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REDUNDANCY

Concerned that you are about to be made redundant? This 'quick' guide is based on the frequently asked questions on our hotline service.

1. What rights do I have?

- a) **Notice** You are entitled to notice (which is ... "In one/two/four ... week's time, you will be made redundant"). There is no general right to be paid money in lieu of working the notice. Many contracts will give the employer the 'right' to pay you instead, but there is not usually any corresponding right for you to insist upon it. Your statutory notice entitlement is nil for the first four weeks of employment, then one week. After that it is one week per complete year of service (eg 3 ½ years count as three week's notice), to a maximum of 12 weeks' notice. Your contract may provide for a longer notice period in which case that will apply. If your contract provides for less notice, then statutory notice will apply.

If you have restrictions on what you can do for a living after you have left (post termination restraints), or if your employer can put you on 'gardening leave' (pay you but require you to stay at home) or transfer you during your notice period, you should take specific advice.

- b) **Consultation** Everyone has the right to be 'consulted' individually about a potential redundancy (see below). However, unless you are covered by c) below, there is very little you can do about failure to consult individually if you have less than one year's service AND if less than 20 people in your unit are being made redundant over a rolling 90 day period. Very occasionally people have contractual rights to specific periods of consultation - check your contract and your own organisation's redundancy policy - some are contractual and some are not.

If your employer is making 20 or more people redundant in a 90-day period, you are entitled to elect representatives or have your trades union consulted. There is also a minimum consultation period of 30 days (90 days if 100 or more employees are being made redundant). If the employer fails to do this, it can result in awards of up to 3 months' money. You do not need any particular length of service to be eligible for this. You should take specific advice if this is the case.

- c) **Discrimination law** If you are on maternity leave, you have additional rights compared to ordinary employees. You have the right to be offered alternative employment while you are on leave (and to be absent from that new alternative employment). You should take advice and not wait until the end of your maternity leave period.

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If you believe you are being singled out for lack of consultation, redundancy selection, or are not being offered vacancies because you belong to a protected group, then you have the benefit of discrimination law, even if you have only just started working for your employer. Similar protection exists for trades unionists - talk to your union about this.

If you have complained about something at work such as not getting itemised pay statements, not getting minimum wage, not getting statutory holidays, you are also protected from being subjected to detriments or victimisation as a result - so if you feel you are being singled out, you should take advice. Similar protection exists for 'whistleblowers' - people who have complained about their employers to external bodies who have a legal interest in their affairs.

If you believe that your employer is acting differently towards you because of your:

gender, sexual orientation, marital status, part time working,
pregnancy/parental status, religious belief, race, ethnicity, nationality,
disability
age

then you should make sure you tell your advisor about this since it changes your rights.

Check out the relevant web sites:

<http://www.equalityhumanrights.com/en/Pages/default.aspx>

- d) Time off during notice period.* If you have **two years' qualifying service** as an employee, you have a right to a limited amount of paid time off to look for another job or to arrange retraining. You must ask your employer for the time off. If it is refused, you may be able to complain to an employment tribunal and get compensation - but you should not just take the time off without permission, as that will put you in the wrong.
- e) Unfair Dismissal law.* You need **one year's qualifying service** as an employee to bring an unfair dismissal claim [unless you have a claim under c) above.] Redundancy is a form of dismissal. It is different from other dismissals in that it is not necessarily about what you did or did not do, it is about how many employees your employer needs to employ. It is possible to be made redundant and yet not be entitled to a redundancy payment (see below). Before you consider taking your employer to tribunal you should take legal advice. And if you don't appeal against your selection for redundancy first, you may prejudice your claim and certainly you will reduce how much you stand to gain
- f) Redundancy pay* You need **two year's qualifying service** as an employee to be entitled to a statutory redundancy payment. You can check your entitlement to statutory redundancy pay on line <http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html>

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g) If you earn more than the £350 a week gross pay, your redundancy pay is calculated on a maximum of £350. If you earn less - then your entitlement will be calculated on less. This figure changes every year in February. This is the figure from 1 February 2009. From 1 October 2009 the figure increases to £380.

For anyone earning over the maximum weekly amount, the statutory redundancy payment is extremely low in relation to their earnings. Your employer may have a voluntary 'top up' scheme, or they may offer you more in exchange for a 'compromise agreement' (see below) but it is extremely rare for anyone to be 'entitled' to any more than their statutory redundancy pay. Even if your employer has made generous payouts in the past, few employers contract to do so in advance. It may be unfair that one person gets a lot and another a little, but unless you are covered by the special protection set out in c) above, there is nothing you can do about discretionary payments but negotiate for them to be given to you.

2. How do I decide what to do?

Get hold of the relevant documents. You should have these, but if not, ask your employer or HR for a copy of:

- your contract of employment/statement of particulars of employment;
- staff handbook;
- redundancy procedure;
- redundancy policy;
- discrimination/equal opportunity policy (if relevant);
- vacancy list (including other locations/other companies in the same group) ;
- calculation of what they propose to pay you if you are selected for redundancy;
- a list of your benefits, current gross pay, average nett pay over last 3 months including commissions, car allowances etc.;
- Pension scheme contributions - yours and employers and latest statement/retirement age information;
- Consultation letter;
- Any other letters between you and your employer about this proposed redundancy;

Start keeping a diary of events/incidents. Make notes of conversations you have about your proposed selection. Date them, put a time on them. Keep them safe. If you believe you are being discriminated against (see c above) start to make notes and collect documents that show how you arrived at this view.

Try to put in who was there, what they said or did, whether any documents exist that will show that - eg e-mails, letters, memos. Keep copies of any documents that you regard as bullying. Do not just record - "x happened". Write down

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boss said e.g. “.....” in front of xxx and the rest of the department on 9th May at 4pm. Sent me memo confirming this an hour later - circulated to entire team.

2. What can I expect to happen?

- h) **Consultation** You should be consulted about your possible selection for redundancy. This is not the same as being told “you are redundant and leaving on Friday” which is being given notice. . Some people, understandably, find it very upsetting to discover their job is at risk and get in a muddle and think they have already been given notice.

If you are not sure whether you have been consulted or given notice, you should ask your boss or HR, preferably in writing (e-mail is fine). Tell them you don't know whether you are being consulted or have been given notice, and ask them to confirm.

You may find it helpful to read (and re-read) the documents you were given (if any) when your ‘consultation’ began. It is easy to be distracted or focussed on one thing and miss another. Most employers take the time to set things out in writing for this reason - so you can read it on your own and think about things.

Consultation should be at the ‘earliest possible opportunity’ and should include:

- ways of avoiding redundancy - eg vacancy freeze, reducing temps, volunteers, other changes
 - potential method of selection (not just we have chosen you, but how)
 - financial consequences and ways to ‘mitigate’ them
- i) **Fair method of selection** In theory employers should have a method of selection, which when applied, results in the selection of certain individuals. In reality, many employers have no such thing and would be hard put to explain how they picked people.

If you don't know or don't understand how people are going to be chosen, ask questions. If you don't think it is fair you should say so and explain why you think this. It is not a good idea to go along quietly and then object later. Be polite, but make sure your views are known.

- j) **Retraining and new work** If you are given formal notice of redundancy, you are entitled to take time off work for attending interviews and retraining. This time should be arranged in advanced, and should be paid. It does not form part of your holiday entitlement. Your employer is not obliged to pay for the retraining itself, though many employers do offer help with interviews, training etc as part of the ‘redundancy package’. They are not obliged to offer to pay for this, though they are obliged to give you the time off.

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You are entitled to be considered for vacancies within your organisation until the very moment your notice expires. This is not the same thing as you having the right to be 'offered' alternative employment. You should apply for any vacancies you see that you feel you are qualified for or are willing to do.

If you are offered an alternative role, there is no legal obligation for that to be at your current pay rate. Employers are entitled to offer you the role at the rate the role carries (which may be less than yours). Some employers have redundancy policies which go beyond this - read yours.

If you accept, you have a four week period to try out the new role, during which time, you can usually go back to your original redundancy package/entitlement if the job is not suitable.

You cannot have the redundancy package and the job!

- k) **Leaving early** If you have been selected for redundancy you usually need to stay working until the end of your employment to qualify for your redundancy pay. Some employers pay money in lieu of notice and you can find things happening very fast. Others give notice in terms of time and you can spend weeks or even months between when you know what is happening and when you actually leave.

If you get offered a new job elsewhere, you can ask your employer to let you go early. Once you are within your statutory notice period [see a) above] even if you were given a longer contractual period, you do begin to have rights to leave early and retain your statutory entitlement. Whether or not you can still have any additional payments is partly a factor of what type of 'deal' your employer offered in the first place and what type of employer you are working for.

Many employers seek to encourage people to remain until the end, and work hard, by offering 'loyalty' payments or bonuses. Not everyone does.

- l) **Pensions** If you or your employer have contributed to a company pension, then you will need a statement of what your contributions are worth. Your advisor will also need to know who usually contributes what. You may want to take advice from an [independent financial advisor](#) or your usual financial advisor on what you should do about pensions. If you are negotiating a large 'pay off' it is sometimes advantageous to put more money into your pension fund and take less cash - see tax below.

- m) **Tax** Statutory redundancy pay is not subject to tax. Holiday pay and wages are always subject to tax. Money in lieu of notice is often subject to tax. The taxable status depends on whether your contract provides for it (which will make it taxable) and on whether your employer customarily pays money in lieu of notice. It is your employer's job to deduct tax and national insurance at source. Any additional payment that you have a contractual right to will also

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be subject to tax. Gifts (ex gratia payments) are not subject to tax, to a limit of £30,000. After that they are subject to tax at your highest rate (top slicing). The Inland Revenue run a pre-clearance scheme. Your employers can put the 'package' to them and get it cleared. This takes time - usually at least two weeks, often longer.

If your employer deducts tax and then you are unemployed for more than a month within the same tax year, you can [claim a tax rebate directly from the revenue](#). Otherwise, your next employer will do this via you tax code. If you change tax year's then you can deal with this via your tax return. Ask your accountant if you have one, or look at the [Inland Revenue's website](#).

- n) **Benefits and insurance** If you have been made redundant you are unemployed and you should usually claim [job seekers allowance](#). You may also be entitled to other benefits, as well or instead of this.

If you have a mortgage, you may be insured, and you should check with your mortgage holder and/or insurer.

3. What can Irenicon do for me?

We can help you at the consultation stage if you want to object to the proposed method of selection. We often work with groups of colleagues who club together and share an advisor. If you are in a Trades Union you get this from them as part of your membership, but many people are not. Working together as a group can keep your legal fees lower and give a consistent 'voice' to your communication - rather than everyone for themselves.

This may change the method, or even improve the package if we negotiate, but what we cannot usually do is make your employer decide to keep the same number of employees as they have right now.

We can help you appeal against your selection if you have been given notice and you think you have been unfairly selected

We can help you assess your 'compensation' or 'redundancy' or 'compromise' package to see how much you are really being offered that is more than your entitlement. We are a 'suitably qualified advisor'

We can help you assess whether you would be better off making a tribunal claim, or leaving things as they are.

We can help you launch, or fully prepare a tribunal claim. We can represent you, or support you while you represent yourself.

Our experienced advisors and litigators have spent decades tackling this problem.

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