



HANDLING REDUNDANCY

Introduction

Resulting from issues arising where Employment Businesses (EB) are contracted and redundancies are required, it is thought prudent to offer guidance which might assist in avoiding difficulties which might otherwise lead to industrial relations problems or other procedural disagreements.

Redundancy in the workplace is always a cause for concern and in itself can lead to employee relations issues and unnecessary stress for individuals. Thus every effort should be made to handle redundancy in a professional and efficient manner to minimise stress and potential disruption.

Objective

The over-riding position should be to ensure that best practice is followed both in terms of good employee relations as well as ensuring that the correct legal steps are followed. In particular attention must be paid to redundancy consultation with the recognised trades unions. This is well covered in NAECI 16.3 and 16.4 as attached to this guidance note.

Where possible, consultation should always commence in good time and be undertaken with a view to reaching an agreement.

Whilst the right to be collectively consulted is only applicable where it is proposed to make 20 or more employees redundant, it is recommended that the process is followed for all redundancies where the employees are covered by NAECI, except for adherence to the applicable timescales where the numbers are more than 20. In particular:

- At least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less
- At least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less

However, where the combined numbers of operatives from the Contractor and the EB to be made redundant, exceeds 20, then it is recommended that both employers should observe the statutory consultation period that would normally apply if they as individual employers were making more than 20 employees redundant.

Interface with Employment Businesses

There are various scenarios which arise when contractors engage EBs. It may be that the whole of a contractor's workforce are employees of the EB or there could be mixed workforces in various proportions ranging from the majority belonging to the contractor to the majority belonging to the EB.

In both cases the redundancy process remains the legal responsibility of the employer whether it is the contractor or the EB. Both must adhere to NAECI 16.3 and 16.4 as well as their legal obligations.

Notwithstanding that, there are likely to be instances where the selection process is blurred in that EB employees are not supervised by their own employer's supervisors but by those of the contractor. In that event some iteration will be necessary with the contractor's supervision to ensure that the agreed selection process has been conducted in a scrupulously fair and reasonable manner.

Where such iteration takes place, then it should be transparent and be part of the consultation unless it had been previously discussed with the recognised trades unions.

It is of the utmost importance that employers and trades unions work together to minimise difficulties when redundancy arises. The majority of operatives are likely to have less than two years' service and will have no remedy in law for unfair dismissal by reason of redundancy. Finally whilst EBs bring another dimension to redundancy handling, it remains within the remit of direct employment and the use of this Guidance Note and NAECI can ensure fairness and stable industrial relations.

Guidance Note Attachment

Excerpt from NAECI

16.3 REDUNDANCY CONSULTATION

- (a) Where a redundancy situation arises the employer shall commence consultation with the relevant signatory trades unions in line with statutory requirements, or as soon as reasonably practicable thereafter given the short-term changes in circumstances commonly experienced in engineering construction.
- (b) Arrangements for collective consultation do not remove any separate, legal requirement for individual consultation.

16.4 REDUNDANCY SELECTION

- (a) The employer shall consult the signatory trades unions on its proposed selection pool(s) and selection criteria as part of any collective consultation arrangements under NAECI 16.3(a).
- (b) The first consideration will be the need to maintain a balanced and productive workforce composed of employees whom management considers have the skills and experience most appropriate to the company's needs.
- (c) Selection shall be based on the particular contract where employees included in a selection pool are currently employed, except where the written offer of employment, contract of employment and/or statutory statement of employment particulars issued by the employer either:
- (i) Expressly provides that an employee is employed specifically on a transferable basis operating across a number of contracts in a defined area. In such cases, that area shall be regarded as the 'contract' for the above purposes; or
- (ii) Expressly sets out a specifically defined alternative to selection on a contract basis (including an unambiguous statement explicitly excluding selection on a contract basis under either (c) or (c)(i) above).
- (d) A particular selection criterion may not be used if, either generally or in the specific circumstances where its application is being proposed, it contravenes the requirements of United Kingdom employment, labour relations or discrimination law.
- (e) Length of service with the employer may form part of the redundancy selection process where it is lawful to do so - for example:
- (i) Where the short-term nature of employment makes it genuinely impracticable for an employer to establish an alternative basis for differentiating between individuals; or
- (ii) To differentiate between 2 individuals who are awarded equal scores under an objective selection matrix operated in accordance with (f) below.
- (f) Where an employer is proposing to base selection for redundancy on the performance of individual employees against a matrix of factors, it should take reasonable steps to demonstrate during consultation that:
- (i) The selection criteria and scoring systems set out in the matrix are objective and/or verifiable. Examples of such criteria include (but need not be limited to):
- Attendance
 - Timekeeping
 - Disciplinary record
 - Job knowledge/skills
 - Relevant qualifications/training
 - Assisting/developing/training others
 - Measurable quality
 - Health and safety
- (ii) Where an individual does not agree with a decision to select him/her for redundancy, he/she shall have access to a company appeals procedure.
- (g) After due consultation, management will prepare a list of the names of the employees to be made redundant in accordance with the above provisions and will notify them accordingly. The list will then be made available to the shop stewards.
- (h) Individual companies shall have the opportunity of registering redundancy procedures established in accordance with the above provisions with the NJC.
- (i) Further dismissal appeal provisions are set out in NAECI 15.8.