

## EMPLOYMENT UPDATE

# COVID-19: Managing the impact

The Government's Job Retention Scheme established a mechanism for businesses to continue employing individuals who may have otherwise been made redundant. With the Government's contributions tapering off, the commercial and financial impact of COVID-19 may be clearer for employers. This note sets out the key considerations for employers prior to making redundancy dismissals.

## Introduction

The Employment Rights Act 1996 provides employees with the right not to be unfairly dismissed. Generally, this right applies once an employee has obtained two years' continuous service.

For an employer to minimise the risk of a claim arising from a dismissal, it must ensure that not only the 'reason' for termination is fair, but that it has acted reasonably in treating that reason as sufficient to justify the dismissal.

'Redundancy' is one of the potentially fair reasons. However, for a redundancy dismissal to be considered fair, an employer must also establish that:

- › Redundancy was the real reason for dismissal; and
- › It acted reasonably, in all the circumstances, in treating the redundancy as the real reason for dismissal.

## What does redundancy mean?

The term 'redundancy' can be frequently used by both employers and employees to describe a termination of employment. However, a genuine redundancy situation only arises in one of the following three circumstances:

- › A business closure: an employer ceases or intends to cease, either temporarily or permanently, to carry on the business for which the employee was employed;
- › A workplace closure: an employer ceases or intends to cease to carry on its business in the place where the employee was or is employed; or
- › Reduced requirements: a diminished requirement for employees to carry out work of a particular kind.

An employment tribunal will not investigate the reasons behind such circumstances arising.

**If you would like any further advice or assistance on these issues, please contact our Employment Lawyer, Jamie Feldman ([jamie.feldman@northridgelaw.com](mailto:jamie.feldman@northridgelaw.com))**

## 'Fair procedure'

For an employer to have acted reasonably in dismissing an employee by reason of redundancy, it should:

- › Engage in a period of consultation;
- › Adopt a fair selection process using objective criteria; and
- › Consider suitable alternative employment within the organisation.

Prior to selecting any employee(s) for dismissal, an employer must also consider the appropriate pool of employees who might be 'at risk' of redundancy, ensuring that criteria used to select individuals are objective, measurable and capable of independent verification.

Whilst there is no prescribed minimum period of consultation, an employer should provide the employee with enough opportunity to comment on the selection process and put forward suggestions for suitable alternative employment.

## Additional considerations

- › Employers wishing to minimise financial liability may look to commence consultation processes now to align the end of an employee's notice period with the end of the Job Retention Scheme (currently due to end on 31 October 2020).
- › An employer proposing to dismiss 20 or more employees at one establishment within a 90-day period engages the collective consultation regulations. Further advice should be sought.
- › Any selection criteria should be fair and non-discriminatory.
- › Whilst Statutory Redundancy Payments cannot be claimed under the Job Retention Scheme, employers can claim contributions towards an employee's notice pay.