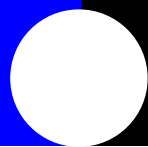


**A Guide to**

**Redundancies**



**mirs**

**Manx Industrial Relations Service**

# Contents Page

<b>About this leaflet</b>	<b>2</b>
<b>Who is entitled to a redundancy payment?</b>	<b>3</b>
What redundancy means	3
Persons who might qualify	3
Employees laid off or kept on short-time	4
Voluntary Redundancy	4
Employees who are not entitled to a statutory redundancy payment	4
<b>Effect of an offer of alternative employment</b>	<b>6</b>
Change of ownership of business	6
Offer of further work	6
Refusal of an offer of alternative employment	6
Trial periods	7
<b>Finding other work</b>	<b>8</b>
Time off	8
<b>How redundancy payments are calculated</b>	<b>9</b>
Length of service	9
A week's pay	10
Pension offset	11
Employees aged 64 and over	11
<b>Some examples</b>	<b>12</b>
<b>Disputes</b>	<b>15</b>
Application for payment from employer	15
Complaint to the Employment Tribunal	15
Claims against the National Insurance Fund	16
<b>Special Cases</b>	<b>16</b>
<b>Rebates to small employers</b>	<b>17</b>
Advance notice	17
Making a claim	18
<b>Handling redundancies</b>	<b>19</b>

## **About this leaflet**

The purpose of this leaflet is to provide general guidance as to employees' rights to redundancy payments and employers' rights to rebates on redundancy payments under the provisions of the Redundancy Payments Act 1990 ('the Act').

This leaflet is issued in association with the Department of Health and Social Security. It is only a guide and has no status in law. It does not cover all the rules for every situation, nor does it provide a full interpretation of the rules. It should not be treated as a complete and authoritative statement of the law.

Copies of the relevant legislation may be purchased from the Tynwald Library, Government Offices, Bucks Road, Douglas or can be downloaded from the DTI website.

Guidance is given on the rules for statutory redundancy payments, as provided for by the Act. Employers and employees may, however, agree alternative redundancy terms, but these must not provide for less than the Act.

General enquiries about redundancy payments should be directed to the Manx Industrial Relations Service.

Claims to the National Insurance Fund (from employers and employees) are administered by the Redundancy Payments Unit, Department of Health and Social Security, Markwell House, Market Street, Douglas, Isle of Man IM1 2RZ (telephone 685103).

Every effort has been made to ensure that the contents are correct at the date shown on the back cover.

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# Who is entitled to a redundancy payment?

## What “Redundancy” means

A payment is only due under the Redundancy Payments Act ('the Act') if the reason for the termination of employment is redundancy. Redundancy means that the termination is a result of the employer's need for employees to do work of a particular kind having ceased or diminished. This may be for example because the workplace is closing down or because of a downturn in trade.

Normally the employee's job will have disappeared. It will not therefore be a redundancy situation if the employer immediately engages a direct replacement.

In general, to be entitled to a redundancy payment the employee should have been dismissed by the employer. It will not therefore be a redundancy situation if the employee has resigned from their employment on their own initiative. Special rules apply where employees have been laid off or kept on short-time (see below).

An employee who is dismissed on the grounds of redundancy will also be entitled to receive the period of statutory or contractual notice, see page 23

## Persons who might qualify for a redundancy payment

Redundancy payments will only be due to employees who have had a minimum of two years' continuous employment with their employer at the date the employment is terminated (this date will normally be the end of the notice period).

Where an employee works under a contract for less than 8 hours per week, only service from 30<sup>th</sup> September 2007 date will count towards the redundancy payment calculation.

Directors of limited liability companies may also be classed as employees if they work in an executive or other capacity under a contract of employment. They cannot be classed as employees if they only deal with company policy and attend board meetings in return for fees.

An employee who is the spouse of the employer will only accrue entitlement to a redundancy payment in respect of service from 30<sup>th</sup> September 2007.

There are a number of other groups of employees who do not qualify for a statutory redundancy payment. These are detailed below.

### **Employees who are laid off or kept on short-time**

A redundancy payment may be due where an employer has not actually dismissed the employee but they have left the job because they were laid off (without pay) or put on short-time (and received less than half a week's pay).

They must have been laid off or kept on short-time for at least 4 consecutive weeks or any 6 weeks in a continuous period of 13 weeks.

Employees must submit a written claim for redundancy to their employer. However, an employer may resist if they genuinely believe that normal working are likely to resume within the following 4 weeks.

### **Voluntary Redundancy**

Where an employer advises that redundancies are proposed, they may invite volunteers as a means of selection.

Employees who volunteer for redundancy will retain entitlement to a redundancy payment provided the employer actually dismisses them and they meet the other conditions of entitlement.

### **Employees who are not entitled to a statutory redundancy payment**

The following categories of employees have no right to a redundancy payment under the Act:

- an employee whose employment ends on or after their 65th birthday
- an employee whose position carries a normal retirement age of less than 65 (for both men and women) and who attains that age on or before the termination of employment
- an apprentice whose service terminates at the end of an apprenticeship contract
- a domestic servant who works in a private household and who is a member of the employer's immediate family
- a share-fisherman who is paid solely by a share of the catch

- a member of the Isle of Man Civil Service and holders of certain public offices (who are covered by other arrangements which are no less favourable)
- an employee working in any capacity of the Government of an overseas territory
- employees of an Isle of Man employer who normally work abroad unless on the date of dismissal they were ordinarily resident in the Island and on that date, or within the preceding 12 months, the employer was resident in the Island or had a place of business in the Island
- an employee on a fixed term contract of 2 years or more which contains a waiver of redundancy payment rights where this was entered into prior to 1<sup>st</sup> May 2007.

# **Effect of an offer of alternative employment**

## **Change of ownership of a business**

If by agreement with the employee the new owner renews the employee's contract of employment, or re-engages them under a new contract to start within 4 weeks, the employee will be deemed to have been continuously employed from when they commenced with the previous owner. Subject to the satisfactory completion of any trial period (see below), there would be no entitlement to a redundancy payment in these circumstances.

## **Offer of further work with the same employer or an associated employer**

If the employee accepts a job on the same terms as the previous one, or a suitable alternative job, before the old contract of employment expires and the new job starts within 4 weeks of the termination of the original employment, they will be regarded as having continuous employment and no redundancy payment will be due.

## **Refusal of an offer of alternative employment**

If an employee unreasonably refuses an offer of suitable alternative work, they will not be entitled to a redundancy payment. Where an employee believes that it was reasonable for them to refuse and the employer disputes this, it would be for the Employment Tribunal to decide whether the refusal was reasonable. The Tribunal may consider factors such as

- the actions of an employee as a result of their being given notice
- how the terms and conditions of the new job compare with the previous one
- the employee's personal circumstances
- whether it would be reasonable for the employee to undertake the new duties being offered
- the location of the new job in relation to the previous one

This list is not exhaustive and the Tribunal would take into account any other issues that it may consider relevant. The same considerations are likely to

apply where an employee refuses the alternative employment before or after any trial period.

## **Trial periods**

Where the duties of the new job are different to those previously undertaken (either wholly or in part) there is a trial period of 4 weeks which commences at the end of the previous contract.

Where retraining is required, the parties can, before the old contract expires, agree (in writing) to a longer trial period. This agreement must specify the terms and conditions of employment which will apply at the end of the trial period and when the trial period will end.

If the employee rejects the new job before the end of the trial period because it turns out to be an unsuitable alternative, they will be considered to have been made redundant from the date the previous job ended. However, if they unreasonably reject the new job, no redundancy payment will be due.

# Finding other work

## Time off

An employee who is under notice of redundancy is entitled to a reasonable amount of time off (with pay) to look for alternative employment provided that at the end of the notice period (by statute or by contract, whichever is the later) they have been continuously employed for two years or more.

The employer and the employee should try to agree a mutually convenient arrangement for time off. If an employer unreasonably refuses to allow time off, the employee can complain to the Employment Tribunal. If the Tribunal finds the complaint to be well-founded, it may make an award equal to the pay to which the employee would have been entitled if they had been allowed the time off (subject to an overall limit of two fifths of a week's pay).

## Employees who wish to leave early

If an employee wishes to leave before their notice ends and the employer has no objection a redundancy payment may still be payable.

Where an employee gives their employer written notice that they wish to leave early (for example, because they have secured alternative employment) and the employer objects to this, the employer may issue a written request to the employee asking them to withdraw their notice and stating that if they do not they may contest any right to a redundancy payment.

Where an employee leaves before the end of their notice, despite a written request from their employer not to do so, and the employer refuses to make a redundancy payment, the employee can complain to the Employment Tribunal. The Tribunal would consider the reasons given by the employer for refusing the employee's request and the employee's reasons for wanting to leave early and will determine whether the employee should receive all, some or none of their redundancy payment.

# How redundancy payments are calculated

For those who meet the conditions for a redundancy payment (see previous pages), the amount of that payment will depend upon the length of service and the rate of pay.

In general, the amount of a redundancy payment is calculated by multiplying the number of complete years' service by the amount of a week's pay. Entitlement can however be affected if the employee is aged 64 at the date of redundancy or if they are entitled to an occupational pension.

## Length of service

The amount of redundancy payment depends, amongst other things, on how long the employee has been continuously employed by the employer. To be entitled to a redundancy payment the employee must have served for at least two continuous years.

All years of service to normal retirement age are counted. Service is counted to the **relevant date**. This is defined as the date on which notice to terminate the contract ends. It doesn't matter if the employer gives less than the period of notice required. The relevant date will still be the date on which the notice they should have given expires. In some cases, therefore, the relevant date may be after the last date actually worked.

Under the provisions of the Employment Act 2006, an employee is entitled to a minimum of one week's notice for each complete year of service up to a maximum of 12 weeks. An employee's contracts of employment may, however, provide for more generous terms. The relevant date is the date on which the notice under statute or contract expires, whichever is the later. When calculating the length of service for redundancy payment purposes, days lost through industrial action do not count.

Where there has been a change of employer and the employee's service is deemed to be continuous, the period worked for the previous employer will count when calculating the total length of service for redundancy payment purposes.

## Amount of a week's pay

A week's pay is the amount payable for a week's work under the contract of employment in force at the "calculation date". The amount of a week's pay is subject to an overriding limit. The limit is £420 where the relevant date is on or after 30 September 2007. The limit may be increased from time to time by order of the Department of Trade and Industry.

The **calculation date** is either

- the date on which the minimum notice required by statute was given, or
- if the notice under contract was longer, the date on which the minimum notice would have been given to end on the date the job ended, or
- the date the job actually ended, where no notice or inadequate notice was given.

Where an employee has normal working hours and their pay does not vary with the amount of work done, this is simply the basic gross weekly wage (that is before deductions). Overtime cannot be counted unless the employer is contractually bound to provide it and the employee is contractually bound to work it.

Where earnings vary because of piecework or productivity bonus arrangements, a week's pay is arrived at by multiplying together the number of hours normally worked in a week by the average hourly earnings over the 12 complete weeks immediately prior to the calculation date. To calculate average hourly earnings, only hours actually worked are taken into account. Any week in which no work is done is replaced by the next earlier week to make up the total of 12. Where the hours to be reckoned include hours payable at premium rates, the premium is disregarded and the hours are reckoned at the normal basic rate.

Where there are normal working hours which vary from week to week (for example, because of a shift-work system) and earnings vary as a result, a week's pay is calculated by multiplying the average hourly earnings by the average weekly hours over the same 12 weeks.

Where an employee has no fixed working hours, the amount of a week's pay is the average weekly earnings in the 12 weeks immediately prior to the calculation date, whatever the basis of payment (fixed-rate, piece-work or commission).

If in doubt, advice should be sought from the Manx Industrial Relations Service.

Employers are obliged by law to provide employees with a written statement of how they have calculated their redundancy entitlement. Failure to provide these statements can result in the employer being fined. Forms RR3, available from the Manx Industrial Relations Service, can be used as the written statements.

### **Pension offset**

Where an employee is entitled to an occupational pension (in respect of the employment from which they are being made redundant) within 90 weeks of the date of their redundancy, their entitlement to a redundancy payment may be reduced or extinguished. The calculation is complex and advice should be sought from the Manx Industrial Relations Service.

### **Employees aged 64 and over**

An employee is not entitled to a redundancy payment if the person reaches, or has reached, normal retirement age on the Saturday of the week in which their contract terminates.

Where an employee is within 12 months of attaining age 65, their redundancy entitlement is reduced by 1/12th for each complete month expired since their 64th birthday up to the relevant date. Entitlement therefore reduces to nothing at aged 65.

### **Weeks which count**

Any weeks which are covered by a contract of employment will count as service except that any service prior to 30 September only counts if the employee was employed for at least 8 hours per week. Weeks in which the employee did no work may still count, for example where he or she was sick, pregnant, on holiday or temporarily laid-off.

### **Previous redundancy payments**

If an employee has already been paid a statutory redundancy payment in respect of an earlier period of service, that period cannot be counted towards any future period of continuous service for redundancy payment purposes.

## Some examples

### Example 1

Joyce Brown had been employed since 4 September 2004. She was told on 16 June 2007 that her employment would terminate on 30 June 2007. Joyce's length of service is calculated as two complete years from 4 September 2004 to 30 June 2007 (the relevant date). At the calculation date (16 June 2007) Joyce's salary was £450 per week, however the maximum amount of a week's pay for redundancy payment purposes is £420 per week.

The redundancy payment due is  $2 \times £420.00 = £840.00$

### Example 2

John Smith commenced employment with A Limited on 10 June 1995. In November 2001, A Limited was purchased by B Limited, who renewed John's contract of employment. On 1 May 2006 John was given the minimum period of notice that his employment was to be terminated on 14 August 2006 due to redundancy. His normal weekly hours are 40, but he often works on Saturday morning for 4 hours if needed and this is paid as overtime. He earns £6.50 per hour. Overtime is paid at £9.75 per hour.

Entitlement to redundancy payment is based on 11 complete years' service from 10 June 1993 to 14 August 2006 (the relevant date).

His weekly pay is calculated as 40 hours @ £6.50 per hour = £260. The Saturday overtime cannot be counted because it is not part of his normal weekly hours as provided for in his contract.

The redundancy payment due is  $11 \times £260.00 = £2,860.00$

### Example 3

Nicola Jones commenced employment with C Limited in October 2002. She works 37 hours a week and is paid a basic wage of £5.00 per hour plus piecework earnings. In April 1998 Nicola was given notice that her employment would be terminated on account of redundancy on 26 June 2006.

The calculation date is 5 June 2006. This is because as Nicola had been employed for 3 continuous years she was entitled to three weeks' statutory notice. The calculation date is therefore 3 weeks before the date on which her employment is terminated.

For the 12 weeks prior to the calculation date Nicola worked and earned a total of £3,592. £40 of this was a premium payment for working on a bank holiday which cannot be counted for redundancy payment purposes.

Entitlement is based on 3 complete years' service from October 1994 to 26 June 1998 (the relevant date).

The average hourly rate (including piecework earnings) is calculated as  
 $\frac{£3,552}{12 \times 37} = £8.00$ .

The average weekly pay is calculated as  $37 \times £8.00 = £296.00$ .

The redundancy payment due is  $3 \times £296.00 = £888.00$

#### **Example 4**

Lawrence commenced employment as a salesman in November 1999. His contract specified that he would work for a minimum of 30 hours a week, though the actual hours of work would be flexible. He would not be paid for any hours worked over 30 a week. When the company announced the closure of his depot on 29 May 2004, he was given 4 weeks' notice of being dismissed on the grounds of redundancy, his employment being due to terminate on 26 June 2004.

Redundancy payment entitlement is based on 4 complete years' service, from November 1999 to 26 June 2004. The calculation date is 29 May 2004. In the 12 weeks prior to this date he earned £3,624 including commission.

His average weekly earnings are calculated as  $\frac{£3,624}{12} = £302.00$

The redundancy payment due is  $4 \times £302.00 = £1,208.00$

## Example 5

Bill commenced employment on 1 August 1993. He was given 11 weeks' notice on 15 June 2004 that his employment was to be terminated on account of redundancy on 31 August 2004. He was 64 on 16 March 2004. His normal weekly earnings were £276 per week.

Redundancy payment entitlement is based on 11 complete years' service, from 1 August 1993 to 31 August 2004. His redundancy entitlement would normally be calculated as  $11 \times £276 = £3,036$

However at the relevant date (31 August 2004) he was aged 64 years and 5 months. His entitlement is therefore reduced by 5/12ths.

The redundancy payment due is  $£3036 \times 7/12 = £1,771.00$

# Disputes

## Application for payment from an employer

Where an employer accepts liability for and makes the appropriate redundancy payment on the date of dismissal or soon after, there is no requirement for the employee to submit a written claim.

However, if an employee believes they are entitled to a redundancy payment and does not get one, or they believe they are entitled to more than they have received, they should initially discuss this with their employer. If the dispute continues, the employee should make a formal written claim to their employer (or to the Receiver or Liquidator of the company, or the personal representative of the employer if they are deceased). This claim should be made as soon as any doubt arises, but in any event it must be made within 12 months from the date that the employment was terminated. In these circumstances, the employee would be advised to send the claim by recorded delivery and retain a copy of the letter.

## Complaint to the Employment Tribunal

Any dispute about entitlement to a redundancy payment or the amount of the payment can be referred to the Employment Tribunal. This can be done at any time, however any right to a payment may be lost if certain steps (see below) are not taken within 12 months of the date on which the job ended.

Provided an employee has

- submitted a claim in writing to their employer, or
- referred the question of their entitlement to a redundancy payment to the Employment Tribunal, or
- presented a complaint of unfair dismissal to the Employment Tribunal within 12 months of the date on which the job ended, entitlement to a redundancy payment should not be lost. (the time limit for unfair dismissal complaints is within 3 months)

Where a claim is not made within the 12 months period but is made within the following 12 months, the Tribunal may still award the redundancy payment if it considers it just and equitable to do so, having regard to the reasons for the employee's failure to take the appropriate action within the first 12 months.

Anyone considering a complaint to the Employment Tribunal can first contact the Manx Industrial Relations Service to see if the claim can be resolved without the need for a formal complaint to the tribunal.

## **Claims against the National Insurance Fund**

If an employee believes that they are due a redundancy payment and has taken all reasonable steps (other than legal proceedings) to obtain that payment from their employer, and their employer has refused or failed to pay all or part of it, the employee may apply to the Department of Health and Social Security for a payment from the Manx National Insurance Fund.

The Department will, where it is satisfied that the employee is entitled to a redundancy payment and that the employee has taken all reasonable steps to obtain it from their employer, make a payment to the employee which would take into account any part-payment which may have been made by the employer.

This provision does not apply to employees who have also been directors or who have held at least half of the issued share capital of a company within the 12 months prior to redundancy.

## **Special Cases**

Advice should be sought from the Manx Industrial Relations Service on the following:

- employees who are on strike during the notice period
- the death of an employer or employee
- the definition of an "associated employer"
- apprentices who are made redundant
- non-renewal of fixed term contracts
- the position of persons who are described as self-employed but in effect work for one employer as an employee
- the dismissal on the grounds of redundancy during pregnancy or maternity absence
- where the employer has become insolvent or ceased to trade on the Island.

## Rebates to small employers

An employer who is obliged to make a redundancy payment under the Act may be eligible to claim a rebate from the Manx National Insurance Fund. They can do this provided that the total number of employees in the business, including those employed by an associated employer, does not exceed 40. A rebate is not payable in respect of an employee who is or in the last 12 months has been a director, beneficial owner or owner of a controlling share.

The amount of the rebate depends upon the size of the workforce. Entitlement is calculated in accordance with the following scale:

Number of employees	Proportion of redundancy payment
1 to 5	60%
6 to 10	50%
11 to 20	40%
21 to 30	35%
31 to 40	30%

A rebate is not payable in respect of directors or the beneficial owner of one half or more of the company, or a holding company. Such employees do not count towards the number of employees when calculating the rebate payable.

### **Advance notice**

Where an employer intends to claim a rebate in respect of redundancy payments made to their employees, the employer should give advance written notice to the Department of Health and Social Security (Redundancy Payments Unit).

Written notice should reach the Department not less than 14 days before the proposed termination, or where 10 or more employees are to be made redundant within a week of each other, not less than 21 days.

In cases where an employer has failed to provide the advance notice required, the amount of rebate to which he may be entitled may be reduced.

Written notice should include the employees' full names, dates of birth and National Insurance numbers, as well as the date(s) on which they are to be made redundant.

## **Making a claim**

Claims for rebate are made on form RR2. Also a form RR1 will need to be completed for each employee, which includes the employee's acknowledgement that they have received a redundancy payment. A form RR3 "Calculation of redundancy payment - statement for employee" is provided with each form RR1.

For copies of these forms contact the DHSS Redundancy Payments Unit (telephone 685103) or the Manx Industrial Relations Service. Care should be taken in completing the forms as this will facilitate quicker processing of the claim. The Department may need to see the employer's wage records to verify the claim.

Claims generally take between 3 to 4 weeks to process.

Rebates in respect of redundancy payments which an employer was liable to pay should be claimed within 12 months of the date of the payment(s) to employees, otherwise entitlement may be lost.

Where there is a dispute about entitlement to a rebate, or to the amount of a rebate, which cannot be resolved between the employer and the Department, the employer can complain to the Employment Tribunal.

# Handling Redundancies

Whilst it is inevitable that redeployments and redundancies will sometimes be necessary, effective forward planning and consideration of staffing needs can lead to improved job security and an avoidance of short-term solutions.

Employers are advised to consult recognised trade unions, employee representatives and employees about the introduction of measures designed to improve efficiency and the implications these may have on staffing levels. Uncertainty is likely to undermine staff morale; however the supply of accurate and reasoned information will provide staff with a better understanding of their employment situation and should aid constructive discussions.

Some organisations have agreed policies that set out the procedures to be followed in the event that the need for redundancies should arise. In the absence of any agreed policy, a reasonable practice will have to be determined according to the circumstances giving rise to the redundancy.

Where possible, a policy should be drawn up in anticipation of the need for redundancies arising, rather than leaving it to the last minute when redundancies are imminent and staff are likely to be pre-occupied with immediate issues. Employers should ensure, where possible, that employees are well aware of how any redundancies would be dealt with.

Failure to follow appropriate and reasonable procedures could result in employers facing claims for unfair dismissal.

## **Voluntary redundancy and early retirement**

This is often seen as the most acceptable method of selection and one which is likely to cause the least unrest amongst the remaining workforce. Such arrangements may, however, be more costly to the employer in the short-term as it will often be the longest serving employees that will volunteer for redundancy. An important consideration for employers is how to deal with volunteers that they feel they cannot let go, either because there are too many of them or because of the need to retain a satisfactory balance of skills and experience to ensure the organisation's future viability.

## Selection criteria

As far as possible, objective criteria, precisely defined and capable of being applied in an independent way, should be used to select which employees are to be made redundant. This should help to ensure that employees are not unfairly selected for redundancy. The chosen criteria must be consistently applied among all employees in the group.

Employees dismissed for reasons of redundancy will be found to have been unfairly dismissed where they were selected for any of the following reasons:

- because the employee took or proposed to take one of the various kinds of family leave;
- because the employee took action in the interests of health and safety;
- because the employee took or proposed to take annual leave;
- because the employee performed or proposed to perform any function as a pension scheme trustee;
- because the employee made a protected disclosure;
- because the employee brought proceedings to enforce, or alleged that the employer breached, a statutory right;
- because the employee exercised the right to be or not to be a trade union member or involved in union activities etc;
- because the employee asked for flexible working;
- because the employee exercised the right to be accompanied or to accompany;
- because the employee took part in "protected industrial action" (lawfully organised, official industrial action not exceeding 4 weeks, called by a registered union in compliance with the statutory procedures under the Trade Unions Act 1991);
- because the employee (being a part-time worker) exercised or proposed to exercise the right not to be treated less favourably than a comparable full-time employee;
- due to racial discrimination or religious discrimination
- due to discrimination on the grounds of the employee's sexual orientation:
- because the employee claimed the minimum wage;
- because the employee refused to work on Sunday etc, (shop employees only) (the Shops Act 2000);
- because the employee was selected for redundancy on unfair grounds including any of the above grounds.

Selection on a “last in, first out” (LIFO) basis is often agreed as a fair method of selection. LIFO is often easy to apply and administer and is readily understood by employees. However, employers need to be aware of the potential dangers of losing workers with key skills when using this method of selection. If LIFO is to be used, a decision must be made as to whether it will be operated organisation-wide, on a departmental basis or amongst any other defined group. Where selection is based on length of service in a particular department, and not on total service in the organisation, special consideration will need to be given to any potential hardship caused to employees who have only recently been transferred to other departments and who would not be selected for redundancy if the LIFO policy had been operated organisation-wide.

In some organisations, female employees may have predominantly shorter periods of service than their male counterparts. It may be suggested that to adopt a LIFO policy in these circumstances could be discriminatory on the grounds of sex and lead to claims under the Employment (Sex Discrimination) Act 2000.

Objective criteria should help to ensure the retention of a balanced workforce, appropriate to future needs. The criteria used should be carefully considered to ensure that there is enough evidence on which to make an objective assessment. Care should be taken to ensure that the chosen criteria are not directly or indirectly discriminatory, for example on the grounds of race or sex. Factors to be included could include:

- skills or qualifications
- standards or work performance
- aptitude for specific sorts of work
- attendance and disciplinary records.

Whatever criteria are ultimately selected, the way in which they are applied should be clearly understood. However there will always be difficulties in interpretation of the criteria. For example, where attendance is considered to be an appropriate criterion, consideration would have to be given as to how to differentiate between staff who have had a sizeable number of short-term absences and those who have had just one or two absences for prolonged periods. It is obviously important that there is clear objective evidence to support the selection made and this would also be particularly important where standard of work performance is considered.

The drawing up of criteria in itself cannot guarantee fair and reasonable selection. Even though the criteria may be objective, the selection may still

be unfair if they are carelessly or mistakenly applied. Employers should be able to demonstrate that there has been comparative analysis of the information relating to all in the unit of selection if qualitative criteria are used.

## **Appeals procedures**

Employers are advised to have an appeals procedure to deal with complaints from employees who feel that the selection criteria has been unfairly applied in their case or that their dismissal is unfair for any other reason. It is essential therefore that employees should be made aware of the selection criteria and how the decision was reached to select them for redundancy.

## **Suitable alternative work**

Employers should consider whether employees who are likely to be selected for redundancy could be offered suitable alternative work within the organisation or, where appropriate, within any associated companies. Where alternative work may be available, the employee should be given sufficient details to enable them to decide whether or not they wish to accept it. Various factors such as pay, status, location, working environment and hours of work may influence the employee's decision. Where possible, employers may wish to consider ways of accommodating the needs of the selected employee.

Employers may wish to consider the possibility of retraining the employee or retaining them in a temporary capacity until permanent vacancies arise. This may be particularly appropriate in organisations where vacancies arise regularly.

Any offer of alternative employment should clearly show how the new job differs from the old and must (by law) be made before the current contract of employment is terminated.

An employee who unreasonably refuses an offer of suitable alternative work may lose any entitlement to a redundancy payment.

An employee who is under notice of redundancy has a statutory right to a trial period of 4 weeks in an alternative position where the terms of the new contract are different to the old.

## **Unfair dismissal**

Employers may face claims for unfair dismissal where for example

- they have failed to properly consult with employees
- they have failed to consider any opportunities of alternative employment
- the employee believes that there is no genuine redundancy
- the employee believes that he has been unfairly selected for redundancy
- the employee was selected for an inadmissible reason.

## **Notice of Termination of Employment**

In addition to any redundancy payment entitlement, employees are entitled to be given the appropriate notice that their contracts are to be terminated. The period of notice will either be the minimum provided for by law (Employment Act 2006) or such longer period as may be provided within their written statements.

Where employees cannot be given the opportunity to work their period of notice or the employer doesn't want them to work during the notice period, employees would expect to be compensated by a payment in lieu of notice.

## **Holiday Pay**

Dismissed employees may raise questions as to their entitlement to accrued holiday pay. The method of calculating any sums due on termination should be clearly stated in their written statement and should comply with the requirements specified in the Annual Leave Regulations 2007.

**September 2007**