



EMPLOYMENT RIGHTS EXPLAINED

Factsheet 8: Redundancy

IN THIS SERIES

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Where you lose your job due to circumstances such as the closure of the business or a reduction in the number of staff this is known as redundancy. This factsheet covers redundancy payments (including taxation of redundancy payments), selection for redundancy and collective redundancies. **Factsheet 7: Leaving or losing your job** covers notice periods and unfair dismissal. You can find more information about your employment rights in the booklet *Employment rights explained* (available from your local Citizens Information Centre), from the National Employment Rights Authority (NERA) at www.employmentrights.ie or from the Citizens Information website at www.citizensinformation.ie

What is redundancy?

Redundancy generally arises where an employee's job ceases to exist. The reasons for a job ceasing to exist might be due to the financial position of the firm, lack of work, the firm closing down, or a reorganisation within the firm.

Alternatively, the employer may have decided that the employee's job is going to be done in a different manner and the employee is being replaced by a person who has the necessary qualifications or training to deal with the new arrangement.

Are all employees entitled to a redundancy payment?

No, not all employees are legally entitled to a redundancy payment. In order to qualify for a statutory redundancy payment, an employee must:

- Have at least two years' continuous service with the employer
- Be aged 16 or over, and
- Be in insurable employment under the Social Welfare Acts

There was an upper age limit of 66 for a redundancy payment but this has now been abolished.

Not all redundancy payments are determined by the legislation. A redundancy payment may be negotiated between the employer and the employee or their union. Such negotiated payments may include employees not covered by the statutory redundancy scheme and may exceed the statutory minimum payment.

An employee's continuity of employment or service is not broken by such events as a period of sickness, lay off, holidays, adoptive leave, leave under the maternity protection legislation, parental leave, carer's leave or any leave authorised by the employer such as a career break.

Likewise, an employee's continuity of employment is not broken if they are reinstated or re-engaged under unfair dismissals legislation.

If an employee is dismissed for redundancy before reaching the required two years' service and then taken back within 26 weeks, their continuity of employment is not affected by the break.

There is no entitlement to a redundancy payment if an employee is dismissed within one month of ending an apprenticeship. If, however, the employer retains the former apprentice's services for more than one month after the apprenticeship finishes, the period of the apprenticeship counts in calculating any subsequent redundancy entitlement.

How much is the statutory minimum redundancy payment?

Since May 2003, when the Redundancy Payments Act 2003 came into effect, the statutory redundancy payment is a lump sum payment based on the pay of the employee and calculated in the following manner:

- Two weeks' pay (subject to a maximum of €600 per week or €31,200 per year) for each year worked (work prior to age 16 is not counted), plus
- One week's additional pay

There is a difference between continuity of employment and reckonable service for redundancy purposes. Some absences from work in the three years before the notice of redundancy may not affect the continuity of employment. However, they may not count as reckonable service when it comes to calculating the amount of statutory redundancy pay. For example, absence from work due to sickness does not affect the employee's continuity of employment for redundancy purposes. However, any period of absence over 26 weeks due to illness will not be counted for the purposes of calculating the actual amount of redundancy.

The Department of Enterprise, Trade and Employment website (www.entemp.ie) provides a redundancy calculator that you can use to assess the statutory redundancy payment due in any particular case.

How is my redundancy payment taxed?

Your statutory redundancy payment is tax free. If your redundancy or retirement payment is more than the statutory minimum payment, you are entitled to the higher of the following:

- The basic exemption: €10,160, plus €765 for each complete year of service. (This does not include statutory redundancy which is tax free)
- An additional €10,000 called the Increased Exemption is also available in the following circumstances:
 - 1 If you haven't received a tax-free lump sum in the last 10 years
 - 2 If you have never received a tax-free lump sum and you are not getting a lump sum superannuation payment
 - 3 If you are in an occupational pension scheme, the increased exemption is reduced by any tax-free lump sum from the pension scheme you may be

entitled to or, the present day value of any tax-free lump sum that may be payable in the future

- Standard Capital Superannuation Benefit is an additional relief that traditionally benefits those with high earnings and long service. It is due if the following formula gives an amount greater than either of the two exemptions above

Your average annual earnings over the previous three years; multiplied by the number of years service; divided by 15 and subtract the lump sum superannuation payment received.

The taxable portion of your redundancy payment can be taxed as part of the current year's income or at your average rate of tax in the previous three years. This second method is known as Top Slicing Relief and is claimed at the end of the tax year.

Can I be laid off or put on short time indefinitely?

No. In certain circumstances, you can opt to claim redundancy if you have been laid off or working short time.

If you have been laid off or on short time, you may be entitled to claim redundancy once the period of lay off or short time has lasted four consecutive weeks or at least six weeks in a 13-week period. Short time for these purposes means a reduction in the employee's normal hours or pay of more than 50%.

You may serve a notice of intention to claim redundancy on the employer once the lay off or short time has continued for the required period, or within four weeks of the end of such a period. It is open to your employer to serve a counter notice that there will be at least 13 weeks' work within a period of four weeks. If your employer is unable to give such an undertaking, you will be entitled to redundancy subject to the normal qualifying conditions.

If you claim redundancy in these circumstances, you are considered to have left your job voluntarily and therefore will lose any right to notice under the Minimum Notice and Terms of Employment Acts 1973–2001.

What happens if I believe that I have been unfairly selected for redundancy?

When selecting a particular employee for redundancy, an employer should apply selection criteria that are reasonable and applied in a fair manner. You are entitled to bring a claim for unfair dismissal if you consider that you were unfairly selected

for redundancy or consider that a genuine redundancy situation did not exist. Examples might be where the custom and practice in your workplace has been last in, first out and your selection did not follow this procedure, or where your contract of employment sets out criteria for selection that were not followed.

Under the unfair dismissals legislation, selection for redundancy based on certain grounds is considered unfair. These include redundancy due to the employee's trade union membership or activity, pregnancy, or religious or political opinions.

The employment equality legislation also prohibits selection for redundancy that is based on any of the nine grounds of prohibited discrimination under that legislation.

If you and fellow employees are being replaced by workers on lower pay or other less favourable terms, your case may be referred to a redundancy panel. In these circumstances, you may be able to take a claim under the unfair dismissals legislation (see What are collective redundancies below).

Must my employer consider alternatives?

Yes. As with any dismissal, an employer must act reasonably when dismissing an employee in a redundancy situation. This requires prior consultation with you before the decision is made. In addition, your employer should consider all options including possible alternatives.

If I'm offered alternative work, must I accept it?

No, the offer must be a reasonable one. What is reasonable depends on the facts of each case. Generally speaking, alternatives which involve a loss of status or lessening of the terms and conditions would not be considered reasonable. Likewise, you may be justified in refusing an offer that involves you travelling an unreasonable distance to work.

You may take up an alternative on trial for up to four weeks. Where the alternative involves a reduction of 50% or more in hours or pay, working under the new arrangements for up to 52 weeks will not count as an acceptance.

If you accept a new contract or re-engagement with immediate effect and the terms do not differ from those of the previous contract, you will not be entitled to claim redundancy. This also applies if you refuse such an offer unreasonably.

If you accept an offer in writing from your employer for a new and different contract which will take effect within four weeks of the ending of the previous contract, you will not be entitled to claim redundancy. Equally, if you refuse such an offer unreasonably, you will lose your right to a redundancy payment.

What are collective redundancies?

A collective redundancy generally means a large-scale redundancy. Collective redundancies arise under legislation where an employer with a specified number of employees is making a set number of them redundant within a particular timescale – for example, at least five employees are being made redundant from a firm that employs between 21 and 49 employees within a 30-day period.

Where there is a collective redundancy, the legislation (the Protection of Employment Act 1977) requires that the Minister for Enterprise, Trade and Employment and employees or their representatives (generally a union) should be consulted at least 30 days in advance of the proposed redundancies. This legislation is separate from the Redundancy Payments Acts 1967–2007. The aim of the consultation is to consider whether there are any alternatives to the redundancies. The employer is also required to provide the employees with information on the redundancies. This includes giving the reasons for the redundancies, the numbers that will be affected and the timescale involved.

In addition, the Employees (Provision of Information and Consultation) Act 2006 requires employers to consult with employees on substantial changes in the workplace, including proposals for collective redundancies. This Act currently applies to employers of 50 or more people.

Some collective redundancies may be referred to a panel that will determine whether the redundancies were (or are being) carried out in order to replace the employees with workers on lower pay or other less favourable terms and conditions. These are known as exceptional collective redundancies and are covered by the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007. If the panel decides the redundancies were carried out for this reason, the employer will not receive a rebate on the lump sum payments and the employees concerned will be able to take action for unfair dismissal.

What procedures should an employer follow in a redundancy situation?

In addition to the requirement to follow fair procedures and observe the statutory provisions in relation to collective redundancies, your employer must:

- Give you at least two weeks' notice of the redundancy – the RP50 form may be used for this purpose
- On the date of dismissal, pay the lump sum due to you and give you a Redundancy Certificate, using the relevant part of the RP50 form. This will give you the details of how your redundancy payment has been calculated

Am I entitled to time off in order to seek new work?

If you have at least two years' service and have been given notice of redundancy, you are entitled to reasonable paid time off in order to look for a new job or arrange for training. The time off may be taken in the two weeks before your notice expires. The employer may ask for evidence that you have been seeking alternative work or arranging training.

Can I leave before the end of the notice?

Between receiving your notice of redundancy and the expiry of that notice, you may give your employer notice that you wish to leave before the end of the notice period. This notice should be given using an RP6 form. Your employer has discretion whether to grant your request or not. You should note that leaving before the notice expires without your employer's agreement might affect your entitlement to redundancy.

ENFORCING YOUR RIGHTS

In the case of dispute, you should bring a claim for redundancy to the Employment Appeals Tribunal within one year of the dismissal. This period can be extended to two years if there is a reasonable cause for not taking the claim within the normal one-year period.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

USEFUL ADDRESSES

Citizens Information Board Head Office

George's Quay House
43 Townsend Street, Dublin 2

Tel: (01) 605 9012

Website:

www.citizensinformationboard.ie

Email: info@ciboard.ie

Department of Enterprise, Trade and Employment

Davitt House,
65a Adelaide Road, Dublin 2

Tel: (01) 631 3131

Website: www.entemp.ie

Employment Appeals Tribunal

Davitt House,
65a Adelaide Road, Dublin 2

Tel: (01) 631 3006

Lo-call: 1890 220 222

Website: www.entemp.ie

National Employment Rights Authority

O'Brien Road, Carlow

Tel: (059) 917 8800

Lo-call: 1890 220 100

Email: info@employmentrights.ie

Website: www.employmentrights.ie

Revenue Commissioners

Central Telephone Information Service,
PAYE Lo-call

Dublin: 1890 333 425

East and South East: 1890 444 425

South West: 1890 222 425

Border Midlands West: 1890 777 425

Website: www.revenue.ie

Citizens Information 

LOG ON

www.citizensinformation.ie

LO-CALL

1890 777 121 Open Mon to Fri, 9am to 9pm

DROP IN

For your local centre see Golden Pages listing