

*“Prior to making a decision to dismiss, the employer should always consider the options other than the termination of employment. These considerations should be noted in writing so that a Tribunal or Court can see at a future date, that the employer was reasonable”*

**...Michael English, Solicitor, DAS**



time scales of the redundancy and the numbers of staff involved. Our advice is to consult in all cases with individual employees who are affected by the redundancies and to do so at the earliest possible opportunity

We advise the employers to set out in detail at the initial stage what they consider to be appropriate selection criteria which can be very particular depending on the type of business. In general, an employer can look at a number of different criteria such as:-

- proficiency,
- qualifications,
- performance appraisals,
- length of service,
- productivity,
- communication,
- team work,
- responsibility,
- adaptability,
- attendance,
- disciplinary records.

### **The Redundancy Payment**

The Redundancy Payment Acts, 1967-2007 oblige employers by law to pay redundant employees what is known as “statutory redundancy entitlements”. This amount varies depending on the employee’s length of service, normal weekly earnings up to a maximum of €600 per week. In calculating the lump sum the employer must add up the following: -

1. Two weeks pay for each year of employment continuous or actual service between the ages of 16 and 66 years. In addition to this a bonus week is also included. The actual service excludes absence’s from work because of lay offs or strikes however, short time work is recognisable service.
2. All the calculations from an employer under the statutory redundancy payment scheme are subject to a ceiling which stands at €600 per week. There is no tax payable on any statutory redundancy lump sum pursuant to Section 37 of the Finance Act 1968.
3. Employers can claim a rebate and to do so they must submit Form RP50 to the Redundancy Payment Section to the Department of Enterprise Trade & Employment within 6 months of the date of termination of employment.

There is no legal obligation to make a payment above statutory entitlement however, in some cases there may be some form of agreement in existence either express or implied.

In relation to this extra amount, an employee may be entitled to further tax relief and the employee can opt for the calculation that gives them the greatest tax free sum between receiving the notice for redundancy and the expiry of notice.

### **Collective Redundancies**

Collective redundancies arise in Ireland where in any period of 30 consecutive days:-

- 5 employees are being made redundant where there are 21-49 employed,
- 10 employees where there are 50-99 employees,
- 10% of the employees where there is 100-299 employees,
- 30 employees where there are the 300 or more employed.

Under the Employment (Exceptional Collective Redundancies

& Related Matters) Act 2007 collective redundancies may have to be referred to a panel (a Redundancy Panel is being set up by the Department of Enterprise, Trade and Employment in accordance with the partnership agreement Towards 2016) to determine whether the redundancies were carried out in order to replace the employees with workers on a lower pay or less favourable terms and conditions. These are known as the exceptional collective redundancies. Where the panel decides that the redundancies were carried out for this reason the employer will not receive a rebate on the lump sum payments. This will also leave the employers open to actions being taken against them for unfair dismissal by the employees affected.

The employer is obliged to provide information in the following terms.

1. The reason for redundancy.
2. The description and the number of employees affected.
3. Description and number of employees normally employed.
4. Time scales in which redundancies will occur.
5. The criteria used in the selection of the employees for redundancy.
6. The method of calculating the redundancy payment.

The employer is obliged to inform the Minister for Enterprise Trade & Employment in writing of the proposed redundancies 30 days before the occurrence.

The Employee (Provision of Information & Consultation) Act 2006 requires employers to consult with employees on certain organisational and structural changes in the work place. The Act specifically refers to proposed or anticipated collective redundancies. This could mean that employers will find themselves discussing restructurings, reorganisations collective redundancies prior to the actual event or decision being made. The Act applies to employers who employ 50 or more staff.

### **Redundancy Notice**

Employees selected for redundancy are entitled to notice, the amount of which depends on:-

1. Contractual notice (written contract)
2. Notice provided in Statute which varies depending on the length of service that an employee is employed
3. In the event of a collective redundancy a period of over 30 days notice must be given .

The employee may give the employer notice that they wish to leave before the end of the notice period. This is usually given by using the RP 6 Form. The employer has the discretion as to whether or not to allow this request.

### **Enforcing Rights**

Cases of disputes in relation to claims for redundancies should be brought before the Employment Appeals Tribunal within 1 year of the dismissal although the period can be extended to 2 years where just cause is shown.

Claims for unfair dismissal arising from redundancy; such as questions on the unfair selection for redundancy, are dealt within the unfair dismissals legislation and employees have 6 months in which to bring a claim in this regard or, in exceptional circumstances, this time limit can be extended to 12 months.

**For further information on redundancy or any employment related issue our policyholders and agents can contact us on our Legal Advice Helpline which is sold as part of our product offering.**