

Briefing Note: Redundancy: Alternative Employment

An Introduction to the Briefing Note

If your business is making redundancies, you have a duty to look for alternative employment for any potentially redundant employees. A dismissal is likely to be unfair, if at the time of the dismissal, you did not consider whether any suitable alternative employment existed within your business. This Briefing Note sets out the key issues you need to consider, but should not be relied upon as legal advice. You should contact us for advice on your specific circumstances.

Briefing Note
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Summary:

This short guide explains the basic legal duties of an employer when making redundancies

For detailed advice on all employment law matters please contact:

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Extent and duration of the search

- Your business is **not** obliged to create alternative employment for redundant employees where none already exists. However, you should make a thorough search for alternative employment and document that search (this will enable you to show the steps your business has taken if you have to produce evidence in defence of an unfair dismissal claim).
- Make sure your business continues to search for possible alternative employment until the date an employee's dismissal takes effect.

Providing employees with sufficient information

Provide sufficient information about any vacancies to all potentially redundant employees, so they can make an informed decision on whether the position is suitable for them. You should also highlight the financial prospects of any vacant alternative positions. Do not automatically assume an employee would not want to take a more junior role for less money.

Matching vacant roles with potentially redundant employees

- If your business is dealing with more than one potentially redundant employee, ensure that all of them are made aware of any vacancies.
- When it comes to deciding which candidate to award a vacancy to, you do not need to take the same rigorous approach that is required in a redundancy exercise where the selection of employees must be based on objective criteria.
- Any potentially redundant employees on maternity or adoption leave should be offered any suitable alternative vacancies first. If you have other vacancies, your business is then entitled to undertake a competitive interview process and appoint the candidate you consider to be the best for the job, even if this is based on your subjective view. You simply need to act fairly and reasonably.
- Be aware of the risk of discrimination when considering whether there are any suitable vacancies and (if relevant) the process for deciding which potentially redundant employee should be offered each vacancy.
- When you have identified one or more possible alternative jobs, you will need to agree on the method for deciding which potentially redundant employees would be best suited for those roles.
- The amount of administration and time required is likely to increase as the number of potentially redundant employees increases. This, and the fact that an offer must be made before the termination of an employee's existing employment, should be taken into account when your business is preparing any timetable for a redundancy exercise.

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Bringing vacancies to the attention of potentially redundant employees

- Your business will need to decide how to alert potentially redundant employees to the existence of possible alternative jobs. For example:
 - for a small group of employees you may want to speak to them as a group or individually, to advise them of the existence of any opportunities and what each involves; or
 - for a larger number of potentially redundant employees, it may be more practical to draw their attention to established methods of communicating vacancies (for example, your intranet or notice boards).
- If you use internal methods of communication, you must ensure the information is provided separately to any affected employees without access to those methods of communication (for example, because they are on sick leave or maternity leave).
- It may also be useful to write to each potentially redundant employee confirming the information you have provided in any meetings and providing details of the vacant roles.
- You should offer (and provide sufficient information about) jobs of lower status compared to the job an employee has been dismissed from.
- Discuss the possibility of all alternatives to redundancy with affected employees, including:
 - possible alternative vacancies; and
 - contractual changes (such as a move to part-time working).

In some cases, it will be appropriate to consider and discuss whether an affected employee should be given another employee's job with that employee being made redundant (known as "bumping").

Allocating vacancies between potentially redundant employees

- Any potentially redundant employees on maternity (or adoption) leave have an automatic right to be offered any suitable vacancies first.
- You will need to make arrangements for other potentially redundant employees to be considered for vacancies in which they are interested. For example, once you have provided details of the available vacancies, you can set out a timetable for the applications to be made and for interviews to be held.
- Applications for vacant roles should be limited to potentially redundant employees and, where possible, appointments should be made from that pool of candidates.

If you would like to know more about this topic or our other legal services, please contact Paul Maynard on 01323435900 or by email pcm@gabyhardwicke.co.uk

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