to perform a particular kind of work or where a business or workplace is closed.

The meaning of redundancy is wider when considering collective consultation requirements (see: Do the collective redundancy consultation requirements apply in relation to changes to terms of employment?)

## Can a redundancy dismissal be unfair?

Without being able to establish that a genuine redundancy arises a dismissal on this basis is likely to be unfair.

A genuine redundancy dismissal can also become an unfair dismissal where an employer: fails to adopt a fair process when selecting employees for redundancy; fails to consider alternatives to redundancy; or, fails to follow a fair procedure in relation to the redundancy.

A fair procedure involves the employer consulting with the employee on an individual basis in relation to the potential redundancy dismissal. A fair procedure may also involve collective consultation with appropriate representatives of affected employees.



Only employees with two or more years' service can claim unfair dismissal. However, irrespective of the length of service, employees may make claims to an Employment Tribunal if there is any discriminatory factor in the employer's decision to dismiss.

## What are the rules when proposing collective or multiple redundancies?

Where an employer proposes 20 or more redundancy dismissals, at a single establishment, over a period of 90 days, in addition to ensuring that the redundancy dismissal is fair on an individual basis, the employer must comply with additional requirements to provide information about its proposals and to consult on a collective basis.

The information and consultation obligations are owed to 'appropriate representatives' of employees and involve the employer consulting for minimum periods prior to effecting redundancy dismissals. These additional requirements are complex, and failure to properly satisfy the requirements can result in financial penalties of up to 90 days' pay for each affected employee.

There is a defence to such claims where special circumstances apply, but this defence is rarely successful.



# What information must be provided to the appropriate representatives?

Prior to the consultation, employers must provide the appropriate representatives with written information about its redundancy proposals.

The information provided must include, for example:

- details of the reasons for the proposals;
- details of the numbers and descriptions of employees affected;
- details of selection criteria; and
- details of redundancy payments.

# What are the minimum periods of consultation for collective redundancies?

Consultation with appropriate representatives must begin 'in good time' and must in any event begin:

- where between 20 and 99 redundancies are proposed at one establishment within a 90 day period, at least 30 days before the first of the dismissals takes effect; and
- where 100 or more redundancies are proposed at one establishment within a 90 day period, at least 45 days before the first of the dismissals takes effect.

A dismissal before the minimum consultation period is up will be a breach of the requirements (even if the agreement has been reached with appropriate representatives).

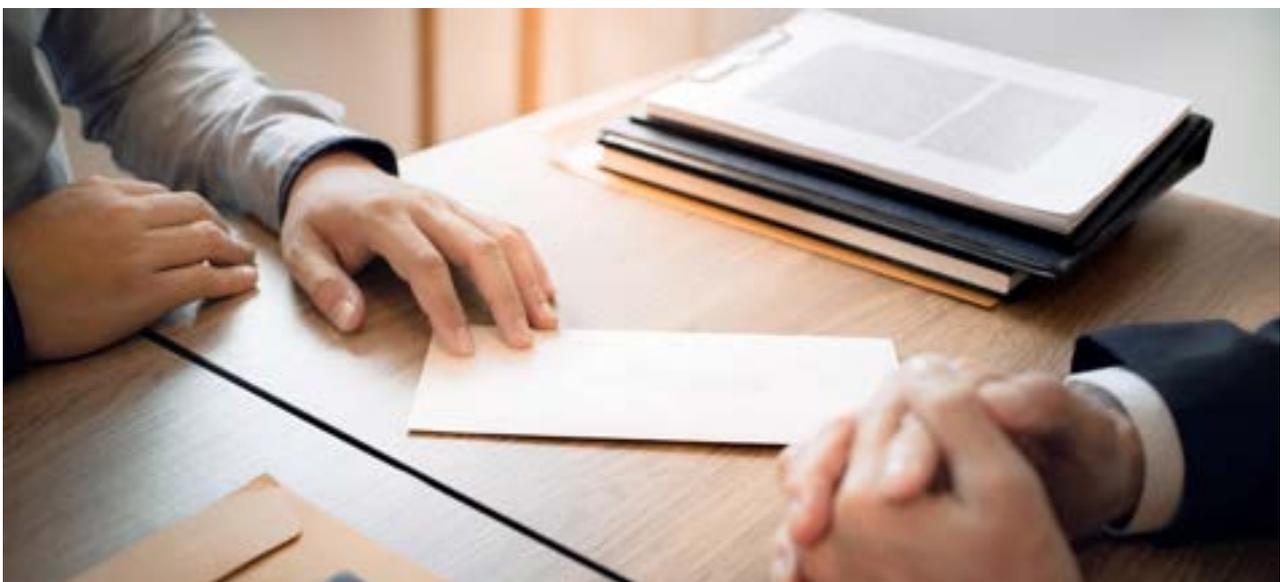


# What does collective consultation involve?

Consultation involves a genuine and meaningful exchange with appropriate representatives about avoiding dismissals, reducing the numbers to be dismissed and mitigating the consequences of the dismissals, as a minimum. For consultation to be meaningful, the employer's proposals must be at a formative stage when consultation begins and the representatives must be given sufficient time to make a meaningful contribution.

## Is there a requirement for both individual and collective redundancy consultation?

The collective consultation requirements are in addition to the requirement not to unfairly dismiss an employee. Employers must, therefore, undertake (and normally complete) collective consultation prior to effecting individual dismissals (which must follow a fair procedure and individual consultation).



# Are there any other requirements when there are collective redundancies?

In addition to obligations to inform and collectively consult with appropriate representatives in cases of collective redundancies (20 or more), employers must also notify the Secretary of State of the proposed dismissals.

This is done using a prescribed form – Form HR1, which can be obtained from the **Redundancy Payments Office**. Failure to give notice to the Secretary of State is a criminal offence punishable on summary conviction by an unlimited fine.

# Do the collective redundancy consultation requirements apply to changes of terms of employment?

The collective consultation requirements apply where an employer proposes to dismiss 20 or more employees where the reason for dismissal is a reason not related to the individual. This means that the requirements are triggered in circumstances where dismissals are for reasons which are wider than what is commonly understood to be redundancy.

Such circumstances include where dismissals may be proposed in the context of reorganisation or changes to terms and conditions involving significant numbers of employees.



# What payments are made on redundancy?

On redundancy, employees with two or more years' service are entitled to a statutory redundancy payment (calculated by reference to age, length of service and a weeks' pay (currently capped at £538)).

Employees may also have an entitlement to an enhanced redundancy payment in some circumstances.

Leavers must also either work a period of notice or be paid in lieu of notice. An entitlement to pay in lieu of accrued but untaken holiday may also arise.



# You're in safe hands!

If you would like further information about how we can help you with your **Redundancy**, or if you have any questions, please don't hesitate to contact a member of our **Employment Law Team** today.

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Call: **0161 941 4000**

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