

One of the inevitable consequences of operating within the voluntary/social sector is that of funding and the short-term sums that are available from a whole host of providers; Lottery, European, National and Local Government etc. These all seem very attractive at the time and groups very often put considerable effort into bidding for funds, undoubtedly with the best of intentions, for the pursuit and furtherance of their aims and objectives. Staff are then employed and things go very well for one, two, three or more years. Unfortunately, funding streams are never 100% guaranteed, or perhaps the progress of a project may not go quite as well as expected and what happens then?

Finally the time has come where perhaps a little more effort should have gone into planning the exit strategy, especially if the only answer/solution is that staff may no longer be required. For anyone losing their job, it can be one of the most stressful events to affect them (or you) in life. Redundancy should therefore be something that all groups consider, right from the very beginning, before funds are even applied for, so that a clear policy and plan can then be implemented. Hopefully this will then result in responsible and realistic recruitment practices where all prospective employees are made well aware of the likely continuance of their employment.

Fixed Term Contracts

Many groups adopt the attitude that as their funding is time-limited they must also time-limit employment and hence take on staff on a fixed-term contract basis for one, two, three years? Often they think that this will in some way just allow them to let staff “go” when the contract comes to an end. Also many groups think that their obligations to make a redundancy payment also disappear just as easily.

WRONG, VERY WRONG & POTENTIALLY VERY COSTLY IF YOU GET IT WRONG

UK Employment Law provides a statutory right to all employees not to be unfairly dismissed. Since 1999 it has been unlawful to incorporate unfair dismissal waiver clauses into fixed-term contracts. Hence if a fixed-term contract, or a contract for a task comes to end without it being renewed, the law treats this as a dismissal and therefore **IT MUST** be for a fair reason and a fair procedure must be followed. If not, then an employee with sufficient employment service rights could claim unfair dismissal and take their case to an Employment Tribunal for compensation. A fair reason for dismissal could be (and nearly always is in these circumstances) redundancy, however, you must also make sure that the procedure was fair. Simply letting the contract come to end and just expecting the employee to clear their desk and go, could hardly be considered to be fair. You have an obligation in law to ensure that the employee’s statutory redundancy rights are not infringed and that any eligible redundancy payments are made.

Fixed Term Workers, Less Favourable Treatment Directive

The new Employment Bill 2002 implements the EU “Fixed Term Workers, Less Favourable Treatment Directive” which from 1st October 2002 prohibits employers from incorporating redundancy waiver clauses in to new or extended fixed-term contracts of any length. However, many employers are often unaware of these changes and continue to issue fixed contracts with

redundancy waiver clauses that are simply not legally enforceable. This could expose many groups in the voluntary sector to unexpected redundancy payments.

Any dismissal at the end of a fixed-term contract must, of course, be for a fair reason (usually redundancy) and the employee must be given proper notice that the contract will not be renewed. Even where the worker has a fixed term employment contract, s/he will still have all normal redundancy rights, including the right to be consulted about alternatives to redundancy, the right to be offered any other suitable alternative employment, and (if s/he has worked more than one year) the right to claim unfair dismissal if the post is not genuinely redundant.

What is redundancy?

Redundancy is when you dismiss an employee because you need to cut jobs, move the place of work or close down completely.

As of 6th April 2009, the old 2004 Dismissal, Discipline and Grievance Procedures (3-Step process) have been replaced by a new ACAS Code of Practice. This Code specifically excludes dismissals due to redundancy and the need to follow this Code.

As a result ACAS have issued a new Guide concerning handling redundancy and there is a new booklet which can be downloaded from their website.

In general the employer still has duty to ensure that the actual dismissal is handled reasonably. It is recommended that as a minimum the employer should, 1) consult with staff about the redundancy procedure to be followed, 2) provide written reasons why there is a redundancy situation and what measure can be taken to prevent redundancy, 3) select employees fairly, 4) hold a meeting with the employee to discuss this and any possible options for continuing employment by offering any other suitable employment, 5) following any selection for redundancy give the employee a right to appeal.

The ACAS guide to Handling Redundancy is available at :

<http://www.acas.org.uk/index.aspx?articleid=747>

What is a redundancy payment?

Your employees may be entitled to a lump-sum severance payment from you if you make them redundant.

How is Redundancy Pay calculated?

Redundancy pay is based on:

- the employee's age;
- how long the employee has continuously worked for you, up to a maximum of 20 years;
- and**
- the employee's weekly pay up to a capped limit which is reviewed each year – currently £400/week, (£430/week as of 1st February 2012).

Who gets a redundancy payment?

To receive redundancy pay from you, an employee must have worked continuously with you for two years or more.

Are there any exceptions?

The following people are not entitled to a redundancy payment.

- people who are not employees (for example, casual workers, some directors and people who are self-employed).

Redundancy payments

Statutory redundancy pay is calculated at the following rates based on their age when they worked for you:

- for each completed year of service up to and including the age of 21 years, one half week's pay
- for each completed year of service, aged 22 and up to including 40 years, one week's pay
- for each completed year of service, employees aged 41 and over, one and half week's pay

As an employer you are totally free to give more generous or enhance payments in your redundancy policy, but you cannot provide for less generous than the statutory amounts. To comply with Age Discrimination legislation any enhancements must be based on the same three age limits as the above statutory payments.

What if I don't make a redundancy payment?

If you do not make a redundancy payment to an employee, but they feel they are entitled to one, they should write to you asking for an explanation. If that is not possible, or if you still feel they are not entitled to a redundancy payment, they can refer the matter to an Employment Tribunal within six months of the job ending. A tribunal may extend this period for a further six months in certain circumstances.

What else should I be aware of?

You should be aware of the following:

- employees are entitled to receive a written statement of the amount of the redundancy payment and how you worked it out.
- if you are making an employee redundant, you must meet the fair dismissal conditions.
- if, in special financial hardship circumstances, the Department Works and Pensions makes the redundancy payment you will have to repay the amount.
- there are special rules when businesses/organisations change hands.
- employees may be entitled to a redundancy payment if they are laid-off or put on short-time.
- Employment Tribunals have the power to settle disputes about redundancy payments.
- if an employee is due a payment under an occupational pension scheme, part of the pension payment may be offset against the redundancy payment.

Do employees have to be consulted?

If you are making 20 or more employees redundant at one place of work within a 90-day period, **you must consult** representatives of the employees who may be affected by the proposed redundancies or by measures you take in connection with them. You do not have to inform and consult representatives if you are making fewer than 20 people redundant. However, case law has shown that if you don't inform and consult your employees, their

representatives or Trade Union representatives, Tribunals will take the view that this is unreasonable and they may make an unfair dismissal claim against you.

If your employees are members of a trade union, you **must** consult trade union officials if that union is recognised for collective bargaining purposes (any agreements made between you and your employee's representatives, for example, trade union representatives). If you have told trade union officials, you don't have to consult any other employee representatives.

If there is no recognised trade union, you must consult other appropriate representatives of your employees. You can consult existing representatives or new ones specifically elected for the purpose.

If your employees are not members of a union and they do not elect representatives, having had a genuine opportunity to do so, you can meet your obligations by giving the relevant information straight to the employees.

Are there time limits for the consultation?

Consultation should begin **in good time** and at least

- 30 days before the first redundancy if you will be making **20-99** employees redundant in one place of business within a 90-day period;
- 90 days before the first redundancy if you will be making **100 or more** employees redundant at one place of business within a 90-day period.

What information must I give my employees?

At the start of consultation, you must provide the employees' representatives with written details of:

- the reasons for the redundancies;
- the numbers and categories of the employees involved (for example, '1 project manager, 3 admin. staff', '3 sessional workers');
- the proposed method of selection;
- how you will carry out the redundancies; **and**
- how you will work out any redundancy payments.

What other conditions apply to consultation?

You should bear in mind that:

- consultation must cover employees even if they volunteer for redundancy;
- consultation does not have to end in agreement but must be carried out properly;
- if there are 'special' circumstances, which make full consultation impossible, you must take all reasonable steps towards meeting the conditions.

Employees or their representatives may complain to an Employment Tribunal if they feel that you have not met the consultation conditions, or they feel it is a case of unfair dismissal.

Do I need to consult anyone else?

If you will be making **20** or more employees redundant at one place of business within a **90**-day period must give the Department BERR full details. You must do this at least 30 days before the first redundancy if you are planning 20-99 redundancies or 90 days before the first redundancy if you are planning 100 or more redundancies.

You must also send a copy of the notification to the trade union or elected representatives.

Where can I get further information?

The Redundancy Payments Service runs a free phone helpline on 0500 848489. You can also get information in the following publications available from the Governments Redundancy Payments Offices and Employment Service Jobcentres or from their Publications Orderline on 0845 015 0010

The DirectGov website:

<http://www.direct.gov.uk/en/Employment/RedundancyAndLeavingYourJob/index.htm>

The **Advisory, Conciliation and Arbitration Service (ACAS)** provides information and guidance on a wide range of employment and industrial relations matters. Their national phone enquiry service is free and confidential, and is listed under ' ACAS ' in your local phone book.

You can get 'Employing People - a handbook for small firms' (price £4.95) and free leaflets about ACAS services from ACAS Publications on 08702 42 90 90.

ACAS can get involved in any complaints that are made to Employment Tribunals. The service is free, voluntary, and lets both sides discuss the problem so they can reach their own agreement.

Or Visit: <http://www.acas.org.uk/index.aspx?articleid=1611>

The Employment Advice Service is able to give advice to Charitable and Voluntary Sector organisations only.
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