



# hr2go

C O N S U L T A N C Y September 2023



## How to consider alternatives to redundancy

The consequences of an economic downturn is that businesses start looking at redundancies and I have supported employers with restructures recently.

No employer will find the experience of making employees redundant easy or pleasant and it may only help a business to survive in the short term. The long-term effects of making staff redundant could be detrimental, particularly when market opportunities pick up again. Alternative measures may achieve the necessary cuts in expenditure.

### So, what are the alternatives?

There are a variety of temporary measures an employer may wish to consider including reducing the number of days or hours that employees work and implementing a lay-off or short-time working. Employers should always seek advice when considering measures like this as such changes cannot be lawfully implemented

without the consent of employees unless there is a contractual provision.

Other measures include offering sabbaticals, introducing a recruitment freeze and reducing or terminating the use of temporary workers, cutting back on paid overtime, implementing pay freezes or pay cuts and cutting or stopping bonus payments.

Businesses should also adopt an open mind on the possibilities of retraining and redeploying staff where appropriate as employees may have hidden skills or talent, they are unaware of. Employers could invite staff to suggest ways of saving money.

### And if there are no alternatives?

Where redundancies are necessary, following good principles of redundancy management will help protect against tribunal claims along with minimising stress for departing employees and the potentially negative impact on survivors' morale.

This month I'm talking about how to support employees through long-term absence and the risks of dismissing unfairly.

In this September newsletter my aim is to share experiences along with best practice HR advice. I want to help businesses comply with legislation whilst supporting their workforce.



You can also request an initial free 30-minute consultation to see if I can help you.

Please contact me using any of the methods listed below. I would love to hear from you!

hr2go Consultancy is here to support you with any of your HR issues or concerns

07779 508972  
01279 771098  
natalie@hr2goconsultancy.co.uk



## How to support employees through ill health...

Most of us are ill at some point in our working life and employers have to expect a certain amount of staff sickness absence, as most employees will occasionally require a few days off as a result of illness. But what happens when those few days turn into weeks, months or even years?

There are ways an employer can deal with long-term absence effectively and HR professionals can support to ensure that any unavoidable dismissals are fair and not discriminatory.

If you have a policy in place ensure it is being followed and ascertain the employee's entitlement to pay during periods of sickness absence, looking in particular at whether only statutory sick pay (SSP) is payable or if there is a contractual sick pay scheme.

Don't forget about absent members of staff, particularly if they submit a fit note to cover an indefinite period. Not only is it detrimental to the employee's wellbeing it is vital for employers to maintain regular contact with employees on long-term sick leave.

Employers should also establish the employee's medical position from their GP or consultant and/or from an occupational health physician appointed by the employer.



## ...and when is it ok to dismiss an employee?

Every absence is diverse as is every employee and no two cases should be dealt with the same.

A tribunal recently ruled that a disabled quality control technologist who was absent from work for nine months was unfairly dismissed and discriminated against after his employer put the "onus" on him to obtain medical evidence on his return to work and failed to provide him with reasonable adjustments.

The onus is always on the employer and a reasonable employer would have carried out further investigation and obtained further medical information, either from a GP, occupational health or another medical professional to determine what adjustments could be made to enable the employee to return to work.

Lack of capability, including when assessed with reference to health, is a potentially fair reason for dismissal under s.98 of the Employment Rights Act 1996. The employer must show that it acted reasonably both in treating the long-term ill health as a sufficient reason for dismissing the employee and in the procedure adopted to effect the dismissal.

When considering dismissing an employee on grounds of long-term ill health, you should investigate the prospects of the employee being able to return to work within a reasonable time. A fair procedure should include consultation with the employee, a medical investigation, consideration of alternative employment and possible ill-health early retirement.

# Top 3 HR questions for busy employers!

## What should the employer and employee discuss at an individual redundancy consultation meeting?

Employers should meet with employees provisionally selected for redundancy for several individual consultation meetings. These will usually take place after the employer has provided the affected employees with general information, such as the reason for the proposed redundancies, and information about the selection process, either as part of the formal collective consultation, or in group meetings with the affected employees if no formal collective consultation is required.

At the individual meetings, the employer should ask the employee for any suggestions that they may have to avoid redundancies, give the employee the opportunity to raise any objections to the basis for their provisional selection and whether or not there is any suitable alternative employment for the employee.

## In a redundancy situation, what obligations does an employer have with regards to offering suitable alternative employment?

It is important as part of a fair and reasonable redundancy procedure for an employer to consider whether it, or any associated employer, has any vacancies that would be suitable for employees who would otherwise be made redundant. There is no obligation on the employer to create new jobs for redundant employees, but failure to offer any available suitable alternative employment may make a dismissal by reason of redundancy unfair.

Where an employee's contract is renewed, or they are re-engaged under a new contract in pursuance of an offer made before the end of the employment under the previous contract, and the renewal or re-engagement takes effect either immediately on, or within four weeks of, the end of the previous employment, there will be no redundancy dismissal. In addition to the requirement to consider alternative employment as part of a fair redundancy procedure, employers must comply with the separate duty to offer any suitable alternative vacancy to an employee who is on maternity leave, adoption leave or shared parental leave when the redundancy occurs.

## Can an employer invite an employee to attend a disciplinary hearing when they are on sick leave?

Where an employee who is subject to disciplinary proceedings is absent due to a short-term illness, the most appropriate course of action is likely to be for the employer to postpone the hearing until the employee is well enough to attend. If the employee is on long-term sickness absence, the employer must balance the need to avoid unreasonable delay in the process with the importance of allowing the employee to put their case before it makes a decision and should take steps to determine whether or not the employee is well enough to attend a disciplinary hearing, even though they are not fit for work.

If necessary, the employer should obtain medical evidence focused on the employee's ability to take part in a disciplinary hearing, and what, if any, reasonable adjustments it could make to facilitate their attendance. Adjustments could include holding the hearing online or at a location of their choice, allowing them to be accompanied by a family member or incorporating frequent breaks into the hearing. If an employee is still unable to attend, the employer should consider putting the disciplinary process on hold until the employee is well enough.



# hr2go Consultancy is here to support you with any of your HR issues or concerns



You can also request an initial free 30-minute consultation to see if I can help you. Please do contact me using any of the contact methods listed below. I would love to hear from you!

07779 508972

01279 771098

[natalie@hr2goconsultancy.co.uk](mailto:natalie@hr2goconsultancy.co.uk)