

## The rise in redundancies – what employers need to know



If you are considering reductions in headcount, you are not alone. In the first two months of this year, Twitter, Facebook/Meta, Paperchase, Tesco, New Look and Asda have made job cuts. The Office for National Statistics is reporting increased unemployment for last year and Glassdoor has seen discussions about redundancies jump by 52% overall and 262% in the technology industry. With organisations already facing record job vacancies and productivity drives, they don't need the added pressure of making sure their redundancies are fair to avoid the risk of a claim.

At Cripps we have the expertise to support organisations and businesses who are undertaking a redundancy process.

### What are the changes in redundancy?

#### **The amount of a week's pay**

This figure, which is used in calculating employee's redundancy pay is going to increase to £643 per week from 6 April 2023. When taking employees through a redundancy process, the weekly pay figure used in redundancy pay calculation will vary depending on the employment end date. If on or earlier than 5 April 2023, £571 per week should be used. If their employment ends on 6 April 2023 or later, the new amount of £643 per week is required. The clauses in the employee's contract may allow you to end employment earlier, by paying in lieu, which could reduce your costs.



## Meaningful consultation

Your organisation needs to ensure that the individual consultation discussions with staff cover the reason that the employee's role is at risk of redundancy, as well as looking at whether there is alternative employment. This was reinforced in the recent decision in *Mogane v Bradford Teaching Hospitals NHS Foundation Trust*. The employer had focussed the discussions on alternative roles for the employee. They were found to have unfairly dismissed the employee as they had failed to hold genuine and meaningful conversations as to why the role may become redundant and the alternatives to redundancy. The discussions about alternative roles was genuine, but there was a need for wider consultation earlier in the redundancy process.

## Extended protection for pregnant employees and those on family leave

The law currently gives employees enhanced protection during their maternity leave. It does not protect in the period before leave while they are pregnant, or after they have returned to work. If a redundancy situation arises during their maternity leave, there is an existing obligation to give those on maternity leave priority over other employees for alternative roles.

The [Protection from Redundancy \(Pregnancy and Family Leave\) Bill](#) will extend the provisions so that the redundancy protection will apply:

- during pregnancy; and
- for 6 months after the individual has taken a period of maternity leave, shared parental leave or adoption leave.

This is expected to become law and has been implemented with wide support following the results of the UK government's research that 1 in 9 mothers are dismissed or made redundant. If you are making redundancies now, it would be wise to consider the position as if the new law was in force. This would help to avoid any claims by the employee that they should not have been made redundant.

## The impact of hybrid working arrangements

We have seen an increase in the numbers of organisations operating hybrid and flexible working which changes an employee's place of work. This feeds into the fair reason needed in order for your organisation to make a redundancy. The legal definition of redundancy is usually linked to the employee's place of work. Unless the organisation is closing their business entirely, the redundancy reason employers rely on will now need to be the reduced need for the type of work the employee performs (not related to where that work is carried out).

## Firing and re-hiring

If there is a possibility of re-hiring the redundant employees on new terms, you will soon have to comply with the mandatory [Code of Practice on Dismissal and Re-engagement](#). The draft code, issued in January 2023, contains the guidance employers should follow if they are considering changes to terms and conditions, where there is the prospect of dismissal and re-engagement.

The code sets out:

- The 'core steps' that an employer must take, such as consulting staff and exploring alternative options to redundancy, and
- a number of 'next steps' depending on whether the changes are agreed, or the employer considers imposing new terms or dismissing and re-engaging employees on new terms.

As currently drafted, the code will alter how most employers approach dismissal and re-engagement for two

reasons:

- it deters the use of the threat of redundancy or dismissal as a negotiating tactic, and
- Employment tribunals will have the power to adjust compensation by up to 25% for an unreasonable failure to comply with the code by either the employer or employee. An employee claiming unfair dismissal could claim a 25% increase in their compensation but the cap would still apply (namely lower 1 year's salary or the figure set by government (£93,878 rising to £105,707 on 6 April 2023)).

## How we can help

For more details on how to conduct redundancies fairly and reduce your liabilities and for details of fixed fee redundancy support, please contact our [employment team](#).

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