Your Questions Answered

This Frequently Asked Question sheet provides an overview of your rights during a redundancy situation.

For free, tailored advice on any of the issues discussed in this FAQ or any other aspect of employment law, please call (028) 9024 4401 and ask to speak to an employment adviser.
Table of Contents

*Click the question title to view the answer*

- What is redundancy? ........................................................................................................................................... 3
- When can an employee be made redundant? ..................................................................................................... 3
- What is the difference between individual and collective redundancy? .......................................................... 3
- What is the difference between redundancy and layoffs? .................................................................................. 3
- How do I claim redundancy if I have been laid off? ......................................................................................... 4
- What is the difference between short time working and being laid off? ....................................................... 4
- What is my right to consultation in a redundancy situation? .......................................................................... 5
  - *Individual redundancy* ................................................................................................................................. 5
  - *Collective redundancy* .................................................................................................................................. 5
- I have received a letter letting me know that there is a redundancy situation in the company I work for and that I am in the ‘selection pool’. What is a selection pool? ................................................................. 6
- What are ‘selection criteria’ in a redundancy situation? .................................................................................. 6
- Does my employer need to consider alternatives to dismissal? What does this mean? .............................. 7
- Does my employer need to consider suitable alternative roles? ......................................................................... 7
- What redundancy pay am I entitled to? .................................................................................................................. 7
- When would I not be entitled to redundancy payment? ................................................................................... 8
- What happens if my employer will not pay? ......................................................................................................... 8
- What happens if my employer is insolvent? .......................................................................................................... 9
- What happens if my employer sells the business? ............................................................................................ 9
- What are my notice rights? ................................................................................................................................. 10
- Where can I go to get help and advice? ........................................................................................................... 10
What is redundancy?

Redundancy is when an employer must reduce or cut its workforce. In other words, certain jobs are no longer needed. The definition of ‘redundancy’ in law comprises three types of situation: business closure, workplace closure, and reduction of workforce. Normally, a redundant employee’s job must no longer exist.

A business might make staff redundant for many reasons. Examples include:

- If a new technology or system has made a job obsolete
- If demand for a goods or service has dropped, so fewer workers are needed to provide it
- If the company is moving part or all of its business to a new location, and/or
- If the company is closing down

There are two different types of redundancy: individual redundancy and collective redundancy. The employer has different legal obligations, depending on what type of redundancy is being considered.

When can an employee be made redundant?

An employee’s dismissal will be by reason of redundancy if it is ‘wholly or mainly attributable to’ the employer:

1. Stopping or intending to stop carrying out the business for which the employee was employed (business closure)
2. Stopping or intending to stop carrying out business in the place where the employee worked (workplace closure) and/or
3. Needing fewer employees to carry out work of a particular kind or to do so at the place where the employee was employed to work (reduced requirement for employees)

What is the difference between individual and collective redundancy?

Collective redundancy is when an employer is making 20 or more employees redundant at a single establishment within a 90-day period.
Individual redundancy applies when the employer is making fewer employees redundant at a single location within a 90-day period.

What is the difference between redundancy and layoffs?

Being ‘laid off’ is when your employer cannot give you work for a temporary period. This contrasts with redundancy, which permanently ends your employment.

Unless specified in your contract or by agreement, you will still be entitled to pay during any layoff period. If you are not receiving any pay, you will be entitled to a Guarantee Payment of £30 a day. This is capped at 5 days maximum within a three month period. After this you may be eligible for Job Seekers Allowance or Universal Credit.

How do I claim redundancy if I have been laid off?

If you’ve been laid off for long enough, you may be able to claim a redundancy payment. You can claim redundancy payment if you have been laid off for:

- Four consecutive weeks or more, or
- Six weeks in a thirteen-week period, with more than three of those weeks being consecutive

Your employer can counter your claim for a redundancy payment if they believe work will be available soon. This means there must be work available within four weeks and the work must last at least 13 weeks without interruption.

Please note, you can only claim redundancy payment if you have at least two years’ service with your employer.

In addition, to get a redundancy payment in these circumstances you must resign, including giving the applicable notice period.

What is the difference between short time working and being laid off?

The principles of short time working and being ‘laid off’ are very similar. Short time work means you are on reduced hours, earning half your normal weekly wage. You can also claim redundancy, as set out above, if you have been put on short time working.
What is my right to consultation in a redundancy situation?

You have a right to be consulted by your employer before being made redundant. If it is a case of individual redundancy, you are entitled to an individual consultation. If it is a case of collective redundancy, you are entitled to a collective consultation.

*Individual redundancy*

In an individual redundancy, your employer should follow a standard dismissal procedure. This is a legal three step procedure:

- **Step 1 - letter**: your employer must send you a letter setting out the reasons why redundancy is being considered and invite you to a meeting to discuss it. You are entitled to be accompanied at this meeting by a Trade Union representative or a work colleague
- **Step 2 - meeting**: your employer must hold a meeting with you. In it, they should explain further their reason for considering you for redundancy. They should also explore alternatives to redundancy with you. After the meeting, your employer should let you know what his/her decision is. They should also clearly tell you that you have the right to appeal their decision
- **Step 3 - appeal**: if you appeal the decision, your employer will hold another meeting with you. At this any new or further considerations will be explored. An employer will then decide whether to uphold the redundancy decision or not

This process should not be a ‘box-ticking’ exercise. Your employer should undertake genuine consultation with you during the process. If you think that the reason for your employer’s selection for redundancy is unfair, or that your employer has alternative work and has not offered it to you, you may be able to claim for unfair redundancy dismissal at the Industrial Tribunal. To claim for unfair dismissal, you must have been working for your employer for at least a year and must start Tribunal proceedings within **three months** of being dismissed.

*Collective redundancy*

In a collective redundancy, your employer will still be required to consult with you individually. However, he/she will also be required to engage with a representative of all the employees under threat of redundancy. The employee representative can be from a Trade Union, or you and your colleagues can elect someone to negotiate for you.
I have received a letter letting me know that there is a redundancy situation in the company I work for and that I am in the ‘selection pool’. What is a selection pool?

A ‘selection pool’ is a pool of employees who hold comparable jobs and can be considered collectively for redundancy. Your employer will decide which jobs are comparable and will choose who is selected for redundancy in the pool using a ‘selection matrix’. This normally involves scoring several different objective criteria and adding together to see who has the lowest score overall. There needs to be a fair and reasonable process for making these selections and the process should not be discriminatory. In some cases, it may be fair and reasonable for the selection pool to contain only one employee if there is no comparable job. For example, there may be a pool of one if there was only one chef in a small restaurant.

What are ‘selection criteria’ in a redundancy situation?

In a redundancy situation, your employer should develop a ‘selection matrix’ using several different objective criteria. These are the criteria by which the list of individuals in the selection pool will be narrowed down to the list of individuals who are selected for redundancy.

The criteria should, as far as possible, incorporate objective and measurable elements. A redundancy in which the selection criteria are simply the employer’s personal opinion may be open to challenge. Similarly, the selection criteria should not be discriminatory. For instance, if one of the selection criteria in a redundancy process is that employees aged over 65 would be automatically considered, this would potentially directly discriminate against some employees on the basis of their age. Another example is where a policy of selecting candidates for redundancy based on the number of days’ sickness absence is used. This could be indirectly discriminatory, since employees with a disability may require more days of sickness absence than an employee without a disability. Indirect discrimination is where the selection criterion is not in itself discriminatory, but the effect of it is.

For more information about discrimination and protected characteristics, please see the appropriate page on the website of the Equality Commission for Northern Ireland.
Does my employer need to consider alternatives to dismissal? What does this mean?

It is vital that your employer considers suitable alternatives to dismissal throughout the redundancy process. This means considering alternatives that they have thought of, or alternatives suggested by the employee (or employees) at risk of redundancy. Typical alternatives to redundancy might include reducing agency staff, banning recruitment or overtime, short time and lay-off or pay freezes, as well as many others.

If the Government’s Furlough Scheme (Coronavirus Job Retention Scheme) is still operational, this may also be considered an alternative to redundancy.

Does my employer need to consider suitable alternative roles?

An employer must make reasonable efforts to find and offer any suitable alternative roles that are available for employees facing redundancy. This may extend to suitable roles within other related businesses or establishments. The employer should tell you about any relevant information on vacancies. This will allow you to make an informed decision as to whether the alternative role is suitable. Employees on family-related leave (for instance maternity, paternity or shared parental leave) should be offered any suitable roles first.

If you do accept an alternative role, you have the right to undertake a four week trial period following notice of your termination, in which you can try the alternative role and make sure it is suitable for you. If you decide that the role is not suitable within the four week trial period, you will still be eligible to receive your Statutory Redundancy Payment. Please note, however, it is important that you carefully consider any alternative role that is offered. If you unreasonably refuse a suitable alternative role, you may forfeit your redundancy payment.

What redundancy pay am I entitled to?

There are two types of redundancy pay, statutory and contractual. Statutory Redundancy Pay is the legal minimum that your employer is required to pay you. Contractual redundancy pay is anything over and above that level that you are entitled to under your
employment contract. This section relates to **Statutory Redundancy Pay**.

Your redundancy pay depends on how much you earn per week before tax, how long you have worked for your employer and what age you are. You must have been employed continuously for two years or more to be eligible for Statutory Redundancy Pay.

You will receive:

- Half a week’s pay for each full year worked up to the age of 21
- One week’s pay for each full year worked between the ages of 22 and 40
- One-and-a-half weeks’ pay for each full year worked over the age of 41

The maximum number of years that can be taken into account for Statutory Redundancy Pay is 20. The maximum weekly pay amount that can be taken into account (as of 6 April 2020) is £560 (please note, this amount changes annually). Redundancy pay under £30,000 is not subject to tax.

When you are given redundancy pay, your employer must also give you a statement showing how it was calculated. If you aren’t sure if your employer has calculated your Statutory Redundancy Pay correctly, you can call the Redundancy Payments Service on 0800 585 811.

To work out how much you might be entitled to, you can use the UK Government’s [statutory redundancy pay calculator](#).

**When would I not be entitled to redundancy payment?**

You will not be entitled to a redundancy payment if:

- You have less than two years’ service with your employer, and/or
- You are self-employed or an agency worker.

If you need advice on your personal circumstances, please contact Law Centre NI and ask to speak to an employment adviser.

**What happens if my employer will not pay?**

You may be able to make a claim to the Industrial Tribunal. For further advice on your
personal circumstances, please contact Law Centre NI or an employment solicitor.

**What happens if my employer is insolvent?**

If your employer is insolvent and cannot pay your redundancy payment, you still have options. Usually an 'Insolvency Practitioner' or 'Official Receiver' will be appointed and they will attempt to raise funds from your employer's assets to pay what the business owes.

If the Insolvency Practitioner can't raise sufficient funds, the National Insurance Fund can be used. This will cover the basic minimum of debts owed to you. You will need to apply to the Northern Ireland Redundancy Payments Service within six months of being made redundant.

From the National Insurance fund, you can claim:

- Redundancy pay
- Arrears of wages (up to a maximum of eight weeks)
- Holiday pay (up to a maximum of six weeks)
- Notice pay

You can apply using an RP1 Application Form – [a printable version of the form can be downloaded by clicking here.](#)

There is currently (as of 6 April 2020) a limit of £560 per week on the amount you can claim for weekly pay. Please note, this amount changes yearly.

**What happens if my employer sells the business?**

If your employer's business is sold, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply. If they do, your employment contract will automatically transfer to the new owner with the same terms and conditions. If you are dismissed because of the transfer, this is an automatic unfair redundancy dismissal. Please note, you normally need to have at least a years’ service before claiming unfair redundancy dismissal at the Industrial Tribunal.

Under TUPE, there is a duty on both the old and new employer to inform and consult employee representatives or individuals (depending on the size of the organisation).

You are entitled to object to your contract transferring to a new employer. If this happens,
your contract will be ended. Generally, this will not count as a dismissal. However, if you are objecting because your new employer plans to make significant changes to your working arrangements or perks, it might still count as dismissal. This is a complex area of law and you should seek legal advice if you are considering an objection.

**What are my notice rights?**

Your employer must give you a notice period before your employment ends. This will be defined in your contract of employment. If you do not have contract, the statutory notice periods are:

- At least one week’s notice if you have been employed between one month and two years, or
- If you have been employed for over two years, your employer must give you a week’s notice for every year you have worked. This rule applies up to a maximum of twelve weeks’ notice.

**Where can I go to get help and advice?**

Law Centre NI offers a free advice line. We can help you to understand what your rights on redundancy are. We can also explain what options are open to you. Contact us on **028 9024 4401**.

If you need help negotiating with your employer, the Labour Relations Agency (LRA) offers free mediation services. These may help you to overcome disputes and address issues before it gets too difficult. Contact the LRA on **03300 552 220**, or visit their website.

If you are a member of a trade union you may be able to benefit from free advice and representation. Speak to your union representative for information on what support is available to you.
Disclaimer
Although every effort is made to ensure the information in Law Centre publications is accurate, we cannot be held liable for any inaccuracies or their consequences.

The information contained within this document should be treated as a complete and authoritative statement of the law.

Law Centre NI only operates within Northern Ireland and the information in this document describes the state of the law in Northern Ireland only.

When reading Law Centre documents, please pay attention to their date of publication, as legislation may have changed since they were published.

© Law Centre NI 2020