



Do you employ staff?

Redundancy Management During Coronavirus Pandemic

The purpose of this newsletter is to provide you with some quick tips and useful advice about managing any current or forthcoming redundancies during the current coronavirus pandemic.

Why Are Redundancies Necessary?

Redundancies can occur when there has been a natural downturn in business, the Company is experiencing financial difficulty, an organisational restructure takes place, when necessary changes to work processes change the number of employees needed to complete certain roles, or when legislation that effects how the Company may operate, changes, etc. It is expected that there will be widespread redundancies in 2020 and 2021 due to the lasting economic impact of the Coronavirus. The Government has taken steps to try to prevent this, by the introduction of loans and the Coronavirus Job Retention Scheme (CJRS). However, despite the support offered, many employers consider redundancies inevitable and necessary in an attempt to save their Companies from permanently closing their doors.

Important Steps in Redundancy Management

- Spend a reasonable amount of time considering all alternative options to redundancy, before deciding that redundancies are the only option. Examples of this are pay freezes, considering / offering alternative roles, reductions in working hours, lay-offs, or, in the current climate, suitable Government loans and the Coronavirus Job Retention Scheme (CJRS).
- Meaningfully consult with your employees, both collectively and individually. If you expect to make 20 or more redundancies within a 90-day period, collective consultations are mandatory and are required to last a minimum of 30 days. This timeframe increases again if more redundancies are made.

- Ensure clear communication is shared both verbally and in writing. Written communication helps to confirm everything that has been discussed and also provides you with evidence that a fair procedure has been followed, should you need it in the future.
- When selecting employees for redundancy, use selection criteria that is objective, fair, balanced, and non-discriminatory. Where possible, the selection process should be completed by a panel of two or more members of senior management, to prevent bias.
- Once the selection process is complete, effected employees should be invited to attend formal notice of redundancy meetings. The decision process should be explained to them, and their rights should be confirmed i.e. the right to statutory notice pay, the right to appeal the decision, and the right to receive statutory redundancy pay (if the employee has two or more years' of continuous service). Any contractual agreements that go above and beyond statutory requirements should also be met.
- Provide effected employees with paid time off work to look for alternative employment or to seek training that could improve their job prospects

Consultations during Coronavirus

Redundancy consultations are meetings that take place collectively and/or individually, with the purpose of keeping employees informed and allowing employees to ask questions or share suggestions. In normal circumstances, we would almost always advise that consultations are held face-to-face, but in the current climate whilst the risks from Coronavirus are still prevalent, this may not be suitable. We recommend the following approaches to consultations during this time:

- Face-to-face consultations with social distancing. This may not be suitable for all employers and should only be considered after a risk assessment is completed, but if the appropriate measures are taken in line with Governmental Covid-19 Secure Guidance, social distancing consultations could be held in the workplace, face-to-face, collectively and/or individually, depending on the number of people involved and the space available.
- Collective consultations via formal letter. The purpose of a collective consultation is to share information with employees at the same time. Where it is not possible to do this in person, a standard letter sent to all "at risk" employees could be a good reasonable adjustment to ensure all effected employees receive the same information at the same time. One benefit of a collective consultation is that employees can hear answers to questions which they may not have asked themselves, so if you do use letters to collectively consult, we recommend that you use one document to capture any and all questions received in response thereafter, record the answers provided, and share this with every "at risk" employee so that all employees are receiving consistent information, as the redundancy process continues.
- Individual consultations via a telephone or video-call. We recommend offering these two options and allowing the employee to choose their preferred method of communication. Redundancy procedures can be emotional for employees, some people would prefer to talk over the telephone so their upset, discomfort or anxiety is not visible or obvious to others. However, other employees would prefer the benefits a video-call allows, where they can see your facial expressions and body language, which can aid effective communication. Either option is suitable and evidence that you have agreed to the employee's preference shows that you are being a reasonable employer.

Selection Criteria during Coronavirus

It is always important that a fair and objective selection criteria is used when selecting employees for redundancy. Whilst the specific selection criteria will vary from Company to Company and job role to job role, common examples are:

- Attendance Record (disregarding any absences that are possibly related to a protected characteristic under the Equality Act 2010)
- Disciplinary Record (“live” warnings only)
- Employee Performance Record
- Valuable Skills / Qualifications (if applicable for the role)
- Length of Service (in some circumstances, where there are no risks of age discrimination)

However, Coronavirus means that other considerations may be necessary. For example, it would be unreasonable to include any absences relating to Coronavirus, preventative self-isolation, or shielding, as employees who have been absent from work for these reasons have done so under guidance from the Government and Public Health England. Similarly, you should be mindful of how the Coronavirus pandemic, unexpectedly working from home (if this is not “normal” for the job role / Company) and dealing with school closures could have affected employee performance. Some job roles are naturally suited to office or home working, but some roles are not. Where job performance has suffered in relation to the Coronavirus (including school closures, etc.), this should not be included within the selection criteria.

It's important to remember that the use of the Coronavirus Job Retention Scheme (CJRS) does not automatically mean that an employee should be made redundant. Although the use of the CJRS may indicate that the job role is non-essential, or that a reduction in the number of employees performing that job role is necessary, it does not mean that the employees who have worked throughout the Coronavirus are “more entitled” to remain in employment when compared with their furloughed employees. Especially when many employees were placed on furlough due to personal circumstances such as their vulnerability to Coronavirus, the vulnerability of household members, school closures and childcare issues, or the inability to fulfil their role safely and legally during lockdown. If you have employees with the same job role, some of whom have remained in the workplace, and some of whom have been placed on furlough, we would recommend that all of those employees are placed in the same “selection pool”, so that the appropriate selection criteria can be relied on.

How Can We Help?

Redundancy management can be a very complex area to navigate your way through so please do contact us for more specific advice and guidance if you feel this is necessary. If you have any queries relating to the content of this newsletter, or any other HR related topic, please don't hesitate to contact us via hradvice@hasslefreehr.co.uk