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## Redundancy – The Risks and Legalities

Figures released by the Department of Enterprise, Trade and Employment indicate that Irish redundancies for the year to November amounted to 37,296, an increase of 57.1 per cent on the cumulative total this time last year. On a daily basis we are hearing of more businesses being forced to close their operations due to the prevailing conditions in the local and global economies. Without question, all sectors of the economy are facing into a period of uncertainty.

In the current recessionary climate, dealing with redundancy is becoming an everyday challenge that employers and employees are faced with. How a business copes with the different factors involved in the redundancy process can have a major impact upon the future prospects for the business.

Redundancy should be seen as a last resort due to the effects the process may have for staff who are retained, creditors, customers and competitors in the market. Alternatives to redundancies include; revisiting wage structures, early retirement, shorter working hours/days, sabbaticals and the retraining and redeployment of workers.

### Risks of redundancy

A redundancy situation arises where an employee's job no longer exists and where he or she will not be replaced. The Redundancy Payments Acts 1967-2007 define when a redundancy situation occurs and provide a redundancy payments scheme. This legislation is applicable only to employees with greater than two years' service.

Failure to adhere to employment legislation can lead to costly and time consuming legal cases being brought against employers. In fact the Employment Appeals Tribunal (EAT) estimates that claims have jumped by 50% in less than a year and awards given to employees who have been unfairly dismissed have doubled in less than three years.

Irish businesses are coming under increased competition from lower cost based competitors in locations such as Eastern Europe and China. Cheaper labour costs in these countries compared to Ireland are a

major advantage to multi-national companies who are concerned about their cost structures in these challenging times. However it is of vital importance that employers understand that a redundancy cannot be used as a means of letting go of staff and simply replacing them with new staff members. Replacing permanent staff with lower paid or agency workers is forbidden under Irish employment law. To this end, a Redundancy Panel was established to ensure that collective redundancy situations were genuine and not the simple replacement of employees with lower paid workers.

Large companies will have a human resources department that will inform employers of their obligations under Irish employment law. However, regardless of the size of a business all employers need to fulfil their legal requirements during a redundancy.

For example employees with more than a year's service have a legal right not to have their contracts unfairly terminated. It is essential that professional legal advice is sought before you enter into the redundancy process.

Voluntary redundancies should be offered before compulsory redundancies are made.

The compulsory redundancy process must also comply with equality legislation. There are nine grounds for discrimination under equality legislation. In order to prove that a redundancy has been made fairly you should consider skills, competencies, qualifications, work experience, performance and attendance records.

### Redundancy Payments

The following sets out common questions in relation to redundancy payments.

#### When does an employee qualify for a redundancy payment?

For an employee to be entitled to the minimum statutory redundancy payments they must satisfy a number of criteria:

- Be between the ages of 16 and 66. Employees who have reached 66 years of age and whose date of termination is

on or after the 8th of May 2007 are now eligible for a redundancy payment under the Redundancy Payments Act 1967-2007.

- ❑ Be in insurable employment for two years prior to redundancy.
- ❑ Have worked continuously for you for at least two years.

#### **How much is an employee entitled to?**

The calculation of statutory redundancy payments is based on a normal week's pay, capped at €600 per week. An eligible employee is entitled to two weeks statutory redundancy pay for every year of service, plus a bonus week. All statutory redundancy payments are tax free.

#### **What procedures are necessary to let an employee know they are being made redundant?**

An employee must be given at least two weeks notice before the proposed date of dismissal, rising to eight weeks if they have 15 or more years of service. Notice must be given to an employee in writing on an RP50 form. RP50 forms are available to download at [www.entemp.ie](http://www.entemp.ie).

#### **Is the employer entitled to any refunds on redundancy repayments?**

An employer who makes a statutory lump sum payment to an employee is entitled to a rebate of 60% from the Department of Enterprise. To get a rebate, the RP50 form must be sent to the department within six months of the redundancy lump sum. No rebate will be paid for redundancy settlements in excess of the statutory entitlement.

#### **What are the consequences if an employer fails to pay a redundancy lump sum?**

If the employer is unable to pay an employee their entitlements, the Department of Enterprise, Trade and Employment pays the full amount direct to the employee from the Social Insurance Fund (S.I.F.). The employee fills in an RP50 form and sends it into the Department. The Department then seeks reimbursement from the employer. The Department treat these applications as a priority.

#### **What happens if an employee disputes their redundancy payment?**

Disputes concerning redundancy payments can be submitted to the Employment Appeals Tribunal. The Tribunal deals with

disputes under such labour law areas as the Minimum Notice and Terms of Employment Acts, 1973 to 2001. These cover the right of workers to a minimum period of notice before dismissal, provided they are in continuous service with the same employer for at least 13 weeks and are normally expected to work at least 8 hours per week. The Tribunal also deals with the Unfair Dismissals Acts, 1977 to 1993 and the Protection of Employees (Employers' Insolvency) Acts, 1984 to 2003 where the employer is insolvent

#### **Dealing with the impact of redundancies on employees who are retained**

Employers should be aware of the affect that redundancies have on remaining employees. One common side affect of the redundancy process is that employees who remain with the business get very nervous about the security of their jobs. This alone can impact on productivity.

To deal with this effectively, employers must be able manage the concerns of the employees who remain with the business. Some measures which could be put in place to make employees feel more secure in their role in the business are:

- ❑ Keep open lines of communication. Hold regular meetings with continuing reassurance to all remaining employees.
- ❑ Ensure that the process of redundancy was deemed fair and reasonable in the circumstances. If the surviving employees feel their colleagues have been fairly dealt with, their commitment to the business will remain high once they believe their own jobs are secure.
- ❑ Management must be visible and involved during downsizing. Staff must feel that management can be relied on as they enter into an uncertain period.
- ❑ Continue to focus on talent management and succession planning. The people for the future must have the key skills to manage in more difficult circumstances.
- ❑ It is essential to continue to motivate high performers. This is the moment where employers must encourage their staff to hold onto the competitive edge.

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