

# Managing redundancies



**Dairine Walsh** of Beauchamps Solicitors looks at the issue of redundancy and outlines employers' obligations and employees' rights in such circumstances

**T**he latest projections from the ESRI of an unemployment rate of 17% in 2010 indicate that redundancies are set to increase. Failure to follow correct redundancy procedures can prove costly for employers in terms of potential claims in the Employment Appeals Tribunal (EAT) and fines.

## Legislation

The Redundancy Payments Act 1967 (the RA), the Protection of Employment Act 1977 and the Unfair Dismissals Act 1977 (the UDA) are the main Acts governing redundancies. The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 covers situations where large numbers of employees are made redundant and are then replaced by lower-cost employees.

The UDA deems all dismissals to be unfair unless there are substantial grounds justifying them.

Redundancy is one such ground but, in order for an employer's decision not to be challenged as an unfair dismissal, there must be a genuine redundancy situation and, where there is not a complete cessation of a company's activity, the selection of employees must be justified on objective grounds.

The RA provides five statutory definitions of redundancy. All of these have as a common theme: the necessity for impersonality and change in the business leading to the necessity for fewer employees. Impersonality means that it is the position that is redundant and not the person.

## Selection

Selection occurs where there are two or more people carrying out the same or similar functions. In selecting employees for redundancy, the selection criteria must be reasonable and objective, not in



breach of an agreed procedure or custom and practice and must not offend against any of the nine grounds prohibited by the Employment Equality Act 1998.

Where there is no agreed procedure or custom and practice, then employers can use a range of selection criteria, such

as: LIFO (last in, first out), capability, performance records, relevant experience and flexibility. The onus will be on the employer to show that they have acted fairly and therefore it is advisable that employers document the selection criteria and the process by which they applied the criteria.

Although not specified in the Acts, an employer is expected to consult with employees and to consider alternatives to redundancy (such as a reduction in salary; withdrawal of benefits; leave of absence and short time/lay off and the EAT will consider this when judging if an employer has acted in a reasonable manner.

## Collective redundancy

A collective redundancy arises if, during any period of 30 consecutive days, the employees being made redundant amount to at least: five out of a workforce of between 21-49; 10 out of a workforce of between 50-99; 10% out of a workforce of between 100-299; or 30 out of a workforce of 300 or more employees. In these situations, the employer must provide the Minister for Enterprise, Trade and Employment with certain information about the redundancies at least 30 days before the first redundancy, permit the election of employee representatives (if there are none) and consult with those representatives.

## Notice

An employee, who has not less than 104 weeks' service, must receive a minimum of

two weeks' written notice. However, if either the employee's employment contract or the Minimum Notice and Terms of Employment Acts provide for longer notice, then the employee will be entitled to the longer period. An employee is also entitled to reasonable time off to look for another job.

## Redundancy pay

An employee who has 104 weeks' continuous employment aged 16 years or over is entitled to a statutory redundancy payment. An employee is entitled to two weeks' pay per year of reckonable service capped at €600 per week plus one additional week overall.

This statutory redundancy payment is tax free to the employee and the employer may claim a 60% rebate from the Department of Enterprise, Trade and Employment.

Some employers also make ex-gratia payments, which may be custom and practice in certain industries and may be tax free subject to certain limits.

The entire redundancy process must be managed and documented. The most important thing to remember in managing redundancy is that the process must be fair, reasonable and objective.

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