

**Exit Management**

**HR Guide**

**Exit Management – HR Guide**

# Introduction

This guide covers a range of information which includes:

* Redundancy
* Redundancy payments
* Retirement
* Employee rights on insolvency
* Termination of employment

**See below for more detail**

# Redundancy

A fair redundancy process should be followed where a genuine redundancy situation arises. Redundancy situations may be due to a reduction of the work for which the employee is engaged, where company premises are being relocated or where, perhaps, a serious financial situation is arising dictating early cuts in labour costs.

Redundancy must not be used simply as a vehicle to dismiss an employee who is proving unsatisfactory.

Wherever possible an employer should consider alternatives to redundancy such as reducing the use of agency workers, ceasing recruitment, or possibly using lay off or short time working.

A full, formal and meaningful consultancy process should always be provided, supported by documents to show:

* How the redundancy situation has arisen.
* Outline clearly the criteria being used to select which employees are to be made redundant.
* Consideration that has been given to finding alternative employment within the company or associated companies/group Employers should fully consult with the affected employees prior to making any selection.

Employees who are put at risk of redundancy must be given reasons why they were selected and the opportunity to challenge that selection.

Dismissals of employees should be undertaken using a proper redundancy process.

The employees being dismissed should be made aware of the various elements of redundancy pay they will receive.

Any short cuts in the pre-dismissal process can be potentially costly and could result in a successful claim at an Employment Tribunal, especially if any of the following apply:

* Dismissal is for a spurious redundancy reason
* Selection was based on unsound criteria
* There was not a consultation process
* No alternative employment possibilities were considered

In any redundancy exercise it is crucial that advice should be taken from the advice service. Where large scale redundancies are envisaged involving 20 or more employees, the formal notification process to the Redundancy Payment Service (RPS) has to be undertaken.

# Redundancy payments

If an employee has been laid off or put on short-time working, they may be entitled to a statutory redundancy payment under a specific statutory scheme if they terminates their contract by giving notice and satisfies the eligibility requirements.

Firstly, the employee must satisfy the eligibility requirements under the general statutory redundancy payment scheme (including the completion of two years’ continuous service).

Secondly, the employee must:

* Work under a contract according to which their pay is dependent on the provision of work by the employer (for example, workers paid per piece of work done)

By the employer

* Have been laid off or put on short-time working for the requisite period
* Have been available for work
* Comply with the statutory notification procedure
* In contested cases, apply to the tribunal for a decision, and
* Resign their employment by giving notice

An employee may be entitled to a redundancy payment in these circumstances even if they also receives a statutory guarantee payment from the employer.

# Retirement

Other than in a few exceptional cases; there is no default retirement age. Since the introduction of the Age Discrimination legislation it has been increasingly difficult for employers to justify an enforced retirement of an employee. In many instances employees wanting to retire will simply resign, and employers wanting employees to retire will either need objective justification or look at the reasons as to why they would like them to retire and address those reasons through a formal procedure, such as performance and capability.

When an employee resigns, it is important for the employee to understand the arrangements for their departure, including how their resignation will be dealt with, who they handover to along with details of any exit interview.

# Employee rights on insolvency

Employees are potentially entitled to recover, from the state, preferential debts and guarantee debts, when an employer becomes insolvent.

Certain categories of employment are excluded from the right to receive one or both of the above categories of debt.

There is no qualifying period of employment required to become potentially entitled to recover the above debts.

There are a number of types of unpaid monies that are classified as preferential debts and these are amended from time to time by employment legislation.

With regard to guarantee debts, there are certain categories of monies which are potentially eligible for payment from the National Insurance Fund. Again, these vary from time to time as amended by employment legislation. There is a maximum amount per week payable under this heading which again varies based on amendments by the government, normally on an annual basis.

Employees may complain to an Employment Tribunal on any matter concerning the payments made under the above provisions.

It is also possible to reclaim unpaid pension contributions due from an employer who has become insolvent. There are limits on the amount of employers’ and employees’ contributions that can be recovered, together with associated conditions for the payments to be potentially payable.

Employees who do not receive the payment to which they believe they are entitled may complain to an Employment Tribunal in the normal way.

# Termination of employment

A Contract of Employment will commonly come to an end following

* Termination by the Employer (Dismissal)
* Termination by the Employee (Resignation)
* By mutual agreement or contractual provision between the Employer and the Employee

There are also a number of less common situations where the contract ends automatically including where performance of the contract is impossible for example due to serious illness.

# Dismissals

Dismissal can be with or without notice but must be for one of the following principal reasons to be fair

* The CONDUCT of the employee
* The CAPABILITY of the employee
* REDUNDANCY
* ILLEGALITY
* SOME OTHER SUBSTANTIAL REASON such as to justify the dismissal.

All dismissals must satisfy the test within the legislation which is:

* Where the employer has fulfilled the requirement (to show that the reason used is one of those above), the determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer, depends on;
* Whether, in the circumstances (including the size and administrative resources of the employer’s undertaking), the employer acted reasonably in treating it as a sufficient reason for dismissing the employee and;
* Shall be determined in accordance with equity and the substantial merits of the case;

This means that an employer must ensure that both the main reason for the dismissal and the procedural methods used to implement the dismissal will need to be demonstrably fair before an Employment Tribunal claim can be defended.

# Resignations

Resignations from employees can also be given with or without notice. Employees will not be in breach of their contracts if they resign without notice where they allege that they have been constructively dismissed.

All resignations should ideally be received by employers in written form as difficulties may arise where verbal notification only exists. This is particularly true where resignations are given in the heat of the moment following disagreements that may have arisen. It is always the case that the employer is expected take those steps necessary to ensure that they are as certain as they can be that the resignation is unambiguous on the part of the employee.

The question of whether notice will be worked should also be confirmed in written form to avoid unnecessary confusion at a later date. Verbal agreements only are likely to go against an employer in the absence of an unambiguous agreement in relation to notice. Attention should also be given to the contractual provisions that the employer has in place in relation to garden leave, pay in lieu of notice and other associated issues that may apply on resignation or indeed dismissal.

# Mutual agreements

Mutual agreements to terminate a contract are not as commonplace as other methods but still meet the needs of the parties to a contract. There is therefore no dismissal in these circumstances and employees will not be entitled to bring claims for unfair or wrongful dismissal. Typical examples will include financial severance packages.

Many such situations result in the production of a legally binding agreement, known as a Settlement Agreement. Although the employer may be satisfied that a severance payment accepted by an employee will be sufficient there are many examples where this has not prevented successful Employment Tribunal claims.

Settlement Agreements must be bespoke to the relevant situation to ensure adequate protection from and Employment Tribunal claim.

# Considerations when the employee leaves the business

When an employee leaves a business either through their own choice or that of their employer, it is important to consider many aspects that are often forgotten including conducting an exit interview, cancelling credit cards, deactivating passwords, and managing conversations regarding ongoing confidentiality.

When an employee leaves the business, an employer might mistakenly think that their obligations towards a former employee have ceased. In many instances they may be right in their thinking; however, work related reference requests will almost certainly be received.

Knowing how to approach issues that may present themselves after an employee has left your employment is important as your legal liability will not end just because the employment relationship has.

**Further free downloads available:**



Exit Management



Training



Grievance, Mediation

and Disciplinary



Attendance

Management



Recruitment and

Selection



Induction and

Probation



Maternity, Paternity,

Adoption and Parental



Employee Reward

and Benefit



TUPE



Contractual

Information

**www.questcover.com**

**01455 852028**