A Guide to Redundancies

mirs
Manx Industrial Relations Service
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redundancy</td>
<td>3</td>
</tr>
<tr>
<td>What Redundancy means</td>
<td>4</td>
</tr>
<tr>
<td>What is a fair process?</td>
<td>4</td>
</tr>
<tr>
<td>Consult your employees</td>
<td>6</td>
</tr>
<tr>
<td>Selecting employees for redundancy</td>
<td>8</td>
</tr>
<tr>
<td>Giving employees notice of redundancy</td>
<td>11</td>
</tr>
<tr>
<td>How redundancy payments are calculated</td>
<td>13</td>
</tr>
<tr>
<td>Effect of an offer of alternative employment</td>
<td>16</td>
</tr>
<tr>
<td>Rights during the notice period</td>
<td>19</td>
</tr>
<tr>
<td>Calculating redundancy payments – Examples</td>
<td>21</td>
</tr>
<tr>
<td>Special Cases</td>
<td>23</td>
</tr>
<tr>
<td>Redundancy rebates to small employers</td>
<td>23</td>
</tr>
<tr>
<td>People who are pregnant, on Maternity or Adoption leave</td>
<td>25</td>
</tr>
<tr>
<td>Making a complaint to the Employment and Equality Tribunal</td>
<td>30</td>
</tr>
<tr>
<td>What else does an employer need to do?</td>
<td>31</td>
</tr>
</tbody>
</table>
REDUNDANCY

The purpose of this leaflet is to provide general guidance on dealing with redundancies including employees’ rights to redundancy payments and employers’ rights to rebates on redundancy payments under the provisions of the Redundancy Payments Act 1990 (‘the Act’).

Guidance is given on the rules for statutory redundancy payments, as provided for by the Act. Employers and employees may, however, agree alternative and more generous redundancy terms if they wish to.

Every effort has been made to ensure that the contents are correct at the date shown on the back cover.

MIRS
Manx Industrial Relations Service

Ground Floor, Imperial Buildings, Bath Place, Douglas, IM1 2BY
Telephone: (01624) 672942, Email: iro@mirs.org.im  Website: www.mirs.org.im
WHAT REDUNDANCY MEANS

Redundancy happens when the employer’s need for employees to do work of a particular kind ceases or diminishes. This may be for example because the workplace is closing down or because of a downturn in trade or because of a restructure.

Normally the employee’s job will have disappeared or the job is broken up and the tasks are given to other employees. In a redundancy situation the employer would not immediately engage a direct replacement.

When someone is made redundant this is a dismissal in law and therefore employers need to make sure that they follow a process to ensure the dismissal is fair.

WHAT IS A FAIR PROCESS?

Make a redundancy plan.

Having a redundancy plan from the start will help you manage each stage of the redundancy process. It should show how you’ll:

- avoid compulsory redundancies
- consult staff
- select staff for redundancy
- give staff notice
- work out redundancy pay
- support staff and plan for the future

If you work with a Staff Association or Trade Union involve those in developing your plan. The plan will then be useful when you start consulting with staff to help them understand what the process looks like.

Avoiding compulsory redundancies

Before you consider making any redundancies, look at other options to see if you can:-

- offer voluntary redundancy or early retirement
- agree to flexible working
- temporarily reduce working hours
- ask employees to stop working for a short time (lay off and short time working)
- retrain employees to do other jobs in your business
- let go of temporary or contract workers
- limit or stop overtime
- not hire any new employees
**Voluntary Redundancy**

Your offer needs to cover the whole workforce and it must always be the employee’s choice to volunteer. Make sure you do not pressure anyone or single a person out.

For example, you could be accused of age discrimination if you only offer early retirement to your older employees.

You do not have to select an employee just because they volunteered. For example, if your most experienced employee volunteers, you can explain that you’re not selecting them. It’s a good idea to make clear to employees early on that voluntary redundancy or early retirement is not automatically given.

You must have a fair way of selecting employees who do get voluntary redundancy or early retirement.

You can offer extra redundancy pay if you want to encourage employees to volunteer. If you do you might like to consider whether you want to use a Settlement Agreement. Please phone MIRS to discuss.

**Agree to flexible working**

You can agree to update employment contracts to allow more flexible working.

This could include offering your employees:

- to work fewer hours
- homeworking
- job shares
- to work compressed hours

**Ask employees to temporarily stop working or reduce hours (lay off and short time working)**

If it’s included in employment contracts you can require employees to:

- stop working for a while (known as a ‘temporary lay-off’)
- work fewer hours (known as ‘short-time’ working)

It **must be** a temporary solution and not a permanent change to agreed working hours.
If the employment contract does not include a clause to permit this then you can ask to update an employee's contract to include these options. They do not have to accept.

A redundancy payment may be due where an employer has been laid off (without pay) or put on short-time (and received less than half a week’s pay). They must have been laid off or kept on short-time for at least 4 consecutive weeks or any 6 weeks in a continuous period of 13 weeks.

Employees must submit a written claim for redundancy to their employer. However, an employer may resist if they genuinely believe that normal working is likely to resume within the following 4 weeks.

**Move employees into other jobs**

You should try and move employees into other jobs within your organisation before you start the redundancy process by finding them suitable, alternative work.

**CONSULT YOUR EMPLOYEES**

Consultation is when you sit down with employees to explain your planned changes and get their feedback and input. This is when you can tell them that they are “at risk” of redundancy.

Your plans must not be finalised at this stage and you should aim to include any employees' suggestions or ideas you agree with.

**Who you must consult with**

You must discuss your planned changes with each employee who could be affected. This can include employees who are not actually losing their jobs.

You must sit down with each employee individually to explain changes and get their ideas and feedback. The meeting can take place over the phone if you both agree to it and there is a clear need, for example if someone works remotely.

An Employment and Equality Tribunal complaint for unfair dismissal can be successful if you cannot show you’ve consulted an employee or employee representatives.

You **must** consult any employees who are on maternity or other types of leave.

**Prepare for the consultation**

You should get the information ready that you're going to share.
During the consultation period you must let employees know in writing:

- why you need to make redundancies
- the number of employees and which jobs are at risk
- how you will select employees for redundancy
- how you plan to carry out the redundancies, including timeframes
- how you will calculate redundancy pay
- details of any agency workers you're using

You should also have:

- a person to lead the consultation
- a clear way of presenting your redundancy plan
- a questions and answers document
- employees you're moving into other roles

**How long should the consultation last?**

There are no rules for how long the consultation should last. You do not need to reach agreement for the consultation to come to an end. You simply need to show that the consultation was genuine and that you aimed to reach agreement.

You must be able to show that you've listened to your employees and that you responded to questions and suggestions.

**What to discuss at the consultation**

Consultations allow you to explain why you're planning on making redundancies.

In return it allows employees to discuss:

- ways to avoid or reduce redundancies
- how to reduce the impact of redundancies
- how the organisation can restructure or plan for the future
- how employees are selected for redundancy

You must consider and respond to any suggestions made by employees. You can reject any ideas you do not think are reasonable but you should explain why. It's important to document all discussions and the reasons for your decisions.

You might not always be able to avoid redundancies but by working with employees you'll often be able to save jobs and come away with a better idea of how your business can plan for the future.
Information that should be shared

You should be as open as possible with unions and employee representatives. This will allow employees to feel part of the conversation.

Not providing enough information often leads to frustration and mistrust and can sometimes mean the consultation is invalid.

You should aim to provide the right level of detail for staff to understand your proposals. The information should not be so long or complex that a specialist is needed.

Consult employees individually

You would normally consult your employees after you’ve completed consultation with employee representatives. You can choose to overlap with individual consultations if needed.

SELECTING EMPLOYEES FOR REDUNDANCY

You must select employees for redundancy in a fair way and not discriminate against any individuals or groups.

It’s a good idea to use selection criteria to help you choose which employees to make redundant.

You should base the criteria on:

- standard of work
- skills, qualifications or experience
- attendance record (do not include absence relating to disability or maternity)
- disciplinary record

You must not select employees because of their:

- age
- disability
- gender reassignment
- marriage or civil partnership status
- pregnancy or maternity leave race
- religion or belief
- sex
- sexual orientation
- family related leave – for example parental, paternity or adoption leave
- role as an employee or trade union representative
- membership of a trade union
- part-time or fixed-term employee status
- pay and working hours, annual leave and the National Minimum Wage

Make sure your criteria do not indirectly discriminate against any of these groups. For example, if you use flexible working as a criterion, you could be discriminating against women. You would need to show that flexible working is no longer possible after your business has changed.

**Agree criteria with employees**

You should if possible, consult employees to identify and agree selection criteria. For example, you could sit with employees to work out the skills and experience needed for your business in the future.

The more open and collaborative your selection process is, the more your employees will trust that it’s fair.

**Select employees in a fair way**

It’s a good idea to score employees against all the agreed selection criteria. This will help you avoid relying on one particular criteria and can lower the risk of discriminating against employees.

It will also help you:

- be objective when selecting employees
- easily share with staff how the selection process works
- explain your decisions at the Employment and Equality Tribunal

**Ask employees to reapply for their jobs**

You can (although it’s not essential) ask employees to reapply for their jobs to help you decide who to select. You should still use criteria when you interview to make sure you’re selecting people in a fair way.
**How to score employees**

You can decide how much you want to score each criterion. You should also provide written evidence to support your score.

You do not have to use the points system used in this guide, it’s just an example. The 'standard of work' criterion could look like:

<table>
<thead>
<tr>
<th>Criteria: standard of work</th>
<th>Score</th>
<th>Evidence</th>
</tr>
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<tbody>
<tr>
<td>Outstanding</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Exceeds objectives for the role</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Meets all objectives for the role</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Meets some objectives of the role</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Fails to meet objectives for the role</td>
<td>3</td>
<td></td>
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**Decide which criteria are most important**

You can adjust the points you give for each criteria. For example if it’s agreed that 'attendance record' is less important you can allocate fewer points. This creates a 'weighting' which allows you to be more flexible in how you score employees.

You should also consider whether any of your criteria need to be adjusted for a disabled employee.

Apply the selection criteria to the group of employees at risk of redundancy. This is sometimes known as the 'selection pool'.

**Set up an appeals process**

You should set up an appeals process for employees who feel they have been unfairly selected. This can reduce the chances of someone making a claim against you to an employment tribunal.

You should explain in your redundancy plans how someone can appeal. You might meet with employees face-to-face to listen to their concerns or ask them to write a letter or email explaining why they do not agree with your decision.
GIVE EMPLOYEES NOTICE OF REDUNDANCY

You can only make an employee redundant once you’ve finished consulting everyone.

It’s best to tell an employee face-to-face that you’re making them redundant. You should also confirm this in writing.

You should include in the letter:

- that their employment is being terminated on the grounds of redundancy
- their notice period
- leaving date
- how much redundancy pay they’re due
- how you calculated the redundancy pay
- any other pay you owe them (for example holiday pay)
- when and how you’ll pay them
- how they can appeal

Notice of termination

An employee who is dismissed on the grounds of redundancy will also be entitled to receive the period of statutory or contractual notice whichever is the longer.

The notice period is normally worked but some employers may choose to make a payment in lieu (PILON) of this where the contract allows instead of requiring the employee to work. The amount to be paid is the amount due under the contract or the minimum periods set out below, whichever is the greater. Please also refer to page 21 about rights during the notice period.

Minimum statutory notice the employer must give

<table>
<thead>
<tr>
<th>Length of service</th>
<th>Minimum Notice</th>
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<tr>
<td>Between one month up to 2 years</td>
<td>One week</td>
</tr>
<tr>
<td>Between 2 and 12 years</td>
<td>One week for every complete year</td>
</tr>
<tr>
<td>12 years or more</td>
<td>12 weeks</td>
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When the notice period starts

It’s a good idea to first check if your contracts say when notice periods take effect as it might affect how you give employees notice for redundancy. For example:
• if you tell the employee while they’re at work, their notice should start from the next day

• if you send the employee a letter or email, they must have a reasonable amount of time to read it before their notice starts

  If you give them notice in a letter sent by registered post, their notice period should start the day after they’ve received it and had time to read it.

You should make sure you know when the employee has received their notice. For example you could:

• add a read receipt, if you send it by email

• post it by delivery that has to be signed for, if you send it in a letter

You should make sure your employee understands how long their notice period is.

**Employees who want to leave before the end of the notice period**

Sometimes employees who are in their notice period may ask to leave early – quite often this can be if they have found a new job. Where this happens a redundancy payment can still be made as long as the employer has agreed. Typically the notice period is reduced and the contract and any notice pay would end on the new termination date.

Where an employer does not agree to the employee leaving earlier they should issue a written request to the employee asking him them to withdraw the notice and warning that if they do not, the employer may contest any right to a redundancy payment.
HOW REDUNDANCY PAYMENTS ARE CALCULATED

Who is entitled to redundancy pay?

A redundancy payment will only be due to employees who have had a **minimum of two years’ continuous employment** with their employer at the date the employment is terminated (this date will normally be the end of the notice period).

Where an employee works under a contract for less than 8 hours per week, only service from 30th September 2007 will count towards the redundancy payment calculation.

Directors of limited liability companies may also be classed as employees if they work in an executive or other capacity under a contract of employment. They cannot be classed as employees if they only deal with company policy and attend board meetings in return for fees.

There are a number of other groups of employees who do not qualify for a statutory redundancy payment.

**Employees who are not entitled to a statutory redundancy payment**

The following categories of employees have no right to a redundancy payment under the Act:

- an apprentice whose service terminates at the end of an apprenticeship contract
- a domestic servant who works in a private household and who is a member of the employer’s immediate family
- a share-fisherman who is paid solely by a share of the catch
- certain public sector employees (who are covered by other arrangements which are no less favourable)
- an employee working in any capacity for the Government of an overseas territory
- employees of an Isle of Man employer who normally work outside the IOM unless on the date of dismissal they were ordinarily resident in the Island and on that date, or within the preceding 12 months, the employer was resident in the Island or had a place of business in the Island

To be entitled to a redundancy payment the employee must have served for at least two continuous years and the amount to be paid will then depend on the length of service and the rate of gross weekly pay.

**Length of service**

You should calculate how many years of continuous service the employee has with the employer. Only full years count and the maximum number of years that count is capped at 26 years so any service greater than 26 years do not count and do not affect the redundancy payment.
Service is counted from the start of employment up to the “relevant date”.

The relevant date is:-

- the date that the notice period ends or legally should have ended on.

It doesn’t matter if the employer gives less than the period of notice required. The relevant date will still be the date on which the notice they should have given expires. It some cases, therefore, the relevant date may be after the last date actually worked.

Where there has previously been a change of employer and the employee’s service is deemed to be continuous, the period worked for the previous employer will count when calculating the total length of service for redundancy payment purposes.

**Amount of a week’s pay**

A week’s pay is the amount payable for a week’s work under the contract of employment in force at the “calculation date”. The amount of a week’s pay is subject to a cap which is presently £540 per week. The limit can be increased from time to time by order of the Department for Enterprise.

The calculation date is either

- the date on which the minimum notice required by statute was given, or
- if the notice under contract was longer, the date on which the minimum notice would have been given to end on the date the job ended, or
- the date the job actually ended, where no notice or inadequate notice was given.

**Pay doesn’t vary**

Where an employee has normal working hours and their pay does not vary with the amount of work done, this is simply the basic gross weekly wage (that is before deductions). Overtime cannot be counted unless the employer is contractually bound to provide it and the employee is contractually bound to work it.

**Pay varies**

Where earnings vary because of piecework or productivity bonus arrangements, a week’s pay is arrived at by multiplying together the number of hours normally worked in a week by the average hourly earnings over the 12 complete weeks immediately prior to the calculation date. To calculate average hourly earnings, only hours actually worked are taken into account. Any week in which no work is done is replaced by the next earlier week to make up the total of 12. Where the hours to be reckoned include hours payable
at premium rates, the premium is disregarded and the hours are reckoned at the normal basic rate.

Where there are normal working hours which vary from week to week (for example, because of a shift-work system) and earnings vary as a result, a week’s pay is calculated by multiplying the average hourly earnings by the average weekly hours over the same 12 weeks.

Where an employee has no fixed working hours, the amount of a week’s pay is the average weekly earnings in the 12 weeks immediately prior to the calculation date, whatever the basis of payment (fixed-rate, piece-work or commission).

If in doubt, advice should be sought from the MIRS.

Employers are obliged by law to provide employees with a written statement of how they have calculated their redundancy entitlement. Failure to provide these statements can result in the employer being fined. Forms RR3, available from the Manx Industrial Relations Service, can be used as the written statement.

Help staff find another job or training

You must allow staff a reasonable amount of time off to look for another job or training if:

- you’re making them redundant
- they’ve worked for 2 full years (including the notice period)

Paying staff who take time off to look for another job

You must pay employees who take time off to look for new work. The most you need to pay for the whole notice period is 40% of one week’s pay. This is the total amount and not the amount per week.

For example if an employee gets paid £500 a week for a 5 day working week, the most you would have to pay them for their time off is £200 (40% of their weekly pay). This stays the same even if they take more than 2 days off.

If an employer unreasonably refuses to allow time off, the employee can complain to the Employment and Equality Tribunal. If the Tribunal finds the complaint to be well-founded, it may make an award equal to the pay to which the employee would have been entitled if they had been allowed the time off (subject to an overall limit of two fifths of a week’s pay).
Accrued but untaken holiday pay

Employers also need to calculate if there is any entitlement to holiday pay. Check how many holidays the employee would have been entitled to up to the termination date and deduct any days that have already been taken.

Look at the Written Statement of Terms and Conditions to establish what happen in this situation if the employee has to take holiday during the notice period but if not then these must be paid in the final salary payment.

If there are days that have been overtaken the employer can deduct this from the final salary but only if the Written statement allows for this deduction.

EFFECT OF AN OFFER OF ALTERNATIVE EMPLOYMENT

If an employee whose job is redundant is offered an alternative job with

- the same employer;
- a successor (change of ownership) or associated employer who takes over the business or
- where there is a service provision change

then there is no entitlement to any redundancy payment but the continuous period of employment is protected.

The job offer must:

- be offered before the old employment contract expires;
- start within 4 weeks of the termination;
- be suitable and it must be unreasonable for the employee to refuse it.

Change of ownership, transfer of trade, business or undertaking or part of trade, business or undertaking

A transfer happens when a business, an undertaking or part of a trade, business or undertaking, is transferred from one person to another and the previous employer terminates the employee’s contract of employment, with or without notice.

Often in these circumstances, the new owner may want to take on some if not all of the staff who worked for the old employer although there is no obligation for the new employer to do so.

If by agreement with the employee, the person who, immediately after the transfer of the business in question, carries it on, the new employer renews the employee’s contract of employment or re-engages him under a new contract of employment, within 4 weeks, the
employee will be deemed to have been continuously employed from when they commenced with the previous owner. Subject to the satisfactory completion of any trial period (see below), there would be no entitlement to a redundancy payment in these circumstances. This effectively means the employee seamlessly transfers to the new employer and their continuity of employment is preserved.

**What is an associated employer?**

A person is an associated employer if in relation to an employer if —

a) one of them is a company of which the other (directly or indirectly) has control;

b) both are companies of which a third person (directly or indirectly) has control.

**Service provision change**

Where a service provision change occurs this has the same effect as a transfer (see above). So any employees who immediately before the service provision change were employed and are transferred will seamlessly move into the new employer and their continuity of employment is preserved.

A service provision change happens when:

- activities cease to be carried out by a person (a client) and instead are carried out by another person (a contractor) on the clients behalf

- activities cease to be carried out by a contractor on a client’s behalf and are carried out by another person (a subsequent contractor) on the clients behalf or

- activities cease to be carried out by a contractor or subsequent contactor on a client’s behalf and instead are carried out by the client on their own behalf.

**Example**

Care at Home is an organisation that provides carers and a cleaning service. They decided that they wanted to focus more on the care side of the business and so they decided to contract all the cleaning work to another organisation and gave a 5 year contract to Manx Home Cleaners. When they won this contract MHC employed their own staff to do this work. After 5 years Care at Home decided not to give another contract to MHC and instead gave it to Bel's Cleaning Services.

There were 5 staff at Manx Home Cleaners and Care at Home offered these staff positions with them.
**Trial periods**

Where the new job is different then the employee can put off the decision as to whether to accept the job for four weeks. This four week trial period gives the employee and the employer time to establish if the new job is a suitable alternative job. The period can be extended beyond four weeks if both parties agree in writing where retraining is necessary.

If at the end of the trial period the employee is still in the job, they are regarded as having accepted it. If the employee rejects the new job before the end of the trial period, because it turns out not to be a suitable alternative to the old job, or for good personal reasons, they will be considered to be redundant from the date the original employment ended and a redundancy payment will be due.

If a redundant employee unreasonably refuses a suitable offer of alternative employment no redundancy payment will be due. It would not be reasonable for the employee to refuse an offer, or to terminate a new contract, simply because the transferee is substituted for the transferor as his employer.

**What is suitable, alternative work?**

It really depends on what is different between the old and new jobs so it could be how the terms and conditions of the new job compare with the previous one, the location of the new job in relation to the previous one or the type of work.

Where an employee transfers over to a new employer in accordance they will not be entitled to a redundancy payment but the continuity of employment with the previous employer will be preserved. That means there is a seamless transfer and all service built up with the previous employer transfers to the new employer.

**Refusal of an offer of alternative employment**

If an employee unreasonably refuses an offer of suitable alternative work, they will not be entitled to a redundancy payment.

Where an employee believes that it was reasonable for them to refuse and the employer disputes this, it would be for the Employment and Equality Tribunal to decide whether the refusal was reasonable. The Tribunal may consider factors such as

- the actions of an employee as a result of their being given notice
- how the terms and conditions of the new job compare with the previous one
- the employee’s personal circumstances
- whether it would be reasonable for the employee to undertake the new duties being offered
- the location of the new job in relation to the previous one

This list is not exhaustive and the Tribunal would take into account any other issues that it may consider relevant. The same considerations are likely to apply where an employee
refuses the alternative employment before or after any trial period.

**Previous redundancy payments**

If an employee has already been paid a statutory redundancy payment in respect of an earlier period of service, that period cannot be counted towards any future period of continuous service for redundancy payment purposes but may still be counted for other purposes including the amount of notice that is due and other employment rights.

**RIGHTS DURING THE NOTICE PERIOD**

(*Employment Act 2006 section 107 and Schedule 2*)

Sometimes different rules apply during the notice period. This section will explain how to work out if an employee should receive pay during the notice period in any of the following circumstances happen:-

- the employee is ready and willing to work but no work is provided for them by the employer; or
- the employee is incapable of work because of sickness or injury: or
- the employee is absent from work in accordance with the terms of their employment relating to holidays.
- the employee is absent from work because of pregnancy, childbirth, adoption leave, parental or paternity leave

**Where there is no work provided, sick absence or on holiday**

It is relevant to explain the two terms used here – contractual notice and statutory notice although in some cases they may be the same period of time.

The statutory notice periods are set out in the Employment Act 2006 and are detailed on page 11. The contractual notice is the period set out in the employees contract of employment and may be the same as or longer than the statutory periods.

Employers need to identify both the statutory and the contractual notice periods to determine what if anything needs to be paid during the statutory notice period when any of these points apply:-

When any of the above points apply then an employee who has been employed for one month or more is entitled to all contractual payments and benefits during the statutory period of notice however this rule does not apply if the contractual notice that the employer is required to give is 2 or more weeks longer than the statutory minimum notice period. In that case, irrespective of whether the employer or the employee has given
notice, the employee’s rights during the notice period will be governed solely by the contract of employment.

**Example 1**

*Martin has been employed for 2 years and 3 months when he resigns. His contract says that both Martin and the employer have to give each other 3 months’ notice to terminate and he did give 3 months’ notice. Martin then falls ill during the notice period. His contract does not entitle him to any sick pay.*

We first of all need to identify the statutory notice that the employer has to give Martin – this is 2 weeks based on him having 2 years complete service. Then look at the contractual notice that the employer has to give which is 3 months.

Because the difference between these two periods is greater than two weeks the Martin is entitled to whatever his contract allows for. In Martin’s case he has no contractual right to sick pay and therefore the employer is not obliged to pay him anything.

**Example 2**

*Alex is being dismissed due to redundancy having worked for the employer for 23 years. In his contract the employer must give him 12 weeks’ notice to terminate which Alex is currently working. In week 7 of the notice period, Alex is signed off sick and he has already exhausted all his contractual sick pay entitlement when he had flu some months ago.*

Statutory notice to be given by the employer would be 12 weeks and his contractual notice is the same. As there is less than two weeks difference between statutory and contractual notice, Alex has to be paid an amount equivalent to a weeks pay for each of the remaining 5 weeks of the notice period.

**Where the employee is on Maternity, Adoption or Paternity leave**

Where an employee is on maternity, adoption or paternity leave during the notice period they must be paid an amount equivalent to one weeks pay for each week of the statutory notice period that is due. This can differ depending on whether it is the employee or the employer that gives notice.

The employee is entitled to be paid an amount equivalent to a weeks pay for each week of the statutory notice period even if they are on reduced or no pay under the terms of their contract.

**Example 3**

*Chloe is on unpaid maternity leave and is not due to return to work for another 5 months but she has decided to resign. She has worked for the employer for just over 18 months and she is required to give her employer one month’s notice.*
The statutory notice that Chloe would have to give would be one week and she would therefore need to be paid an amount equivalent to one weeks pay for the one week of statutory notice. The remaining period of her contractual notice would be unpaid.

**CALCULATING REDUNDANCY PAYMENTS - EXAMPLES**

**Annabel - straightforward calculation**

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<table>
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<tbody>
<tr>
<td>Start date</td>
<td>4 Sept 2016</td>
</tr>
<tr>
<td>Notice given on</td>
<td>15th June 2019 (the calculation date)</td>
</tr>
<tr>
<td>Length of Notice given</td>
<td>2 weeks</td>
</tr>
<tr>
<td>Termination Date</td>
<td>30 June 2019 (the relevant date)</td>
</tr>
<tr>
<td>Length of service</td>
<td>2 years</td>
</tr>
<tr>
<td>Weekly gross salary</td>
<td>£560</td>
</tr>
</tbody>
</table>

**Annabel’s redundancy payment will be 2 x £540.00 = £1080.00**

Only complete years of service count and the statutory cap on a week’s pay is £540 gross

**Irene - over 26 years’ service**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Start date</td>
<td>15 February 1980</td>
</tr>
<tr>
<td>Notice given on</td>
<td>7th February 2020 (the calculation date)</td>
</tr>
<tr>
<td>Length of Notice given</td>
<td>12 weeks</td>
</tr>
<tr>
<td>Termination Date</td>
<td>30 April 2020 (the relevant date)</td>
</tr>
<tr>
<td>Length of service</td>
<td>40 years</td>
</tr>
<tr>
<td>Weekly gross salary</td>
<td>£262.00</td>
</tr>
</tbody>
</table>

**Irene’s redundancy payment will be 26 x £262.00 = £6812.00**

As Irene has 40 years the maximum number of weeks that count is capped at 26 weeks.

**Jack – continuous employment in a transfer and occasional overtime**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Start date</td>
<td>10 June 2008</td>
</tr>
<tr>
<td>Transfer Date</td>
<td>1 November 2011</td>
</tr>
<tr>
<td>Notice given on</td>
<td>7th February 2020 (the calculation date)</td>
</tr>
<tr>
<td>Length of Notice given</td>
<td>11 weeks</td>
</tr>
<tr>
<td>Termination Date</td>
<td>29 May 2020 (the relevant date)</td>
</tr>
<tr>
<td>Length of service</td>
<td>11 years</td>
</tr>
<tr>
<td>Weekly gross salary</td>
<td>£500.00 (hourly rate is £12.50)</td>
</tr>
</tbody>
</table>

Jack commenced employment with A Limited on 10 June 2008. In November 2011 A Limited was purchased by B Limited, who renewed Jack’s contract of employment.
Entitlement to redundancy payment is based on 11 complete years’ service from 10 June 2008 to 7th February 2020.

Jack normally works 40 hours per week but sometimes he can work on Saturday morning for 4 hours if needed and this is paid as overtime.

His weekly pay is calculated as 40 hours @ £12.50 per hour. The Saturday overtime cannot be counted because it is not part of his normal weekly hours as provided for in his contract.

**Jack’s redundancy payment will be 11 x £340.00 = £5500.00**

**Sebastian – wages vary**

- **Start date**: October 2016
- **Notice given on**: 3rd January 2020 (the calculation date)
- **Length of Notice given**: 3 weeks
- **Termination Date**: 24 January 2020 (the relevant date)
- **Length of service**: 3 years
- **Weekly gross salary**: £ varies

Sebastian commenced employment with C Limited in October 2016. He works 40 hours a week and is paid a basic wage of £10.00 per hour plus piecework earnings.

The calculation date is 3rd January 2020. This is because he had been employed for 3 continuous years and was entitled to three weeks’ statutory notice. The calculation date is therefore 3 weeks before the date on which his employment is terminated.

For the 12 weeks prior to the calculation date Sebastian worked and earned a total of £5760.00. £40 of this was a premium payment for working on a bank holiday and has not been counted for redundancy payment purposes.

Entitlement is based on 3 complete years’ service from October 2016 to 24 January 2020 (the relevant date).

The average hourly rate (including piecework earnings) is calculated as £5760.00 = £12.00.

12 x 40

The average weekly pay is calculated as 40 x £12.00 = £480.00

**Sebastian’s redundancy payment will be 3 x £480.00 = £1440.00**
SPECIAL CASES

Advice should be sought from the MIRS on the following:-

- employees who are on strike during the notice period
- the death of an employer or employee
- apprentices who are made redundant
- non-renewal of fixed term contracts
- the position of persons who are described as self-employed but in effect work for one employer as an employee
- the employee at risk of redundancy is pregnant or on either maternity or adoption leave
- the employer is insolvent or ceases to trade - see next paragraph

What happens if an employer becomes insolvent or ceases to trade?

Where an employer becomes insolvent or ceases to trade and employment ends but the employer cannot pay the employees, Treasury may pay some of these out of the Manx National Insurance Fund.

Treasury may pay the following debts to an employee whose employment has been terminated:

- arrears of pay for between 1 to 8 weeks
- compensation pay during any period of statutory minimum notice
- up to 6 weeks' holiday pay accrued in the preceding 12 months;

MIRS can help employers and employee is this situation – please contact us as soon as possible.

REDUNDANCY REBATES TO SMALL EMPLOYERS

An employer who is obliged to make a redundancy payment under the Act may be eligible to claim a rebate from the Manx National Insurance Fund. They can do this provided that the total number of employees in the business, including those employed by an associated employer, does not exceed 40. A rebate is not payable in respect of an employee who is or in the last 12 months has been a director, beneficial owner or owner of a controlling share.

The amount of the rebate depends upon the size of the workforce.

<table>
<thead>
<tr>
<th>Number of employees</th>
<th>Proportion of redundancy payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 5</td>
<td>60%</td>
</tr>
<tr>
<td>6 to 10</td>
<td>50%</td>
</tr>
<tr>
<td>11 to 20</td>
<td>40%</td>
</tr>
</tbody>
</table>

To Table of Contents
A rebate is not payable in respect of directors or the beneficial owner of one half or more of the company, or a holding company but such employees do not count towards the number of employees when calculating the rebate payable.

**Advance notice to Treasury**

Where an employer intends to claim a rebate in respect of redundancy payments made to their employees, the employer should give advance notice (verbal or written) to Treasury, (Redundancy Payments Unit).

The notice should reach the Department not less than 14 days before the proposed termination, or where 10 or more employees are to be made redundant within a week of each other, not less than 21 days.

In cases where an employer has failed to provide the advance notice required, the amount of rebate to which he may be entitled can be reduced.

Written notice should include the employees’ full names, dates of birth and National Insurance numbers, as well as the date(s) on which they are to be made redundant.

**Making a claim for a redundancy rebate**

Claims for rebates are made on form RR2. Also a form RR1 will need to be completed for each employee, which includes the employee’s acknowledgement that they have received a redundancy payment. A form RR3 “Calculation of redundancy payment - statement for employee” is provided with each form RR1.

For copies of these forms contact Treasury, Redundancy Payments Unit (telephone 685103) or the Manx Industrial Relations Service.

Care should be taken in completing the forms as this will facilitate quicker processing of the claim. The Department may need to see the employer’s wage records to verify the claim.

Claims generally take between 3 to 4 weeks to process.

Rebates in respect of redundancy payments which an employer was liable to pay should be claimed within 12 months of the date of the payment(s) to employees, otherwise entitlement may be lost.

Where there is a dispute about entitlement to a rebate, or to the amount of a rebate, which cannot be resolved between the employer and the Department, the employer can
complain to the Employment and Equality Tribunal or contact MIRS who may be able to offer help in resolving it without filing a complaint.

PEOPLE WHO ARE PREGNANT, ON MATERNITY OR ADOPTION LEAVE

If you are reorganising and/or need to make employees redundant and this includes someone who is pregnant or on maternity leave, you need to:

- Check the redundancy is genuine and necessary
- Ensure you consult and keep in touch
- Establish non-discriminatory selection criteria
- Consider alternative work

Is the redundancy genuine?

You must be careful to ensure that the redundancy is for a genuine reason, is necessary now and is not caused by the pregnancy or maternity leave itself. A reason could be the closure of the business or employee’s workplace or because of a diminishing need for the employee to do the available work.

Example 1

While Wendy, a part-time librarian, was on maternity leave her employer decided to appoint an information services manager and incorporate Wendy’s duties into this post. Wendy was dismissed on ground of redundancy shortly before she was due to return to work. This was found to be unfair dismissal as the new post was still available and she was not genuinely redundant.

You may find during a woman’s maternity leave that you can manage without her by redistributing or reorganising the work. This is not a valid reason to make her redundant. Dismissing her is likely to be unlawful discrimination (and automatically unfair dismissal), because the woman would not have lost her job if she had not had to take time off work to have a baby.

If you have decided that you need fewer employees you need to go through a fair redundancy selection process, ensuring that the woman who has been absent on maternity leave is not disadvantaged.

How do I consult employees on maternity leave?

You should consult employees at risk who are on maternity leave (or off work with pregnancy-related sickness) about proposed redundancies, giving as much warning as possible. This includes employees on fixed term contracts.
You need to talk about:

- Reasons for redundancy and the posts affected
- Considering alternatives, such as voluntary redundancies, or reduced working hours
- The selection criteria for those employees at risk of redundancy
- How the employee’s redundancy selection assessment was carried out any suitable alternative work.

If you don’t consult, even if it’s because you have a genuine concern not to worry or disturb an employee during her maternity leave or when she is off work with pregnancy-related sickness, this is likely to be discrimination, as well as making the process unfair.

**Example 2**

Joan, the manager is aware that Kelly is having a difficult pregnancy and is quite unwell. She learns that Kelly’s job is under threat of redundancy. Joan is worried that talking to Kelly about this might cause her distress as Kelly has already indicated to a friend at work that at the present time she doesn’t want to speak to anyone or discuss work.

Joan decided not to talk to Kelly and consequently didn’t find out about a qualification Kelly has for an alternative job. Joan realises that now Kelly could make a claim for discrimination and unfair dismissal. Try and agree the least intrusive and least stressful methods of keeping in touch before your employee goes on maternity leave.

**How do I decide the right selection criteria?**

If you use a selection process to decide who to make redundant it must be transparent, known by everyone it applies to and non-discriminatory. The selection criteria should be objective and measurable.

Typical criteria include:

- Individual skills, qualifications
- Performance or aptitude for work
- Attendance and absence record
- Disciplinary record
- Customer feedback.

**Managing redundancy for pregnant employees or those on maternity leave**

The criteria you use must not disadvantage employees because of sex, pregnancy or maternity leave.

If you use attendance or absence as a selection criterion don’t forget to discount any caused by your employee’s pregnancy or maternity.
Dos and don’ts:

If you have decided to use performance as one of your main selection criteria, you need to ensure you do not disadvantage pregnant employees or those on maternity leave.

For example:

✘ If the last performance assessment was done during pregnancy or maternity leave and showed lower scores than usual for this reason, this should not be taken into consideration against the selection criteria.

✔ If an employee missed the performance review cycle because of pregnancy-related illness or maternity leave you could consider using a previous review.

✘ Do not allow an employee to miss out on what’s been happening at work, such as information on workplace developments or any support they may need for an interview.

✔ If an interview process is required, make sure they are given sufficient notice (for example to make childcare arrangements and to catch up with work-related developments).

Example 3

Less than a month after Megan leaves to have her baby, her team have a new manager. Shortly afterwards a redundancy situation is announced and one of the criteria is a review of employees’ performance carried out by the new manager. In Megan’s case, the employer decides to use her last review from her former manager as this will ensure she isn’t disadvantaged by her pregnancy or being on maternity leave.

Alternatively, the employer could decide to assess everyone’s performance over a longer period, which would be an adjustment to reflect her circumstances but may allow for more complete comparisons of performance.

How performance appraisal should be conducted in this situation may be part of the consultation process.

You must ensure that the woman is not disadvantaged in the redundancy process, but you should not do more than is reasonably necessary to achieve this where it would prejudice the position of others at risk of redundancy.

For example, in the scenario above, it would be unfair on a colleague if Brenda’s manager decided to give her a blanket ‘maximum assessment’ for the previous year’s report irrespective of the mark she actually got, and as a result of this the colleague was selected for redundancy.
**Is there a suitable alternative vacancy?**

Sometimes you might have alternative jobs that you can offer to redundant employees. If you do, an employee on maternity leave who has been selected for redundancy must be offered a suitable vacancy **before any other employee**. If you don't do this, her dismissal may be automatically unfair. If you do offer a suitable alternative and the employee unreasonably turns it down, she loses her right to a redundancy payment. If there is no suitable alternative vacancy, a woman can be made redundant during her statutory maternity leave provided the reason for redundancy is unconnected with her pregnancy or maternity leave and you have followed a fair redundancy process. If a woman is selected for redundancy it is good practice to discuss the implications – for example, her statutory and contractual maternity rights including pay. The alternative job must be suitable and appropriate for the employee in the circumstances; if it is not then you do not have to offer her the job.

To decide if a job is suitable and appropriate the law says it must be no worse than her previous job with regard to location, terms, conditions and status and she has the capacity for the work. So if the vacancy is at a different location and poses additional childcare and travelling problems for the employee it may not be suitable, in which case if she refuses it she would not lose her right to a redundancy payment.

If there is only one job and more than one person on maternity leave, you will have to consider for whom it is most suitable.

**Myth Busting: key facts about managing pregnancy and maternity at work**

**Myth: Pregnant women and women on maternity leave cannot be made redundant.**

This is not true. In a genuine redundancy situation, and where there is no suitable alternative work available for those on maternity leave, then they can lawfully be made redundant, providing that pregnancy and maternity is not the reason for redundancy, the redundancy is genuine and you have followed the correct redundancy procedures and have considered any redeployment.

**Myth: If a pregnant employee is on a fixed-term contract I can just make them redundant without offering them an alternative job**

Pregnant employees on fixed-term contracts have similar maternity and employment protection rights to permanent employees. If you decide not to renew a fixed-term contract because of pregnancy or maternity leave this would be unlawful discrimination and automatic unfair dismissal. Any suitable alternative work should be offered to an employee who is made redundant while on maternity leave even if she is on a fixed-term contract.
Myth: Everyone has to go through the application process for a job after the reorganisation

This is not always true. In the redundancy process, if suitable alternatives are identified, these should be offered to employees on maternity leave without the need for an application process.

Myth: You can’t criticise the performance or conduct of a pregnant employee

The effects on some women of pregnancy-related illness or fatigue should not be underestimated and should be taken into consideration when reviewing performance. However this does not provide a complete blanket ban on discussing performance or conduct issues. If the performance issues predate the pregnancy and were not dealt with at the time, this Managing redundancy for pregnant employees or those on maternity leave 11 may raise suspicions that any adverse assessment is linked to the pregnancy and that would be discrimination.

Myth: If an employee is on maternity leave it is illegal for an employer to contact her about any work-related issues.

This is not true. Employers can and should keep in contact with employees on maternity leave especially if the employee is at risk of being made redundant. It is good practice to agree beforehand how this contact should take place, and important to be sensitive to an employee’s circumstances and preferences. You could agree to use an employee’s Keeping In Touch Days (known as KIT days), and/or agree when is best to telephone, write letters or emails about workplace developments.

Myth: All women returning from maternity go part-time, we don’t have part-time roles so I can make her redundant.

Some women may wish to return full-time, in any case a person’s work status (full-time, part-time, flexible working etc.) should not affect the likelihood of being made redundant. To do this could be discriminatory or unfair dismissal, both of which could lead to a claim at an Employment and Equality Tribunal.

Myth: We are going through redundancy so I can ask pregnant staff and those on maternity leave to ‘volunteer’ for redundancy first

Pregnant employees and those on maternity leave should not be singled out for different or detrimental treatment. As an employer you are entitled to offer some form of voluntary redundancy, but no-one should be pressured.

Written Statement of reasons for dismissal — Pregnancy, Maternity Adoption Leave

An employee who is pregnant or on maternity leave is entitled to a written statement without having to request it if she is dismissed:
• at any time while she is pregnant
• after childbirth in circumstances in which her ordinary or additional maternity leave period ends by reason of the dismissal

**MAKING A COMPLAINT TO THE EMPLOYMENT AND EQUALITY TRIBUNAL**

**Redundancy payments**

Any dispute about entitlement to a redundancy payment or the amount of the payment can be referred to the Employment and Equality Tribunal although you could contact MIRS first as we may be able to help both parties to resolve the issue without having to file a complaint.

A complaint can be made at any time in the 12 months after the termination date as long as the employee has:

- submitted a claim in writing to their employer, or
- referred the question of their entitlement to a redundancy payment to the Employment and Equality Tribunal, or
- presented a complaint of unfair dismissal to the Employment and Equality Tribunal within 12 months of the date on which the job ended, entitlement to a redundancy payment should not be lost (the time limit for unfair dismissal complaints is within 3 months)

Where a claim is not made within the 12 months period but is made within the following 12 months, the Tribunal may still award the redundancy payment if it considers it just and equitable to do so, having regard to the reasons for the employee’s failure to take the appropriate action within the first 12 months.

**Written Reasons for Dismissal**

A complaint can be made to the Employment and Equality Tribunal where the employee believes that:

- the employer unreasonably failed to provide a written statement within 14 days of the request or
- where received that the reasons were inadequate or untrue or
- in the case of an employee who is pregnant or on maternity or adoption leave, no statement was received.

A complaint to the Employment and Equality Tribunal must be made within 3 months of date of termination and if the claim succeeds, the Tribunal will make an award of 2 weeks pay.
Unfair Dismissal

Employers may face claims for unfair dismissal where for example:-

- they have failed to properly consult with employees
- the selection criteria were discriminatory
- they have failed to consider any opportunities for alternative employment
- the employee believes that there is no genuine redundancy
- the employee believes that he or she has been unfairly selected for redundancy
- the employee was selected for an inadmissible reason

An unfair dismissal complaint to the Employment and Equality Tribunal must be made within 3 months of date of termination. If a complaint is made outside of this time, the Chairman will consider an application to extend time.

Example – time limit

The final day of employment was 15 December. The three month time limit runs out on 14th March and complaints have to be received during the Tribunal Office’s normal opening hours.

Time limit extension

If a complaint is made outside of the normal time limit it must be accompanied by a request to extend the time limit and the reasons why the complaint could not be made before.

WHAT ELSE DOES AN EMPLOYER NEED TO DO?

Written Particulars of redundancy payment

An employer is legally obliged to provide the employee with a statement setting out how the redundancy payment was calculated – you can use Form RR3 for this which is available from MIRS

Whilst not a legal requirement in most cases, it is good practice to issue a written statement (an email or letter) confirming the reason for dismissal on the grounds of redundancy and this can also set out the notice period as well as the right to appeal. Please refer below if the employee is pregnant or on either maternity or adoption leave.

Support your staff and plan for the future

Redundancy can create difficult situations and conversations in your organisation.

You should think about how to support:
employees at risk of redundancy
managers who are breaking the news
the people leading the consultation
employee representatives
staff that are staying on

It’s often forgotten that those staying on experience stress from seeing colleagues and friends being made redundant. They will also be part of a changing organisation and might feel uncertain about what the business and their roles will look like in future.

You can support staff by providing:

- counselling
- additional face-to-face meetings
- help getting financial advice
- clear plans for the future of your organisation
- help finding work for another company

**Support the people breaking the bad news**

You should make sure that anyone breaking the news to staff:

- understands in detail the organisation’s plans
- knows why redundancies are being made
- is trained (at least in how to hold difficult conversations)
- is not over-worked (their role often involves long hours)
- has a group of colleagues they can turn to for support
- understands the support they can get from trade unions

Staff will have lots of questions about what’s happening – it’s important the person telling them they’re being made redundant understands the changes and plans in detail.

Line managers often have to break the news to staff about redundancies. You should give line managers training and support to help them manage these difficult conversations.

They can then offer support and help to staff who are being made redundant. This in turn helps staff who are staying on believe that the organisation has dealt with the situation fairly and will be a good place to work in the future.

If the situation is handled in the right way it can make a big difference to:

- how staff react and cope with being made redundant
- the morale of staff who are staying on
- the success of the planned changes and future of the organisation
Where can I get help?

The Manx Industrial Relations Service helps employers and employees so if you have any questions or want to discuss any employment issue or if you would like us to help resolve any issues about redundancy or employment rights, please get in touch with us. Our service is completely confidential and free to all. Our contact details are at the front of this guide.

FEBRUARY 2020