

• REDUNDANCY - SUMMARY GUIDE FOR EMPLOYERS

Although an employer may have a contractual obligation to make a payment to an employee in the event of redundancy, there is no statutory right to redundancy pay in Guernsey.

As an employer however, you must follow the correct procedure with regard to any redundancy situation.

If there is not a genuine redundancy situation, or the correct procedure is not followed and the employer does not act reasonably and fairly throughout the process, an employee will be entitled to bring a claim for unfair dismissal on the grounds of redundancy under the Employment Protection legislation.

In considering whether there is a genuine redundancy situation, the Employment Protection (Guernsey) Law 1998 provides that an employee is dismissed by reason of redundancy "if the dismissal is attributable wholly or mainly to:

- a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or
- b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed, have ceased or diminished or are expected to cease or diminish."

Once it has been established that a genuine redundancy situation exists, it is then imperative for the employer to act appropriately and fairly throughout the redundancy process. The Commerce and Employment Department have issued a Code of Practice in handling redundancy which provides that the appropriate procedure to be adopted by the employer is as follows:

- 1) Consultation with Employees - Employees should be consulted about the redundancy before the event and given sufficient information and time to make representations. It is hoped that by consulting with employees at an early stage, employees may suggest alternatives, for example volunteering for redundancy.
- 2) The Pool for Selection - The Employer will need to identify those employees that form the pool of selection for redundancy; in other words, the group of employees from which the selection for redundancy will be made.
- 3) Establishing the Selection Criteria - An objective, fair and consistent method of selecting employees for redundancy from the pool for selection must be applied by the employer.
- 4) Consideration of Alternative Work - The employer must effectively show that he took all reasonable steps to avoid dismissals and that he considered whether alternative employment was available, including consideration of employment with an associated employer e.g. within the same group of companies.

It is very important that the employer complies with all areas of this Code of Practice and that he is fair, reasonable and consults with the employees throughout. It is also advisable that each stage of the process is clearly documented and that any employee selected for redundancy is given a right of appeal against that decision. If the employer does not comply with a fair procedure based on the Code of Practice, the employee will have a claim for unfair dismissal by reason of redundancy. If it is held by the Employment Tribunal that the employee's dismissal was unfair, the employer will be liable to pay the employee a compensatory payment of up to six months gross salary.

It should also be noted that whilst an employee can normally only bring a claim for unfair dismissal if they have been continuously employed for a period of one year or more, there are exemptions to this qualifying period if the reason for redundancy is for one of the exceptional reasons specified in the Employment Protection legislation.

Another consideration for employers is the negotiation of compromise agreements, whereby the employer and the employee are able to reach an agreement with regard to the termination of the employment without reference to the Employment Tribunal. By using such an agreement, the employee is effectively agreeing to contract out of his right to bring a claim for unfair dismissal. It is important to note however, that any such agreement must comply with the prescribed conditions as set out in the Employment Protection legislation in order for it to be legally binding on the parties and enforceable by the employer.

**FOR MORE INFORMATION,
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