



# **An Overview of Redundancy & You**

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AN OVERVIEW OF REDUNDANCY & YOU

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## **PART ONE: BACKGROUND**

### **1.0 Introduction**

This article provides an overview of redundancy, which is a form of dismissal.

When the economy is in difficulties, redundancies are in the news every day. However, even when times are better, redundancies still happen as businesses reorganise or get taken over.

Redundancy is one of the potentially fair reasons for dismissing an employee under section 98 of the Employment Rights Act (ERA) 1996 which the employer must establish to show that an employee was not unfairly dismissed.

To ensure that such a dismissal is fair, an employer must demonstrate there is a redundancy situation as defined under section 139 of the ERA 1996, i.e. where an employer decides to reduce the number of its employees, whether within the business as a whole or within a particular site, business unit, function or job role.

*This article is provided as general background information and should not be taken as legal advice or financial advice for your particular situation. Make sure to get individual advice on your case from your union, a solicitor, and/or an independent financial advisor before taking any action.*

### **1.1 Brief History**

Prior to the introduction of the Redundancy Payments Act 1965 (RPA), employees who lost their jobs did not receive a statutory redundancy payment, although they may have received some form of non-statutory payment.

The RPA introduced a safety net and established the principle that after a qualifying period of work, employees would have a right to a severance (or redundancy) payment in the event of their jobs becoming economically unnecessary to the employer.

The introduction of a statutory redundancy payment served several functions, including to:

- Internalise the social cost of unemployment to the employer;
- Make employers think more carefully before making employees redundant (and consider alternatives to redundancy);
- Compensate the employee for the loss of their job; and
- Provide a minimum sum of money for the employee in case future employment could not immediately be found.

Together with the requirement of statutory minimum notice in the Contracts of Employment Act 1963, and the right to a fair dismissal first found from the Industrial Relations Act 1971, redundancy pay forms one of the three pillars of rights in dismissal.

The RPA was eventually codified in the Employment Protection (Consolidation) Act 1978, and its provisions are now updated and found in the Employment Rights Act 1996 Section 135.

### **1.2 What is Redundancy?**

Redundancy is when you dismiss an employee (or employees) because you no longer need anyone to do their job due to changes in the business.

Examples include:

- The work the employee was doing no longer being available or diminished;
- A relocation (e.g. from one part of country to another, or to another country);
- Change how the business works (e.g. using new machinery or technology);
- Reorganisation (e.g. merging two roles into one or dividing work amongst other staff); and/or
- Closing down all or part of the business, or part of a business (e.g. subsidiary);

The basic process in a redundancy situation can be summarised as:

- The need to make job losses arises.
- Volunteers are sought.
- Volunteers are picked.
- The pool is identified.
- Selection criteria are decided upon (where relevant).
- The staff in the pool are notified.
- The staff in the pool are consulted.
- The selection criteria are applied.
- Redundancy notices are issued.

It is important to note that only a few of these steps have any legal requirements attached to them.

If you are made redundant due to your employer being insolvent there is a different process (refer to [Part Six](#)).

If you are a company director refer to [Part Seven](#).

### **1.3 Ways of Avoiding Redundancy**

While redundancy may not be preventable, taking the time to consider how an employer might avoid it (and making a note of this process) will leave the employer better protected against a claim of unfair dismissal.

Things to consider before making an employee(s) redundant include:

- Introduce a recruitment freeze;
- Ask for volunteers/offering voluntary redundancy or early retirement;
- Retrain employees and transfer them to vacant posts;
- Implement cost savings (reduce work hours, overtime, wages, benefits, leave, etc.);
- Agreeing to flexible working;
- Temporarily reducing working hours;
- Asking employees to stop working for a short period;
- Letting go of temporary or contract workers; and/or
- Limiting or stopping overtime.

Employment contracts may not have the above as options or terms within them, and employment contracts may need to be updated to reflect changes if not already included in the contract.

## **1.4 What are your Rights?**

Employees have certain rights in relation to redundancy, for example:

- Possibly being entitled to redundancy pay (both statutory and non-statutory);
- The right to reasonable time off to look for a new job or arrange training;
- Not be unfairly selected for redundancy;
- A notice period;
- A consultation with your employer; and
- Suitable alternative work with the company.

## **1.5 Unfair Dismissal and/or Discrimination**

If you select an employee (or employees) for redundancy for any of the following reasons (whether wholly or mainly and directly or indirectly), then the business may face a claim for unfair dismissal and/or discrimination:

- Gender;
- Marital status;
- Sexual orientation;
- Race;
- Disability;
- Religion or belief;
- Age;
- Being named on a blacklist;
- Membership or non-membership of a trade union, accessing union services, or carrying out trade union activities at an appropriate time, including supporting trade union recognition;
- Health and safety activities, , taking action on health and safety grounds, acting as a safety rep, raising health and safety concerns with your employer, participating in safety consultations, leaving or refusing to return to a place of safety in circumstances of serious and imminent danger, or taking other appropriate steps to protect yourself and others;
- Acting as an employee representative, or standing as a candidate for an employee representative;
- Working pattern (e.g. flexible working, part-time or fixed-term employees), maternity leave, birth or pregnancy, paternity leave, parental or dependants leave;
- Their exercise of their statutory rights (e.g. the right to a rest break);
- Making an allegation;
- Exercising the right to be accompanied or acting as a companion;
- Whistleblowing (e.g. making disclosures about wrongdoing);
- Taking part in lawful industrial action lasting 12 weeks or less;
- Exercising your right to object to working on a Sunday if you work in retail or betting;
- Taking or asking to take jury service;
- They are the trustee of a company pension scheme;
- Asking to be paid the National Minimum Wage;
- Trying to enforce your rights to participate in pensions auto-enrolment;
- Breaching a contract term banning you from working for another employer (if you are a zero hours contract worker);
- Asserting equal treatment rights under the Agency Workers Regulations 2010 (if you are a directly employed temp worker);
- A reason that would be a breach of TUPE laws; and/or

- Having a spent conviction (except in certain occupations, covered by the Exceptions Order to the Rehabilitation Act 1974).

## **1.6 Fair Procedure**

Even if the business can show that the reason for the redundancy is genuine, the business will also have to show that it has followed a fair procedure when it selected the employee(s) who will be made redundant.

Common and fair ways of selecting employees for redundancy are discussed next.

## **1.7 How Will I Be Selected for Redundancy?**

Your employer should use a fair and objective way of selecting you for redundancy. With this in mind, it is supposed to be the role itself which is identified as being redundant first, and then the employee is identified afterwards, but this is not always the case. Commonly used methods include:

- Last in, first out (employees with the shortest length of service are selected first).
  - It should not be used as a sole criterion as that would be a 'blunt instrument', an approach likely to result in claims for unfair dismissal and indirect discrimination on grounds of age and sex.
  - For example if it means only young people are made redundant.
- Asking for volunteers.
  - Known as self-selection.
  - Should apply to the whole workforce.
  - An employer does not have to select an employee just because they volunteered.
  - Not automatically given by the employer.
  - Can offer enhanced redundancy pay to encourage volunteers.
- Disciplinary/conduct records.
  - It is advisable to not take account of expired warnings.
- Staff appraisal scores (aka standard of work/capability), skills, qualifications and experience.
  - What type of work is needed to be done by those remaining?
  - Do your skills, qualifications, and experience match this work?
- Attendance record (although do not include absence related to disability or maternity).

Things to Consider:

- Selection criteria should be objective and verifiable, and not reflect personal opinions, prejudices, or be guesswork (eg. flexibility, attitude to work, and teamwork).
- There is no actual right to see to anyone else's scores but there is no harm asking for them, perhaps offering to take them in an anonymised form.
- Allowances should be made for performance, attendance and conduct issues conducted with an individual's disability and (and for attendance at least) maternity.
- You should be told what factors have been used in the selection process. If not, you should ask, and if you are still not told, you should seek further advice.
- If you are in a union, it may have agreed a redundancy procedure with your employer, so check with them that this has been followed.
- An employment tribunal will not get involved with whether a decision to make redundancies was sensible, only whether it was genuine, and whether the selection process was objectively fair.

- You might think that the decision to make you redundant is really bad for the business and will result in lost revenues, but that is not the test for the employment tribunal unfortunately.
- Employment tribunals will not 'put themselves in the shoes' of the employer for this.
- Where employees have to sit a test as part of the process, test scores alone should not decide who is made redundant (Mental Health Care (UK) Ltd v Biluan & Anor UKEAT/0248/12/SM).

Your employer can make you redundant without having to follow a selection process if your job no longer exists, for example if:

- Your employer is closing down a whole operation in a company and making all the employees working in it redundant.
- You are the only employee in your part of the organisation.

Your employer may offer you a different role if one is available (referred to as suitable alternative work, [refer to Part Four](#)).

## **1.8 Can I Appeal the Employer's Decision?**

- You can appeal if you feel that you have been unfairly selected, although an employer has no legal obligation to take this step.
- As good practice, an employer should ensure an opportunity for appeal is a part of their redundancy procedure.
- Write to your employer explaining the reasons.
- You may be able to take a claim to an employment tribunal for unfair dismissal.
- Adding this step can aid an employer avoid an unfair dismissal claim.

Things to Consider:

- You should talk to your employer first and check if they have an appeals process.
- If they do not, you can write to them explaining why you think the redundancy is unfair.
- You can get help from staff representatives such as trade unions who can attend any meetings your employer might set up.
- You can also ask for a senior member of staff who was not involved in the selection process to come to meetings.
- What your employer can do:
  - Your employer needs to tell you if they accept or reject your appeal.
  - They need to confirm this in writing.
- If they accept your appeal:
  - If you are still on your notice period they can offer you your job back.
  - This means your employment contract will be the same as before you were selected for redundancy.
  - If you have finished your notice period they can put you back on your previous employment contract.
  - They should consider you as having worked continuously from the date they originally hired you.
  - You must be paid for the time you were not at work.
  - You will need to pay back any redundancy pay.
- If they reject your appeal:
  - If you are due redundancy notice and pay, these will continue as planned.

If you are made redundant, then you should make sure that you appeal in writing against the decision, pointing out any defects with the procedure as set out above. This can be useful evidence if you do end up challenging the decision in an employment tribunal, and more importantly it gives you that additional firepower for a negotiation.

### **1.9 What about Voluntary Redundancy?**

- It is up to your employer whether they actually select you if you volunteer for redundancy.
- If you are selected, you are being dismissed even though you consent to it.
- If you are selected, you cannot subsequently claim unfair dismissal.
- Your employer cannot just offer voluntary redundancy to age groups eligible for an early retirement package - this could be unlawful age discrimination.
- However, an early retirement package (for certain age groups) could be one element of a voluntary redundancy offer open to all employees.
- If selected, you should receive a letter from your employer confirming your redundancy ([Section 3.5](#)).
- You should still get any redundancy rights you are entitled to, such as time off to look for a new job.
- You might also be able to negotiate your notice period with your employer.
- You should check your mortgage protection policy to see what it says about voluntary redundancy.
  - Voluntary redundancy is usually excluded, meaning they will not pay your mortgage payments after your redundancy.
  - You can ask to be made compulsorily redundant instead.

### **1.10 What if I am an Apprentice?**

- Talk to your manager and training provider if you are an apprentice and you are worried about being made redundant.
- Your training provider or the apprenticeship service might be able to help you find another employer to help you complete your apprenticeship.
- Apprenticeships are different in England, Scotland, Wales and Northern Ireland.

### **1.11 Will I Have to Reapply for My Own Job?**

- You might be asked to reapply for your own job, which could help your employer decide who to select.
- Where there are more applicants than places it is entirely proper for an employer to adopt a mechanism for assessing who to offer the role to, e.g. competitive interviews.
- If you do not apply or you are unsuccessful in your application, you will still have a job until your employer makes you redundant.

### **1.12 Consulting Employees**

Any employees the business selects to make redundant will be entitled to consultation on the matter, where they can discuss the reasons for their selection and any alternatives (refer to [Part Three](#)).

If the company is making more than 20 employees redundant then the consultation should take place with a representative, either from the trade union or elected from the workforce.

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There is also an obligation to report the redundancies to the Secretary of State for BEIS (Business, Energy, and Industrial Strategy) where more than 20 employees will be made redundant.

### **1.13 What Notice Period Can I Expect?**

The minimum period of notice required to terminate a contract of employment under section 86 of Employment Rights Act 1996.

An employer is obliged to give an employee(s) a minimum notice period before their redundancy takes effect. These are known as statutory notice periods and depend on the employee's length of service with the employer.

- At least one week's notice if employed between one month and 2 years.
- One week's notice for each year if employed between 2 and 12 years.
- 12 weeks' notice if employed for 12 years or more.

Check your employment contract, as your employer may give you more than the statutory minimum, but they cannot give you less. The parties (employer and employee) may agree longer notice periods. In the absence of express agreement, the common law will imply a reasonable notice period, which cannot be shorter than the statutory minimum.

The notice period starts when your employer gives you a letter ([Section 3.5](#)) or email telling you that you have been selected for redundancy. From an employer perspective, it is best to give the employee the letter at work or send it by recorded delivery (although ensure only the employee can sign for it).

### **1.14 What if I do not Work my Full Notice Period?**

- You can ask your employer if you can leave before your notice period ends, for example if you have another job to go to.
- You must get their agreement.
  - If not they may consider that you have resigned and you could lose your eligibility for redundancy pay.
  - Make sure you get the agreement in writing.
- If your employer agrees you can leave early, your employer does not have to pay you for the rest of your notice period.
- You still get the same redundancy pay.

### **1.15 What is an Effective Date of Termination?**

- An employee's period of continuous employment will end on the effective date of termination (EDT).
- The EDT is defined as (Section 97, ERA 1996):
  - The date on which the employee's notice expires (where the employee has been terminated with notice); or
  - The date on which termination takes effect (where the employee has been dismissed without notice).
- Establishing the EDT is important for determining when an employee should bring a claim for unfair dismissal.

- An employee has three months from the EDT in which to bring a claim (section 128, ERA 1996).
- The EDT is also significant in relation to the availability of interim relief for certain claims.

### **1.16 What is the Importance of a Contract of Employment?**

- Also known as a contract of service.
- A contract of service or apprenticeship, whether express or implied and, if express, whether oral or in writing.
- Whether or not an individual is working under a contract of employment will determine whether they are entitled to certain statutory rights, such as statutory redundancy payments and statutory maternity pay and the right not to be unfairly dismissed.
- This can be contrasted with a contract for services, where the relationship between the parties is not that of employer and employee.
- For a contract of employment to arise there must at least exist an obligation to personally perform the work, mutuality of obligations between employer and employee, and a sufficient element of control over the employee's work (*Ready-Mixed Concrete (South East) Limited v the Minister of Pensions and National Insurance* [1968] 2 QB 497).
- An employee is an individual who has entered into or works (or worked) under the terms of a contract of employment, whether such contract is expressly agreed (in writing or orally) or is implied by the nature of the relationship (section 230, Employment Rights Act 1996).

### **1.17 What is the Importance of Continuous Employment?**

- An employee must complete a minimum period of continuous employment with an employer to be eligible for certain rights and payments such as unfair dismissal, statutory redundancy payments, statutory maternity pay (SMP), statutory paternity pay (SPP) and statutory adoption pay (SAP).
- Continuity will usually be broken by, amongst other events, a break of one clear week (measured from Sunday to Saturday) between two contracts of employment, unless certain exceptions apply.

### **1.18 What about Garden Leave?**

- If your employer says you do not have to be at work (known as 'garden leave') you must get paid as usual during your notice period.
- Your employer can ask you to take any unused holiday during your garden leave.

### **1.19 What if I am Made Redundant During Leave?**

- There are many forms of leave, including maternity, paternity, sick leave, career break, sabbatical, etc.
- Employees affected by redundancy are entitled to certain payments and treatment privileges depending on their length of service with the employer.
- Under normal circumstances, the calculation of length of service is not usually a complicated one.
- When the employee has spent a significant amount of time on leave, however, the obvious question arises:
  - Should the time spent on leave be counted as part of the length of service?
  - Simple answer: Maybe, it depends on the nature of the leave being taken.
- If it is maternity leave, the period of absence will count as 'continuous service' with the employer.

- The same is true of sick leave.
- Other forms of career break will not normally count as continuous service with an employer and may break the period of continuous service you have accumulated before the leave started ([Section 1.17](#)).
- This means that when you return you will be, in effect, starting from scratch again, although in granting you leave, your employer may choose to offer you more generous terms than are required by law.

### **1.20 What if I Accept Early Retirement instead of Redundancy?**

- If you are close to retirement, your employer may suggest you take voluntary early retirement instead of voluntary redundancy.
- You need to look carefully at the financial impact of each option, including how it will affect:
  - Any occupational or personal pensions you have;
  - Any benefits you might be entitled to; and
  - The redundancy package you are being offered.
- It is advisable to seek financial advice.

### **1.21 Should I Offer to Resign Before I Am Made Redundant?**

- If you are sure that you are going to be made redundant, then you could offer to resign voluntarily first, on the basis that your employer pays you a sum of money which recognises the amount of time and effort saved by short circuiting the redundancy process.
- For example, you might save them a month of HR and management time, so you could ask for a month's salary plus say another month to take into account their time and effort.
- It may be attractive from their point of view too as they will not have to carry out any kind of fair process or give you a right of appeal.
- However, it is important to understand the implications of doing this, and seeking advice is advisable.

### **1.22 Express Terms vs Implied Terms**

- Express Term:
  - These are terms that have been confirmed either orally or in writing, and understood by all parties to be part of the contract.
  - If there is any misunderstanding over the terms, it can lead to a dispute between the employer and the employee.
  - When terms are written, the main types of dispute are likely to revolve around their interpretation and application in a particular set of circumstances.
  - Where contractual terms are orally agreed, the matter would be a question of what the terms were and this would be for the Court to decide.
  - The evidence will likely be the witness evidence of the parties involved, and therefore witness recollection will be key in persuading the Court exactly what was said, when this was said and the true application of the words used.
  - Generally express terms are less likely to be in dispute.
  - However disputes can arise as to whether the particular term was contractual or whether further policies have been introduced since the original contract.
- Implied Term:
  - It is common for an employment contract to be made up of both express and implied terms.

- Implied terms are those which have not been explicitly confirmed by all parties, but they are considered either so obvious that they are part of the contract, or have been ‘inserted’ in the contract by the custom or practice of the parties or industry.
- Terms will only be implied by law in particular circumstances.
- The most obvious type of enhanced redundancy payments cases would be by way of ‘custom and practice’.
- This means it is the employer’s practice to offer enhanced redundancy payments.
- However, this can be difficult to prove, as the employee would need to show the Employment Tribunal or Court that enhanced redundancy payments were paid to other employees, every year, and there were no verbal representations made to the contrary.
- Generally speaking, implied enhanced redundancy terms must be ‘reasonable, notorious and certain’ and must be shown to be the general rule rather than exception.
- The onus (aka responsibility) will be on the employee to demonstrate this to the Employment Tribunal or Court.
- A key factor in deciding whether a term has been implied is whether a clear and certain policy has been communicated to employees.
- This would go some way to showing that the policy was ‘notorious’.

## **PART TWO: REDUNDANCY PAY AND TAXES**

### **2.0 Introduction**

- Redundancy pay is compensation for your job loss and, as such, up to £30,000 of it is tax free.
- This applies to a statutory or non-statutory payment, because the payment is regarded as a compensation payment.
- However, there is a distinction to be made; the £30,000 exemption only applies to payments made on the termination of employment that are not payments of earnings ([Section 2.13](#)).
- Therefore, when structuring a termination package, employers should try and make best use of the £30,000 exemption by making compensation payments rather than payments of earnings where at all possible.
- With this in mind, care should be taken when drafting an employment contract.
- You are entitled in law to a redundancy payment if you have worked continuously for your employer for two years or more and are being dismissed for redundancy. You cannot be made to give up or ‘sign away’ that right, no matter what your employment contract states.
- Each element of the payment must be considered separately, rather than ascertaining the tax position of the payment as a whole.
- Careful analysis of the nature of a termination payment is crucial, as this will determine its tax treatment.

### **2.1 Different Terms for Redundancy Pay**

Redundancy Pay can also be known as:

- Relevant Termination Award (RTA).
- Statutory Redundancy Pay (SRP).
- Non-Statutory Redundancy Pay (NSRP).
- Contractual Redundancy Pay (CRP).
- Enhanced Redundancy (ER).

- 'Ex gratia' or Non-Contractual Redundancy Pay (NCRP).
- Severance Pay/Payment or Enhanced Severance Payment.
- Compensation Payment.
- Compensation for Dismissal.
- Golden Parachute.
- Redundancy Money.
- Termination Pay/Payment.
- Discontinuance Wage/Payment.
- Dismissal Wage/Payment.

## **2.2 Types of Redundancy Pay**

There are two types of redundancy pay:

- Statutory Redundancy Pay (SRP):
  - Paid by the employer or government (if the employer is unable to pay, e.g. because it is insolvent).
  - Statutory, meaning compulsory not optional.
- Non-Statutory Redundancy Pay (NSRP):
  - NSRP replaces SRP altogether (you cannot get both).
  - By law, NSRP must be more generous than SRP, otherwise SRP applies (i.e. an employer can pay more but not less).
  - What you are entitled to will be outlined in your employment contract.
  - May not be in your employment contract, but can be used as an incentive to encourage volunteer redundancies, for example.

There are a number of reasons why an employer would offer NSRP, including:

- Maintaining a reputation as a good employer;
- Preserving the goodwill of departing employees;
- Keeping up morale and preserving the goodwill of remaining employees;
- Matching market rates or industry norms for such payment; and/or
- Getting departing employees to sign an agreement saying they will not take legal action against their former employer ([Section 5.2](#)).

## **2.3 The Two Elements of Termination Pay**

From 06 April 2018, The Finance (No.2) Act 2017, Section 5, essentially split termination payments into two elements (together termed Relevant Termination Awards, RTA):

- The first element is known as 'post-employment notice pay' (PENP).
  - PENP represents the amount of basic pay the employee will not receive because their employment was terminated without full or proper notice being given.
  - This element will be subject to income tax and employee Class 1 NICs.
  - The legislation sets out a complex statutory formula to calculate the rest element of the payment, which involves carrying out a number of preliminary calculations to establish the employee's basic pay, the amount of the notice period outstanding following the termination date and the number of days in the employee's last pay period.
  - Once PENP has been calculated, any contractual PILON payment ([Section 2.16](#)) can be deducted, to give the final taxable sum.
- The second element is the remaining balance of the termination payment.

- RTAs subject to section 403 ITEPA 2003 - these are eligible for the termination related tax exemptions.
- The balance of the payment is tax free up to £30,000 (provided that it represents income from employment).
- Any excess over £30,000 will be subject to income tax.
- Employees will continue to benefit from an unlimited NI exemption for payments related to the termination of employment, so the whole of the balance of the payment will be free from Class 1 NICs.

Things to Consider:

- RTA constitutes termination payments and benefits which meet all of the following criteria:
  - The payments, or benefits fall within section 401(1)(a) ITEPA 2003 (i.e. they are received directly, or indirectly in consideration of or in consequence of, or otherwise in connection with the termination of a person's employment).
  - The payments, or benefits are received on or after 06 April 2018.
  - The employment was ended on or after 06 April 2018.
  - The payments or benefits are not statutory redundancy payments, or approved contractual payments to the extent that they are exempt under section 309 ITEPA 2003 (refer to EIM13760<sup>1</sup>).
  - The payments or benefits are not chargeable to income tax by virtue of any provision other than in Chapter 3 of Part 6 ITEPA 2003 (refer to EIM13000).
- Where notice has not been paid and/or taxed separately, compensation payments now need to be divided up into an amount representing notice pay and the remainder of the payment (as above).
- Importantly, these new rules did not apply to SRPs (not an RTA), which could still be made tax-free in their entirety.
- Although HMRC guidance had previously suggested that NSRPs would also be excluded from the these rules, this was amended and the reference to NSRP removed.
- Enhanced redundancy payments do count as an RTA and therefore do not automatically benefit from the £30,000 exemption.
- Whilst these rules did little to simplify the current regime for employers and employees they certainly generated additional revenue for the Treasury by making many more termination payments subject to some element of tax.
- From April 2020, Class 1A NICs are payable on non-contractual termination payments that exceed the £30,000 threshold and are not already subject to Class 1 NICs.
- Restrictive covenants are not considered RTA.

## **2.4 What is the General Difference between SRP and NSRP?**

- Statutory redundancy is the amount which must be paid by the employer to the employee under employment law and will be a fixed amount for each year of service.
- An employee may also be entitled to a redundancy payment in accordance with the express terms of the contract of employment or they may be able to claim an implied contractual right where the payment of a specific amount on redundancy by an employer has become contractual through custom and practice.
- An employer may also offer a NSRP where no scheme is in place.
- An employer may refer to this as 'enhanced redundancy' and it is common to have an enhanced redundancy policy in place.

<sup>1</sup> EIM = Employment Income Manual (refer to References at end).

- Where an employer's redundancy policy is stated to be discretionary, the contractual position will need to be carefully checked.
- Where it is (or could be considered) discretionary, things an employer should consider include (refer to *Park Cakes Ltd v Shumba & Ors* [2013] EWCA Civ 974):
  - On how many occasions it has been paid?
  - Over how long a period has it been paid?
  - Are the benefits always the same?
  - Are the benefits always calculated the same way or on a case-by-case basis?
  - To what extent are the benefits publicised generally?
    - The above can lead to implied terms through custom and practice.
  - How are the terms described? Wording such as 'discretionary' and ex-gratia' aid employers.
  - What is stated in the express contract? Is there a specific clause stating there is no entitlement to an enhanced redundancy payment?
  - Is there equivocality in the contract? The employee must demonstrate that the entitlement is contractual, rather than it might be.
- Failing to pay enhanced redundancy when a contractual obligation has been identified is a breach of contract.
- It is clear that if the employer has any discretion to exercise under the enhanced redundancy scheme then that discretion must be exercised in good faith and the employer will not be entitled to exercise its discretion in a wholly unreasonable, capricious or arbitrary manner.
- It is not uncommon for employers to require employees to enter into settlement agreements (whereby, an employee waives specific claims against an employer) in return for a NSRP ([Section 5.2](#)).
- Generally, NSRP packages tend to follow the same principles as SRP entitlements, as departing from the statutory criteria could invite allegations of discrimination.
- They generally have the same qualifying criteria, such as the age banding; offering enhancements as a multiple of the SRP entitlement.
  - For example, a NSRP package may offer three weeks' pay but the SRP entitlement is one weeks' pay.
- Some NSRP packages may extend eligibility criteria, such as employees being able to apply with only one year of service instead of two.

## **2.5 What about Contractual Redundancy Pay Specifically?**

- An employer could be contractually obliged to make an additional redundancy payment.
- This obligation could arise from:
  - The written contract of employment;
  - A collective agreement with a trade union;
  - A letter given to employees (perhaps as a loyalty incentive in uncertain times); or
  - As an implied contractual term through custom and practice (however, this is much more difficult for employees to establish than is often thought to be the case).
- There may be a policy of paying enhanced redundancy payments which is not contractual.

## **2.6 What about Non-Contractual Redundancy Pay Specifically?**

- An employer may choose to pay an enhanced redundancy package for a variety of reasons (refer to [Section 2.2](#)).
- When fixing or agreeing an enhanced package, regard should be had to other relevant laws including discrimination laws - the age discrimination law in particular.

## **2.7 Do I Qualify for Redundancy Pay?**

To be eligible for SRP you:

- Need at least two years continuous service with your employer; and
- Must be over the age of 18 but under the age of 65 (before dismissal).

## **2.8 What about Short-Term and Temporary Lay-Offs?**

You can claim SRP if you are eligible and you have been temporarily laid off (without pay or less than half a week's pay) for either:

- More than 4 weeks in a row; or
- More than 6 non-consecutive weeks in a 13 week period.

Things to Consider:

- Write to your employer telling them you intend to claim SRP. This must be done within 4 weeks of your last non-working day in the 4 or 6 week period.
- If your employer does not reject your claim within 7 days of receiving it, write to your employer again giving them your notice.
- Your claim could be rejected if your normal work is likely to start within 4 weeks and continue for at least 13 weeks.

## **2.9 Who Does not Qualify for Redundancy Pay?**

You will not qualify for SRP if:

- You are self-employed or a member of a partnership.
- You are a director who has a controlling interest in the company.
- A member of certain professions, including the Armed Forces, police, parliamentary staff, and Crown servants.
- Your employer offers to keep you on.
- Your employer offers you suitable alternative work which you refuse without good reason.
- You were dismissed for misconduct.
- You are a former registered dock worker (covered by other arrangements) or share fisherman.
- You are an apprentice who is not an employee at the end of your training.
- You are a domestic servant who is a member of the employer's immediate family.
- You leave before the end of your notice period without permission from your employer.

## **2.10 What Notice Pay Can I Expect?**

As well as SRP, your employer should either:

- Pay you through your notice period; or
- Pay you in lieu of notice ([Section 2.16](#)) depending on your circumstances.

Your notice pay is based on the average you earned per week over the 12 weeks before your notice period starts.

Things to Consider:

- During your notice period you are entitled to the same pay you would normally get, and this includes if you are:
  - On holiday (annual leave);
  - On sick leave;
  - On maternity, paternity or adoption leave;
  - Temporarily laid off; or
  - Available for work but there is no work to do.
- The period of paid notice you are entitled to will be your statutory period of notice or the period of notice set out in your contract, whichever is the longer.
- If you are on reduced pay because you are absent due to sickness, or because you are on maternity, adoption or shared parental leave, where the employer gives you statutory notice, you are entitled to full pay while working out your notice, even if you have already used up all your entitlement to paid leave.
- The rules are different if you are entitled to notice that is a week (or more) longer than the statutory period of notice.
  - Here, if you are off work during your notice period, your employer only has to pay whatever statutory or contractual sick pay or maternity, adoption or shared parental pay you are entitled to.
  - If you have already used up your whole entitlement, your employer may not have to pay you anything during your notice.

## **2.11 What Redundancy Pay Will I Receive?**

The SRP you receive is based on your:

- Age (18-65);
- Length of service (capped at 20 years); and
- Salary (with a maximum award of 20 week's pay).
  - Your weekly pay is the average you earned per week over the 12 weeks before the day you got your redundancy notice.
  - If you were made redundant on or after 06 April 2022, your weekly pay is capped at £571 and the maximum statutory redundancy pay you can get is £17,130.
  - Weekly pay is subject to an annual uprate on 06 April each year.

As of April 2022, the limits were:

- For ages between 18 and 21, you will receive 0.5 week's pay for each complete year of service.
- Between 22 and 40, you will receive 1 week's pay for each complete year of service.
- Between 41 and 65, it is 1.5 week's pay for each complete year of service.

Things to Consider:

- For the purposes of calculating redundancy payments, weekly pay is capped which is bad news for those who were earning more.
- Redundancy pay is free of tax and national insurance (NI) as long as the award you are entitled to does not exceed £30,000.
- Beyond this threshold payments will be subject to tax deductions at the normal rate.
- Anything else you receive as part of a redundancy package which is not money will be converted into a cash-value for tax and NI purposes.

- Non-cash benefits will also count towards the £30,000 tax-free limit.
- Anyone who volunteers for redundancy is still eligible for SRP.

## **2.12 When Will I Receive My Redundancy Pay?**

- An employer must pay redundancy on an employee's last day.
- The employer can pay shortly after, on a set date, if both the employer and employee agree in writing.
- The employer should clearly communicate when and how the payment will be made.
- For example, let employees know if payments will be included in their monthly pay or as separate payments.

If making redundancy payments puts the business at risk, the employer can ask the Redundancy Payments Service (RPS) for financial help. If the employer is insolvent (**Part Six**) they can get RPS to make redundancy payments and recover the debt from the employers assets.

## **2.13 What is Meant by Payment of Earnings?**

- These are payments normally made as part of the employment, i.e. wages and salary.
- They are not the same as a statutory redundancy payment, which is made on termination to compensate the employee.
- The statutory redundancy payment itself is tax free, but other payments of earnings will not be, with examples including:
  - Payments in lieu of notice (**Section 2.16**);
  - Holiday pay;
  - Overtime and bonuses; and
  - Other benefits.
- Section 401 of ITEPA 2003 is widely drafted and is designed to catch all payments and benefits that are not earnings.

## **2.14 What about Tax and National Insurance?**

If you are made redundant, you may get a 'termination payment', which can include:

- SRP (under £30,000 is not taxable);
- Holiday pay;
- Unpaid wages; and
- Company benefits, for example bonuses.

What you will pay in tax and NI on depends on what is included in your termination payment.

- What you **will pay** tax and NI on:
  - Holiday pay;
  - Unpaid wages
  - Bonuses;
  - Payments you get from your employer for agreeing to enter into a restrictive covenant; and
  - Any payments you receive instead of working during your notice period - this may be payment in lieu of notice (PILON) or be part of any severance pay.
- What you **will not pay** tax and NI on:

- Contributions your employer makes to a registered pension scheme as part of your termination payment - you will pay tax on any employer contributions that go above the Annual Allowance.
- Legal costs related to the settlement that your employer pays directly to your solicitor.
- A termination payment you get because of an injury, illness or disability that prevents you from being able to continue to do your job.
- What **may be** tax free:
  - You do not usually pay tax on the first combined £30,000 of:
    - SRP;
    - Additional severance or enhanced redundancy payments your employer gives you; and
    - Non-cash benefits, for example company property you keep after your employment ends.
  - You will pay tax on any amount over a combined total of £30,000.
  - Your employer will pay employer Class 1A NI on any amount over a combined total of £30,000.

You may be able to get part of your termination payment tax free if you are:

- Not resident in the UK for tax purposes (a non-resident) for the whole of the tax year in which your employment terminates;
- Someone who works at sea (a 'seafarer'); or
- A serving member of the armed forces.

Any tax and NI due on your termination payment will be taken automatically by your employer in your final payslip.

- Your employer will put any taxable parts of your termination payment through their payroll and deduct any tax or NI under Pay As You Earn (PAYE).
- If you get your termination payment after you have got your P45, your employer will use an 'OT' tax code.
- Tax will be deducted on the assumption that you have used up your personal allowance for the current tax year.
- If your termination payment means your total income for the year is higher than in the previous year, you may pay more tax than usual.
- You can see an estimate of how much tax you will pay over the whole year.
- If you complete a Self Assessment tax return, include your termination payment as 'additional information'.
- If you think that you have paid too much tax or you think that your termination payment has not been taxed in the right way contact HMRC.

With regards to NSRP, the same £30,000 limit applies; however, that there are some circumstances where it does not.

- Occasionally, employers will negotiate an enhanced redundancy package, which involves additional payments, with their employees, usually through their trade union, and codify the new agreement as an alteration to the existing contract of employment.
- There have been cases where the tax authorities did not regard the resulting payment as meeting the definition of "not arising from the employment" as required by the statute which grants the tax exemption.

## **2.15 What if I do not Work my Full Notice Period?**

- You will pay tax and NI on the part of your termination payment equivalent to what you would have earned if you were working, and this may apply to:
  - Lump sum payments in lieu of notice (PILON);
  - Pay you are given while on 'gardening leave' (where you remain on the payroll but you are asked not to work); and
  - Part of any severance, enhanced redundancy or non-cash benefits you get (known as Post-Employment Notice Pay (PENP)).
- If PENP applies to you, your employer will work out how much you have to pay tax and NI on.
- If the amount of PENP is more than the total of any severance, enhanced redundancy or non-cash benefits you receive, you will only pay tax on the amount you actually get.

## **2.16 What is Payment in Lieu of Notice (PILON)?**

Instead of asking an employee to work for the business during the notice period, it is possible as an employer to dismiss the employee immediately and make a payment to them for the notice period, providing there is a provision for this in the employee's contract.

- You get all of the basic pay you would have received during the notice period.
- You may get extras such as pension contributions or private health care insurance if they are in your contract.
- Your employer may still offer you payment in lieu of notice, even if your contract does not mention it.
- If you accept, you should receive full pay and any extras that are in your contract.
- From April 2018, all PILON became subject to income tax and employee Class 1 NICs regardless of whether there is a PILON clause in the employment contract.

Things to Consider:

- Contractual PILON payments which are subject to tax and NIC as earnings (if also paying an RTA a PENP calculation is required).
- Non-contractual PILON which are RTAs.
- In order to work out the amount liable to tax and NIC, employers need to undertake the PENP calculation (refer to EIM14000).
- The formula takes into account any PILON chargeable to income tax as earnings within section 62 ITEPA 2003 by reducing the amount of PENP by the amount of the PILON (refer to EIM13896).
- The slice of the RTA that must be treated as earnings under the legislation is:
  - The entire RTA if PENP is equal to or more than the RTA.
  - PENP, if it is less than the RTA but is not nil (If PENP is a negative amount, it is treated as nil).
- There are two situations when the PENP calculation is unnecessary:
  - If all the lawful notice due is worked or the employee is placed on gardening leave and is paid in the normal way subject to PAYE tax and NIC.
  - If there is no termination payment other than items that are taxable and liable to NIC as earnings, such as a contractual PILON, holiday pay and bonus.
  - Additionally, if the termination date was on or before 05 April 2018 then the PENP rules do not apply.
- How PENP is Calculated:
  - Formula  **$((BP \times D) / P) - T$** .

- **BP** = basic pay.
- **D** = days in the notice period.
  - D is the number of days in the post-employment notice period (broadly the unworked period of notice).
  - Note that D is calculated by reference to the notice that the employer must give (by contract or law).
  - This may be different from the period of notice that the employee must give.
- **P** = days in the pay period.
  - P is the number of calendar days in the employee's last pay period ending before the 'trigger date'.
  - EIM13898 provides the definition of 'trigger date'.
  - This is where notice of termination of employment is given or received it is the date that notice is given by either party.
  - Otherwise it is the last day of employment.
- **T** = taxable amounts on termination other than holiday pay and bonuses.
- PENP rules apply where an employee is dismissed without notice and offered a settlement agreement at a later date (the fact that there is a gap between termination and agreeing settlement terms does not prevent the rules applying).
- If a fixed term contract ends early there is still a notice period, which runs from the date of termination to when the contract would have ended.
- When determining whether there are any unserved periods of notice, employers must use whichever is the greater of the contractual or statutory notice periods that the employer is required to give.
  - Meaning varying the employee's notice period may have no impact on the application of the rules.
  - It is worth noting that there is an anti-avoidance purpose test in the rules.
- Salary sacrifice as well as basic pay needs to be included when calculating PENP.

## **2.17 What if I Have More Than One Job with the Same Employer?**

If you are concurrently employed and one of your jobs is made redundant, you will need to consider:

- How your employer intends to assess your period of continuous service ([Section 1.17](#)); and
- Which salary will be used to calculate redundancy pay.

## **2.18 Am I Entitled to a Tax Rebate?**

- You might be due a refund if you answer 'yes' to all of these questions:
  - Were you dismissed or made redundant part way through the tax year? (Tax years start on 06 April and end on the following 05 April).
  - Were you employed and paying tax through PAYE?
  - Are you still out of work?
- How much you can get back will depend on:
  - How much you earned since the tax year started; and
  - How much tax you paid on those earnings and any other income.
- How you go about getting your refund will depend on:
  - How long you have been unemployed;
  - Whether you have claimed any taxable benefits since losing your job; and
  - Whether you found another job within four weeks of losing your old one.
- Jobseekers Allowance (JSA) and Other Taxable Benefits:

- If you have claimed any taxable benefits since losing your job, the Benefit Office has to pay your refund.
- This is because the tax you are paying on your benefits affects how much you owe overall.
- Taxable benefits include JSA and Carer's Allowance.
- You will need to send the Benefit Office parts 2 and 3 of your P45 to claim your tax refund.
- Keep part 1A for your records.
- The Benefit Office will work out your refund and pay it either after the end of the tax year or after you stop claiming taxable benefits, whichever comes first.
- If you are claiming Universal Credit (UC), this is not a taxable benefit, so once you have been unemployed for four weeks you can claim your tax refund from HMRC.
- If you get a new job within four weeks:
  - If you start a new job within four weeks of finishing your old one, your new employer will pay any tax refund you are owed.
  - Give your new employer parts 2 and 3 of your P45, keeping part 1A for your records.
  - You should get your refund with your pay.
- If you have been unemployed for at least four weeks:
  - You can claim a tax refund by filling in Form P50.
  - Send this to HMRC with Parts 2 and 3 of your P45.

## **PART THREE: REDUNDANCY AND CONSULTATION**

### **3.0 Introduction**

- If you are an employee affected by redundancies, by law your employer must consult you.
- This should be given at the earliest opportunity and before any final decisions have been made.
- This is even if you are not at risk of redundancy yourself.
- You will usually have a face-to-face meeting with your manager or the person leading the redundancy changes.
- The meeting can take place over the phone if you both agree to it and there is a clear need, for example if you work remotely.
- By law they must meet you at least once.
- They might need to meet you more than once to make sure they can respond to your suggestions or requests.

The consultation should involve:

- Reasons for the planned redundancy;
- Details of the selection criteria;
- Details of why you have been selected;
- Any issues you have with the process;
- What time off you will have to look for a new job or training;
- How the business can restructure or plan for the future;
- Alternatives to redundancy (if possible); and
- Details of the redundancy payment.

The consultation does not have to end in agreement, but it is important the employer takes the time to properly consider the employee's response. In other words, your employer does not have to make the changes you suggest but they do need to show that they have listened to you, considered your ideas, and tried to come to an agreement.

An employee should only be made redundant once the employer has finished consulting everyone.

### **3.1 What are Collective Redundancy Rules?**

If your employer is making 19 redundancies or less, there are no rules about how they should carry out the consultation. Employers are not legally obliged to allow employees at risk to bring a representative to the consultation. However it is recommended that the employer permits this, as doing so will help the employer avoid an unfair dismissal claim.

If the employer is making 20 or more redundancies at the same time, the collective redundancy rules apply, and the consultation should take place between your employer and a representative, which can be either:

- A trade union representative (if you are represented by a trade union); or
- An employee representative (if you are not represented by a trade union or if your employer does not recognise your trade union).
  - An individual elected or otherwise appointed to represent employees, for example, for the purposes of an information and consultation exercise during a collective redundancy or transfer of an undertaking subject to TUPE, or for the purposes of an information and consultation agreement.
  - Under the Takeover Code, a representative of an independent trade union, where that trade union has been recognised by the bidder or the target company in respect of some or all of its employees; and any other person who has been elected or appointed by employees to represent employees for the purposes of information and consultation.
  - The Takeover Code requires certain information and documents to be provided to employee representatives of the bidder and target company during a takeover offer.
  - Employees affected by the proposed redundancies can stand for election (or be appointed) as an employee representative or vote for other representatives.

Your employer does not need to include you in collective consultation if you are employed under a fixed-term contract, except if they are ending your contract early because of redundancy.

### **3.2 What Must the Consultations Cover?**

Collective consultations must cover (in writing):

- Ways to avoid redundancies;
- The reasons for redundancies;
- The number of employees and which jobs are at risk;
- The plan for selecting employees for redundancy;
- The plan for carrying out redundancies, including timeframes;
- How redundancy pay will be calculated;
- How to keep the number of dismissals to a minimum;
- How to limit the effects for employees involved, for example by offering retraining; and
- Details of any agency workers the employer is using.

Your employer must also meet certain legal requirements for collective consultations.

The employer should have a:

- Trained person to lead the consultation;
- Clear way of presenting the redundancy plan; and
- Questions and answer document.

### **3.3 How Long will the Consultation Last?**

There is no time limit for how long the period of consultation should be, but the minimum is:

- 20 to 99 redundancies: The consultation must start at least 30 days before any dismissals take effect.
- 100 or more redundancies: The consultation must start at least 45 days before any dismissals take effect.

### **3.4 What is a Protective Award?**

- An award which an employment tribunal may order an employer to pay to its employees under TULRCA where the employer has failed to inform and consult the employees' representatives when proposing to make 20 or more redundancies.
- Often used to describe a similar type of award made under TUPE for failure to inform and consult prior to a transfer of an undertaking, although the term 'protective award' does not appear in TUPE.

### **3.5 What is a Redundancy Letter?**

It is good practice for an employer to inform an employee(s) face-to-face that they are going to be made redundant. The employer should also let the employee know in writing, which should include:

- The notice period;
- Leaving date;
- How much redundancy pay is due;
- How the employer calculated the redundancy pay ;
- Any other pay the employer owes the employee (for example holiday pay);
- When and how the employer will pay them; and
- How the employee can appeal.

## **PART FOUR: SUITABLE ALTERNATIVE WORK & FINDING OTHER WORK**

### **4.0 Introduction**

Your employer might offer you 'suitable alternative work/employment' within your organisation or an associated company (termed redeployment). In fact, an employer is obliged to try to find suitable

alternative work for an employee they plan to make redundant and this step, whether there is an alternative position available or not, should be part of the consultation process.

Whether a job is suitable will depend on a variety of factors, including:

- How similar the work is to your current job;
- The terms of the job being offered;
- Your skills, abilities and circumstances in relation to the job; and
- The pay (including benefits), status, hours and location.

Things to consider:

- Deciding on what is actually suitable alternative work can be a highly contentious issue without clear rules as it must always depend on the circumstances of the case.
  - To some extent it is what is mutually agreed by the employer and employee as both have a part to play.
  - The employer can quite reasonably argue that a more senior position may not be suitable but it is the employee who decides whether a more junior position is.
- Under 'suitability' one must consider the nature of the employment offered.
  - An employment tribunal has to make an objective assessment of the job offered but it is not, however, an entirely objective test, in that the question is not whether the employment is suitable in relation to that sort of employee, but whether it is suitable in relation to that particular employee.
  - It comes really to asking whether the job matches the person: does it suit their skills, aptitudes and experience?
  - The whole of the job must be considered, not only the tasks to be performed, but the terms of employment, especially wages and hours, and the responsibility and status involved.
  - The location may also be relevant, because as the employment appeals tribunal once stated "commuting is not generally regarded as a joy".
  - No one single factor is decisive; all must be considered as a whole.
  - Was it, in all the circumstances, a reasonable offer for that employer to suggest that job to that employee?
  - And the sole criterion by which that is to be judged is 'suitability'.
- If an alternative position is available, the new job must be offered before the planned redundancy is due to take place.
- It must begin no later than four weeks after the end of the previous role.
- If the employer does not follow these steps, they must make a SRP.
- If the offer of an alternative job is unreasonably refused by the employee, they lose their right to SRP.
- Your redundancy could be an unfair dismissal if your employer has suitable alternative employment and they do not offer it to you.
- A change in the terms of the employment contract will often be involved, in which case redeployment can only take place with the employee's consent.
- If you turn down a suitable alternative post that is offered by your employer before you are made redundant, your employer may be able to refuse to pay you a redundancy payment. Specifically, you would lose your redundancy rights if:
  - Your employer (or an associated employer, or an employer taking over the business) offers you a new job before your current contract expires and which starts within four weeks;
  - The job is suitable for you; and

- You unreasonably reject it.

#### **4.1 Is There a Redeployment Pecking Order?**

Sometimes there are fewer vacancies than people wanting to fill them. An 'ordinarily' redundant employee is only third in the pecking order which runs:

- A redundant woman on maternity leave;
- A disabled individual being moved into a new role as a reasonable adjustment; then
- Others whose jobs are redundant.

Where there are more applicants than places it is entirely proper for an employer to adopt a mechanism for assessing who to offer the role to, e.g. through competitive interviews.

#### **4.2 An Offer of Suitable Alternative Work**

If your employer does offer you another job it needs to be:

- In writing;
- Made before your contract ends; and
- If a different job to the one you are doing, the employer will need to explain how it is different.

You should not have to apply for the job.

#### **4.3 What if I Refuse an Offer?**

- You may lose your right to SRP if you unreasonably turn down suitable alternative employment.
- You may turn down a job before or during a trial period, but not post trial period ([Section 4.4](#)).
- In order to refuse an offer of suitable alternative work you will need to give a good reason why it is not suitable, with examples including (not an exhaustive list):
  - Lower pay.
  - Health issues stop you from doing the job.
  - You have difficulty getting there, for example because of a longer journey and/or higher cost, or lack, of public transport.
  - It would cause disruption to your family life.
- Your contract could say you have to work anywhere your employer asks you to (known as a 'mobility clause').
  - This could mean turning down a job because of its location could risk your right to redundancy pay.
- If your employer does not accept your reasons for turning down the job, they could refuse to pay your redundancy pay.
  - Have an informal chat with your employer and ask them why they do not accept your reasons.
  - Explain why you think the job is not suitable.
- If they still do not accept your reasons, you could seek advice from a colleague, union rep, ACAS, or even a solicitor.
- You can make a claim to an employment tribunal if you think the job you have been offered is not suitable.

Things to Consider:

- On the question of whether an employee's rejection of a job is unreasonable, the test is whether the employee's behaviour and conduct, looking at it from their point of view, on the basis of the facts as they appeared, or ought reasonably to have appeared, to them at the time the decision had to be made.
- It is also worth noting that the burden of proof is on the employer to show that the reasons are unreasonable; the employee is not required to show that they are reasonable.
- The following principles apply to looking for suitable alternative employment:
  - The obligation is to look for, and consider offering, suitable alternative employment. It does not quite go as far as requiring the employer to offer it (but if an employer does not it may be an unfair dismissal).
  - The search for suitable alternative employment should not be limited to the same section of the business that the employee worked in although it is probably going too far to require a search amongst associated companies/employers.
  - It is not unreasonable to expect an employer to even consider posts which are already filled, even if that means bumping the employee currently in that post.
  - As well as looking, the employer should carefully consider the possibility of offering the job. This most regularly comes up where the alternative is a demotion. The question of whether a demotion is suitable is the employee's to answer, not the employer's, and should be the subject of consultation;
  - Identifying transferable skills is a proper activity for the consultation process.
  - If making an offer of suitable alternative employment the employer must give sufficient information to the employee about it so that the decision can be properly informed. This will always include the financial prospects for the new role.
  - If the post is suitable, but the terms upon which it is offered are not, then this can make the dismissal unfair.
  - Any obligation to retrain the employee will be limited to what is reasonable. Showing them how to operate a slightly different machine is clearly different to totally retraining them.
  - No employer is expected to make an offer if it contradicts an agreement made with the union.

#### **4.4 Do I Have a Trial Period?**

- You have the right to a 4 week trial period for any alternative employment you are offered.
- The 4 week period could be extended if you need training, and any extension must be agreed in writing before the trial period starts.
- The trial must start within 4 weeks of your previous job ending.
- The trial must start after you have worked your notice period and your previous contract has ended.
- This will help to avoid confusion or disputes if the trial does not work out, and it is a good idea to set out the dates for the trial in writing.
- Tell your employer (and vice versa) during the trial period if you decide the new job is not suitable.
  - This will not affect your employment rights, including your right to SRP.
  - You will lose your right to claim SRP if you do not give notice within the 4 week trial period.
- If at the end of the trial period you are still in the job, you will lose any rights to a redundancy payment.
  - In law, you will have accepted the new job.
  - If the trial period is successful then you are not dismissed.

- If you reject the new job before the end of the trial period because it turns out to be unsuitable, or for good personal reasons ([Section 4.3](#)), your redundancy will be considered to have started on the day your old job ended.
- However, if you say the new job is not suitable but your employer disagrees, your employer may refuse to pay your redundancy payment, leaving you to challenge this in an employment tribunal.
- You should take advice before you reject an alternative job offer (unless it is obviously unsuitable for you). You may be in a stronger position if you at least try it out and give clear reasons for rejecting it if you find it unsuitable.

#### **4.5 What about Time Off to Look for Other Work?**

- If you have been continuously employed for 2 years by the date your notice period ends, you are allowed a reasonable amount of time off to:
  - Look for another job; and
  - Arrange training to help you find another job.
- How long you can take will depend on your circumstances.
- No matter how much time you take off to look for another job, the most your employer has to pay you is 40% of one week's pay. For example:
  - You work 5 days a week and you take 4 days off in total during the whole notice period - your employer only has to pay you for the first 2 days.

#### **4.6 What about Help Finding Other Work?**

- You can get help from the Jobcentre Plus Rapid Response Service to:
  - Write CVs and find jobs;
  - Find information on benefits;
  - Find the right training and learn new skills;
  - Organise [work trials](#) (if you are eligible); and
  - Get any extra help at work if you are disabled, for example [Access to Work](#).
- You may also be able to get help with costs, such as:
  - Travel to work expenses;
  - Childcare;
  - Tools or equipment; and
  - Vocational training - you must be in your notice period to be considered.
- You can contact the Rapid Response Service:
  - If you suspect you are going to be made redundant;
  - During your notice period; and
  - Up to 13 weeks after you have been made redundant
- Contact the Rapid Response Service @ [rrs.enquiries@dwp.gov.uk](mailto:rrs.enquiries@dwp.gov.uk).

There is a different service if you are in Scotland or Wales.

#### **4.7 What about Job Seekers Allowance/Universal Credit?**

- Check out whether you can claim Jobseeker's Allowance (JSA) or Universal Credit (UC).
- JSA is an unemployment benefit you can claim while looking for work.
- If your redundancy pay off is too high you may not qualify for income-based JSA, but you are entitled to contribution-based JSA as long as you have paid sufficient NI contributions.
- To claim JSA online, visit the [GOV.UK website](#).

- It is important to sign on even if you do not qualify for benefits so you do not miss out on NI credits while you have no earnings.
- If you have an incomplete NI record this could affect your entitlement to the State Pension and other benefits later on.
- The Redundancy Payments Office (RPO), a division of the Insolvency Service, when calculating your notice pay, is obliged to subtract the amount of JSA or UC you were entitled to receive during your notice period - even if you did not claim it.
  - You will need to prove that you were rejected for these benefits in order to get your full notice pay from the RPO.

## **PART FIVE: REDUNDANCY AND OTHER FACTORS**

### **5.0 Introduction**

This part of the article outlines other factors relevant to the redundancy process.

### **5.1 What about Holidays?**

- Your employer may be able to require you to take any unused holiday while working through your notice.
- Your employment contract may or may not say something about this.
- If there is nothing in your contract, your employer can still make you take holiday during your notice period, but they must give you at least twice as much advance notice as the amount of holiday they want you to take.

### **5.2 What is a Settlement Agreement?**

Upon the dismissal of an employee, that employee and their employer can enter into what is known as a Settlement Agreement (formerly known as a compromise agreement).

- Commonly used to record an employee's terms of departure where they are to receive a severance/termination payment in return for the waiver of all actual and potential statutory (and usually common law) claims against the employer.
- Through a Settlement Agreement the two parties can settle any employment claims that may be made by the employee after they leave.
- By entering into a Settlement Agreement the employee waives their right to make any claims, such as unfair dismissal.
- Settlement agreements can be beneficial for employers as it means that they do not have to worry about any later repercussions of dismissing the employee, such as having to attend an Employment Tribunal.
- They can also be much simpler and stress-free to arrange than a claim that has to go through the courts or an Employment Tribunal.
- Before reaching a Settlement Agreement with an employee, it must be ensured that they have received legal advice from an independent adviser first. This adviser should be a qualified lawyer, a trade union representative or an advice centre representative.
- You should acquire a certificate from the adviser confirming that they have given advice to the employee on the terms and effect of the agreement. The advice will also confirm that the adviser has the necessary insurance.

- A redundancy situation does not always lead to a settlement agreement.
- It is important to understand is that, quite often, the ex gratia payment is negotiable, and if it is not, then you can focus on other areas such as bonus payments, the termination date, share options and holiday pay as points of negotiation to increase your overall termination package.

Examples of terms that a Settlement Agreement may contain include:

- An amount of compensation offered to the employee.
  - Staggered payments may be offered as an alternative to a lump sum to encourage compliance.
- Assurances given by both the employer and employee.
  - Should state clauses outlining remedies should either party renege on the agreement.
- Provision requiring the employee to confirm that, at the time of signing, they are not aware of any circumstances constituting gross misconduct, which would have entitled the employer to terminate employment without notice.
  - If payment is conditional on this undertaking and some heinous act of misconduct is discovered, the employer could withhold payment without being in breach of the agreement.
- Indication that all terms have been accepted by the employee and that they will not take legal action in future.
- A letter of reference which can be used by the employee in future job applications (although it must be fair and accurate to avoid a claim from a future employer about misrepresentation or negligence).
- A 'non-compete' clause which places some restriction on the type of jobs the employee is able to apply for in the future.
- Payment of tax by the employer (consider Tax Indemnity Clause).
- Confidentiality Clause - i.e. that the employee cannot disclose some or all of the details of the Agreement or the termination of their employment to anybody.
- Provision requiring the employee to repay all or part of the termination payment if they breach the agreement.
  - To avoid allegations that the repayment clause is a penalty, and therefore void, it may be appropriate to consider whether the amount of the repayment is a genuine estimate of the employer's potential loss.

For a valid waiver of statutory employment rights, certain statutory conditions must be met:

- The agreement must be in writing.
- The agreement must relate to a particular complaint or particular proceedings.
- The employee must have received independent legal advice on the agreement and in particular on its effect on their ability to pursue the statutory rights in question.
- The adviser must be identified in the agreement.
- The adviser must have insurance in relation to the advice.
- The agreement must state that the conditions regulating settlement agreements in the relevant legislation have been met.

### **5.3 What is a Severance Agreement/Payment?**

- In the context of employment, an agreement recording the terms of termination of a contract of employment and any payments to be made, usually in return for a waiver of claims.

- In order to effectively waive claims under most statutory employment rights, a severance/termination agreement must comply with the statutory conditions for a settlement agreement.

#### **5.4 What is a Covenant/Restrictive Covenant?**

- An agreement or promise to do or provide something, or to refrain from doing or providing something, which is meant to be binding on the party giving the covenant (who may be referred to as the 'covenantor').
- In a finance law context, also known as an undertaking.
- In a property law context, in some circumstances, the agreement or promise may have to be given in a particular form for it to be binding.
- Some types of covenant may also be enforceable by, or against, persons who were not a party to the original arrangement.
- Restrictive covenant:
  - A negative covenant that restricts the way in which a party can act, for example the way in which land may be used or what an employee can do.
  - In employment contracts to protect the employer's business by restricting the activities of an employee, generally after the employment has ended.
  - Based on the restraint of trade principle that an individual should be free to follow their trade and use their skills without undue interference.

#### **5.5 What Happens if the Business Keeps Me On?**

The business will not have to pay redundancy pay to an employee(s) if it decides to offer to keep them on or it finds them suitable alternative employment.

#### **5.6 What Happens if the Ex-Employer Advertises for a Post Similar to Mine?**

If your employer claims that they no longer need the work you do to be done, but recruits someone else to fill the post after you have left it; this is a good indicator that something is amiss, that your redundancy is not a genuine one, and that there may be grounds for bringing an unfair discrimination case against your employer (the exception being if that person is on significantly less money than you were, which is a legally acceptable reason to make you redundant).

- If you were made redundant - that is, you were told that your job was no longer needed - but you get clear evidence later that this was not the case, you may be able to claim unfair dismissal.
- Even if the job advertised is not the same as the one you did, but is sufficiently close that you might be able to do it, you could still have a case.
- This is because your employer should have actively investigated the possibility of suitable alternative employment for you when you were faced with redundancy.
- It may appear to a tribunal, after looking at the evidence, that this avenue was not properly explored.
- However, it is also possible that circumstances have changed since you left.

- Your former employer could argue that there was no prospect of a suitable alternative job when you were declared redundant, but that, for example, since you left, a new unexpected order has come in.
- Your employer should be looking for suitable alternative roles for you right up to your last day of employment.
- The first step in any tribunal claim is to contact ACAS by submitting an ACAS Early Conciliation Notification Form.
- If you want to claim that your selection from redundancy was unfair, you must submit the Form to ACAS within three months (less one day) of your dismissal date, otherwise the tribunal will not be able to consider your claim.
- ACAS conciliation is free, and it is an opportunity to try to settle the dispute without a tribunal claim.
- If ACAS conciliation fails (or if you or your employer choose not to participate in ACAS conciliation), ACAS will issue an early conciliation certificate.
- You will need the number on this certificate to bring your claim.
- All the deadlines in the employment tribunal are extremely tight and if you miss them, the tribunal is unlikely to consider your claim.
- Take advice from your union rep/solicitor and make sure you do not delay.

## **5.7 Employment Tribunals**

- Employees have the right to take disputes about the amount of SRP they will receive, or their eligibility for it, to an Employment Tribunal.
  - This is also true for NSRP.
- The time limits for SRP and NSRP are different.
  - Complaints about SRP payments must be made within six months of the time at which the payment should have been made.
  - Complaints about NSRP must be made within three months as they are breach of contract issues.
  - This is the general rule, but there are some exceptions to it.

## **5.8 What is a Basic Award?**

- The first of two elements of compensation payable to an employee successful in an unfair dismissal claim in the employment tribunal (the second element being the compensatory award).
- The basic award is designed to compensate an employee for loss of job security and is calculated in the same way as the statutory redundancy payment according to a formula based on the employee's age, length of service and weekly pay (subject to a statutory limit).

## **5.9 What Can I Do With My Redundancy Pay?**

You can do many things with your redundancy payment, including:

- Use it to replace lost income whilst finding other work.
- Clear debts or repay all or part of your mortgage.
  - Check there are no penalties which might be incurred by redeeming your debts early.
- Pay in to a pension:
  - You can benefit from tax relief on your contribution.
  - However, consider that you might exceed the limit on pension contributions and the implication of this.

- Pay for a holiday.
- And so on.

## **5.10 What about Support?**

- Anyone who has gone through redundancy will understand that it can create difficult situations and conversations within the organisation.
- With this in mind, employers should think about how to support:
  - Employees at risk of redundancy;
  - Managers who are breaking the news;
  - The people leading the consultation;
  - Employee representatives; and
  - Staff that are staying on.
- However, it is often forgotten that those staying on experience stress from seeing colleagues and friends being made redundant.
- They will also be part of a changing organisation and might feel uncertain about what the business and their roles will look like in future.
- As such, employers can support staff by providing:
  - Counselling;
  - Additional face-to-face meetings;
  - Help getting financial advice;
  - Clear plans for the future of the organisation; and
  - Help finding work for another employer.

## **5.11 What about Unfair Dismissal?**

If the redundancy process is not handled properly then the dismissal could be unfair, and the key areas of focus for employers are:

- The consultation;
- The search for suitable alternative work;
- The procedure; and
- The dismissal.

Things to Consider

- The Basic Award ([Section 5.8](#)) for unfair dismissal and the SRP are calculated in the same way, anyone who has one will not get the other as well.
- Where there is a technical breach that would not have made a difference to the fact that the employee was dismissed when they were, there is not likely to be much, if any, compensation.
- Where employees under notice of redundancy are dismissed on the grounds of incapacity the timing of the dismissal is likely to be significant, especially if the employer has taken no previous steps to dismiss the employee on ground of capability.
- Where an employee is under notice of dismissal for redundancy and is dismissed for gross misconduct, special provisions apply.
  - In this situation the onus is on the employer to show that the employee is guilty of the misconduct.
  - Under ordinary unfair dismissal the duty on the employer is only to show that they had a reasonable belief in the employee's guilt after carrying out a reasonable investigation.

- Furthermore, an employee who is dismissed may still receive a redundancy payment at the discretion of the Tribunal.

### **5.12 Will a Breach of Contract Claim Affect My SRP?**

Based on *Ugradar v Lancashire Care NHS Foundation Trust* UKEAT/0301/18/BA the answer to this would be no.

- In this case the claimant was made redundant and had a contractual redundancy entitlement of £43,949.04.
- The Trust refused to pay, claiming she had turned down suitable alternative employment.
- A provision in the claimant's contract stated this entitlement was inclusive of SRP, in her case calculated at £5,868.00.
- The contractual redundancy pay therefore totalled £38,071.04.
- When the claimant brought her case to the employment tribunal, they awarded her £25,000, which was the then cap on breach of contract claims and held the cap also caught her SRP.
- On appeal to the employment appeals tribunal (EAT), the claimant won £25,000 for non-payment of the contractual redundancy pay, and £5,868.00 for non-payment of her SRP.
- The EAT held that the employer had two obligations to the claimant; one in contract and one in statute, and that the award should be reflective of both.
- The EAT clarified the cap only applied to a breach of contract claim and did not impact the claimant's statutory claim.
- Employers with contractual redundancy schemes should therefore be aware that the cap of £25,000 only applies to contractual redundancy pay and does not extend to the amount owed to employees under statute.

### **5.13 What about Share Options and Share Awards?**

- Employees may be entitled to exercise share options and/or receive share awards either before or at some point after termination.
- The terms of the relevant employee share scheme will govern any right of exercise or entitlement to receive shares.
- Therefore, the reason for the termination will need to be clearly identified for the purposes of dealing correctly with the employee's share scheme entitlements.
- However, there are many factors which need careful consideration in relation to shares, so individual advice on this is crucial.

## **PART SIX: REDUNDANCY AND INSOLVENCY**

### **6.0 Introduction**

If your employer is insolvent and cannot pay the redundancy payment then you are entitled to claim the SRP, as well as certain other unpaid sums, from the state out of the National Insurance Fund.

You will have different rights depending on whether your employer:

- Makes you redundant;

- Asks you to keep working; or
- Transfers you to a new employer (if the business has been sold).

Your employer must have a consultation about why redundancies are happening and if there are any alternatives, although they do not have to consult you directly.

## **6.1 What if I am Made Redundant?**

You are made redundant if you are dismissed from your job, and the individual who is dealing with the insolvency (the 'insolvency practitioner' or 'official receiver') must tell you how your job is affected and what to do next.

They will also give you a:

- RP1 fact sheet; and
- 'CN' (case reference) number to use when you apply for money you are owed (cannot claim without this).

You can apply to the government for:

- A redundancy payment;
- Holiday pay;
- Outstanding payments like unpaid wages, overtime and commission; and
- Money you would have earned working your notice period ('statutory notice pay').

It is important to note that a company can go through more than one insolvency. You cannot claim outstanding payments between the day of the first insolvency and the day you were dismissed, even if you did not know about the previous insolvency.

You can also apply to court for compensation if you think you were dismissed unfairly or not consulted properly.

## **6.2 What if I Believe I was Dismissed Unfairly?**

You can make a claim to an employment tribunal if:

- You were dismissed unfairly ('basic award').
- There was not a consultation about your redundancy ('protective award').

You will be claiming against the Secretary of State for BEIS and your former employer ('the respondents').

## **6.3 What if I Continue Working after the Insolvency?**

- You might be asked to continue working for your employer after they become insolvent.
- You will still be eligible to claim for redundancy pay and other money you are owed if you are made redundant at a later date.
- You cannot claim holiday pay, wages, bonuses or commission that you are owed between the day of the insolvency and the day you were dismissed.

## **6.4 What if I am Transferred to a New Employer?**

- You cannot claim any money from the government if you were transferred before your former employer became insolvent.
- If you were transferred afterwards, you can apply for redundancy pay, statutory notice pay and outstanding payments such holiday pay, wages, commission and bonuses.

## **6.5 What Redundancy Pay Will I Receive?**

The same principles apply as outlined in [Section 2.11](#) above.

Other money you may be able to claim includes:

- **Wages and Other Money You are Owed:**
  - You can apply for unpaid wages and other money you are owed by your employer, for example bonuses, overtime and commission.
  - You are only entitled to money that is in your employment contract.
  - You will get up to 8 weeks of money you are owed. It counts as a week even if you are only owed money for a few days. For example, if you are owed £30 of overtime per week for the last 10 weeks, you will get £240 (£30 x 8 weeks).
  - Payments for wages and other money you are owed are capped at the same rate as redundancy pay.
  - You pay income tax and NI when you get unpaid wages and other money you are owed.
  - You might be able to claim a tax refund if you have paid too much.
- **Holiday Pay:**
  - You can get paid for:
    - Holiday days owed that you did not take ('holiday pay accrued'); and
    - Holiday days you took but were not paid for ('holiday pay taken').
  - You are only paid for holidays you took or accrued in the 12 months before your employer became insolvent.
  - You will only get payments for up to 6 weeks of holiday days. Holiday pay is capped at the same rate as redundancy pay.
  - You pay income tax and NI on your holiday payment.
  - You might be able to claim a tax refund if you have paid too much.
- **Statutory Notice Pay:**
  - You are entitled to a paid notice period when you are made redundant, even if it is not in your contract.
  - You can claim for statutory notice pay if you:
    - Did not work a notice period;
    - Worked some of your notice period; or
    - Worked an unpaid notice period.
  - Your statutory notice pay is worked out as one week's notice for every year you were employed, up to a maximum of twelve (12) weeks.
  - Payments are capped at the same rate as redundancy pay.
- **Pension Contributions:**
  - Contact the insolvency practitioner or official receiver if you are missing contributions to your pension.

## **6.6 How Do I Apply for Money I Am Owed?**

- You can apply as soon as you have been made redundant.
  - The person dealing with the insolvency (the ‘insolvency practitioner’ or ‘official receiver’) will give you a ‘CN’ (case reference) number.
  - You cannot claim without the CN number.
- You are eligible to apply if:
  - You were an employee; or
  - You are a UK or EEA national (or a foreign national with permission to work in the UK).
- If you are not eligible (for example you are a contractor) register as a creditor instead.
- You must apply for redundancy, unpaid wages and holiday within 6 months of being dismissed.
- You request to claim for loss of notice pay (‘statutory notice pay’) in your application.
  - Choosing ‘Yes’ does not mean you have applied.
  - If you requested to claim statutory notice pay, you will get sent a letter telling you when you can apply.
  - You need an ‘LN’ reference number to make a claim.
  - It will be sent after your notice period would have ended.
  - This is usually no more than 12 weeks after you are dismissed.
  - You must apply for redundancy first - even if you are not owed any money.
  - Employees at the same business can have different notice periods.
  - Once you have the LN reference number, [claim online for loss of notice](#).
  - Money you get (or could have got) by claiming benefits will be deducted from your payment.

Details you will need include:

- A ‘CN’ number.
- Your NI number.
- An email address.
- Your bank or building society details (so you can get paid).
- The date you became redundant (if you lost your job) - this can be found on your official letter of redundancy.
- Your employment details, including dates you were employed and how much you were paid.
- Details of any money you are owed by your employer.
- The number of holiday days you are entitled to and holiday days you have taken.
- Copies of any letters sent to or received from your employer or an employment tribunal.
- Details of any money you still owe your employer.

If you have an enquiry or need help with the various forms, contact the Redundancy Payments Service @ [redundancypaymentsonline@insolvency.gov.uk](mailto:redundancypaymentsonline@insolvency.gov.uk). You will need your CN number and NI number.

## **6.7 What Happens After I Have Applied?**

- It usually takes up to 6 weeks to get your payment but can take longer.
- Your information will be checked against the employer’s records, for example how much holiday you had accrued.
- You will only get a payment if the records show you are owed money.
- Any benefits you are eligible to claim will be deducted from your statutory notice payment (even if you did not claim them).
- If your application is rejected contact the Redundancy Payments Service in the first instance who will explain why it was rejected.

- If you disagree with the decision you can make a claim to an employment tribunal.
  - You will be claiming against the Secretary of State for BEIS and your former employer ('the respondents').
- You can also get help finding a new job:
  - Contact your local Jobcentre Plus and ask for their Rapid Response Service for help finding a new job.
  - You will be able to use the service for up to 13 weeks after you are made redundant.
  - You must have started your notice period to be eligible.

## **PART SEVEN: DIRECTORS**

### **7.0 Introduction**

If your business is struggling financially, despite your best efforts to turn things around, voluntary liquidation may be your best option - but few company directors know that they may also be entitled to claim SRPs.

Company directors who can prove their status as an employee of the company may also qualify for a number of statutory payments, and this can provide a much needed financial buffer following the closure of the business.

### **7.1 How Do I Prove My Status as an Employee?**

- To receive statutory redundancy payments following the liquidation of a company, directors must be able to prove that they had more than just an advisory or non-executive role in the running of the business (i.e. a practical role).
- To do this, they must complete a form provided by the Insolvency Service that asks for details about:
  - Whether they worked under a contract of employment (for at least two years, whether written, oral, or implied);
  - Whether they are regarded as "an employee of the limited company" in addition to their role as director (this is a must);
  - If the director worked at least 16 hours a week;
  - If the director is owed money by business, whether PAYE arrears or an initial seed capital investment.
  - Whether the company has been incorporated for more than two years; and
  - The details of the directors' day-to-day responsibilities in the running of the company.
- If the company director can prove to the liquidator that they had a practical and ongoing role in the running of the company, took a salary using the PAYE scheme and had a similar relationship to the company as other employees, they may be eligible for statutory payments.

Things to Consider:

- Implied contracts are a fairly common legal situation and, where it can be demonstrated that the director has maintained either a full or part-time role within the company, then they are demonstrably a worker and would hence qualify.
- The relevant laws here are Section 230 of the Employment Rights Act 1996 and Article 2 of The Working Time Regulations 1998.

- This is something of a legal grey area, however, and there have been numerous contentious legal cases around this subject.
- Where directors have opted not to receive a wage and only receive dividends as a shareholder, this will automatically exclude them from SRP.

## **7.2 Does the Type of Employment Contract Have Relevance?**

- In short, yes.
- The type of employment contract that existed between a director and the company can have some bearing on how their status will be viewed by the liquidator.
- One of the first questions a liquidator will ask is what type of contract of employment existed - whether it is written, oral or implied.
- It is easiest to prove a director's status as an employee where the contract was written, but a contract does not have to be written down to be legal.
- If, following discussions with the board, a director works similar hours to an employee, is paid through PAYE and has a similar relationship to the business, this oral or implied contract can still be sufficient for statutory entitlements to be paid.
- However, it will be more difficult to prove, and the liquidator will look at every aspect of the relationship before making a decision.
- The easiest method to prove your employment is by having a contract of employment in force.

## **7.3 How Do I Make a Claim for Redundancy Pay?**

There are a number of statutory payments available to company directors if their status as a company employee has been proven, and these are outlined in [Part Six](#) (i.e. the same process as other employees).

Unlike employees who are eligible for up to £30,000 as a tax-free statutory redundancy payment, directors have to pay tax on any redundancy.

# **PART EIGHT: MISCELLANEOUS**

The legislation, documents, and links outlined below are not intended to be definitive.

## **8.0 Legislation**

- PAYE:
  - Income Tax (PAYE) Regulations 2003.
  - Scottish Rate Tables for an employee with a prefix S.
  - Welsh Rate Tables for an employee with a prefix C.
  - Refer to CWG2 below.
- National Insurance Contributions (NICs):
  - Social Security Contributions and Benefits Act 1992.
  - Social Security Administration Act 1992 .
  - Social Security (Contributions) Regulations 2001, as amended.
  - Social Security (Categorisation of Earners) Regulations 1978, as amended.
  - Social Security Contributions and Benefits (Northern Ireland) Act 1992.
  - Social Security Administration (Northern Ireland) Act 1992.

- Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978, as amended.
- Collective Consultation Regulations 1999.
- Employment Act 2008.
- Employment Rights Act 1996 (ERA 1996), which consolidated a number of enactments relating to employment rights.
- Enterprise and Regulatory Reform Act 2013 (ERRA), Part 2.
- Trade Union and Labour Relations (Consolidation) Act 1992 (TULCRA), which defines and governs the roles of trade unions, including in relation to collective bargaining and industrial action.
- Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
- Finance (No.2) Act 2017, Section 5 (refers to Termination Payments).
- Select Case Law:
  - Lesney Products & Co v Nolan [1977] ICR 235.
  - Park Cakes Ltd v Shumba & Ors [2013] EWCA Civ 974.
  - Albion Automotive Ltd v Walker and ors 2002 EWCA Civ 946 CA.
  - Quinn and Ors v Calder Industrial Materials Ltd 196 IRLR 126, EAT.
  - Keeley v Fosroc International Ltd 2006 IRLR 961, CA.
  - Worrall and Ors v Wilmott Dixon Partnership Ltd and anor EAT 0521-4/09.
  - Hartwell Commercial Group Ltd v Brand and Jones EAT 491/92 and 506/92.
  - Mental Health Care (UK) Ltd v Biluan & Anor UKEAT/0248/12/SM.
  - Ugradar v Lancashire Care NHS Foundation Trust UKEAT/0301/18/BA.

## 8.1 Useful Documents and Websites

- Documents:
  - CWG2 (Page 96). Further Guidance to PAYE and National Insurance Contributions @ <https://www.gov.uk/government/publications/cwg2-further-guide-to-pay-and-national-insurance-contributions>.
    - Provides detailed information on PAYE and NICs for employers.
    - Updated annually.
  - HMRC Employment Income Manual @ <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual>.
    - A guide to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).
  - ACAS Redundancy Information @ <https://www.acas.org.uk/redundancy>.
  - UK Government:
    - Form HR1: Advance Notification of Redundancies @ <https://www.gov.uk/government/publications/redundancy-payments-form-hr1-advance-notification-of-redundancies>. Form and guidance for employers who need to notify the government of potential redundancies.
    - Form RP1. Used to claim redundancy pay and other statutory entitlements including pay in lieu of notice, holiday pay, and arrears of wages.
    - The Insolvency Service Redundancy Payment Forms @ <https://www.gov.uk/government/publications/redundancy-payments-form-hr1-advance-notification-of-redundancies>.
  - TUPE 2006 - Redundancy and insolvency payments.
- Websites:
  - Contact the Insolvency Service/Redundancy Payment Service if your employer cannot pay your SRP @ [redundancypaymentsonline@insolvency.gov.uk](mailto:redundancypaymentsonline@insolvency.gov.uk) or 0330 331 0020.
  - Advisory, Conciliation and Arbitration Service (ACAS): <https://www.acas.org.uk/your-rights-during-redundancy>.

- Partnership Action for Continuing Employment (PACE) through [My World of Work](#) (Scotland).
- Jobcentre Plus Rapid Response Service (England) @ [rrs.enquiries@dwp.gov.uk](mailto:rrs.enquiries@dwp.gov.uk).
- Welsh Government (Wales): <https://gov.wales/get-help-if-youve-lost-your-job-or-are-unemployed>.