

# DBULLETIN

## Redundancy in the education sector: An overview

The Association of School and College Leaders (ASCL) has reported that a dozen schools a day are calling the ASCL's helpline to seek advice on implementing redundancies, some of which are anticipated to be on a large scale.

Many schools are unprepared for dealing with redundancies of this nature. The last time such mass redundancies occurred in the education sector was in the 1990s. This means that many head teachers have never had to deal with a redundancy situation and are therefore unsure of how to respond if or when the time comes that staffing cuts may be necessary.

ASCL has said that many schools have to locate their redundancy policies, which may not have been looked at for many years. ASCL has also advised that many schools only have a redundancy policy that relates to teachers and not support staff.

This article provides an overview of the key points when dealing with a redundancy situation and the procedure that should be followed to mitigate against a claim or a finding of unfair dismissal.

This article is aimed at those schools who are independent from the LEA or those who anticipate becoming independent in the near future.

### **The definition of redundancy**

Redundancy is a potentially fair reason to dismiss an employee and covers:

- A business closure
- A workplace closure
- A reduction in the number of employees required to carry out work of a particular kind

If for example, school governors decide that a certain subject should no longer be taught as part of the curriculum, this could give rise to a redundancy.

### **Redundancy and unfair dismissal**

Even where an employer establishes there is a redundancy situation, it must follow a reasonable procedure in implementing any redundancy to demonstrate the dismissal is fair. A redundancy dismissal is likely to be deemed to be unfair by a tribunal if the employer fails to:

- Consult with individuals
- Identify the correct pool of employees for selection or fails to apply objective selection criteria to those in the pool
- Offer suitable alternative employment where appropriate
- Follow its own redundancy procedure

There are also instances where dismissal on the grounds of redundancy will be automatically unfair, for example, dismissal for reasons connected with pregnancy or maternity leave.

### **Where over 20 employees are affected**

Where more than 20 employees are involved there are additional duties on an employer which involve consulting with employee representatives. These are:

- To inform and consult with employee representatives/trade union representatives

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- To notify the Secretary of State of Business, Innovation and Skills
- To ensure that a fair procedure is followed including:
  - using objective criteria when selection for redundancy is made
  - ensuring the selection criteria is transparent and applied fairly
- To ensure consultation occurs in good time and lasts for a minimum period based on the number of employees who are affected
  - at least 90 days consultation if 100 or more redundancies are contemplated
  - at least 30 days consultation if less than 100 redundancies are contemplated

## Costs of redundancy

Independent schools must pay statutory redundancy pay where the employer has had over two years' continuous service. Statutory redundancy payment is currently capped at £12,000.

Enhanced redundancy rights may also be available to employees under employees' contracts of employment, policies or as a matter of custom and practice of the school.

If an employee is successful in bringing an unfair dismissal claim the tribunal can grant compensation as it feels is "just and equitable" in the circumstances. This is currently capped at £68,400.

Breach of the collective consultation requirements can result in a protective award of up to 90 days pay per affected employee.

## Redeployment and alternatives to redundancy

The dismissal of an employee for redundancy may be unfair if the employer fails to make a reasonable search for suitable alternative employment. Therefore employers should consider alternative employment for employees at risk of redundancy. Where the school is part of a trust or a federation, they must also look for suitable alternative work within that trust or federation.

The contract of employment will not come to an end if the employer offers either to renew an employee's contract of employment or to re-engage them under a new contract of employment. Where the employee unreasonably rejects an offer of suitable alternative employment, they will forfeit their right to a redundancy payment.

If you wish to seek professional advice on redundancy please feel free to contact Amanda Harvey or Nicola Philp on the details below. Devonshires will also be happy to discuss updating your redundancy policy, or expanding the content of your redundancy policy to relate to support staff as well as teachers.

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