

Statutory redundancy pay

Employment Rights Advice Leaflet

Number 5/ November 2002

If your job disappears because of economic circumstances or due to a re-organisation in the work place, you may be entitled to a lump sum redundancy payment. Many workers have a right to redundancy pay under the terms of their contract. If you have no "contractual" right to redundancy pay, you may still be entitled to a "statutory" redundancy payment.

In order to claim a statutory redundancy payment you must have been dismissed. In certain circumstances it is possible to resign and claim "constructive" dismissal, but you should be careful about doing this: it is always best to seek advice first.

Definition of a Redundancy

People often talk of being "made redundant" when they are dismissed. However Redundancy has a legal meaning. In a legal sense Redundancy covers three situations:

- Closure of the business or organization for which you work;
- Closure of the workplace where you work;
- A reduced need for employees to do work of a particular kind.

Exclusions

To qualify for a statutory redundancy payment, you must be:

- an employee;
- at least 20 years old;
- below the normal retirement age or, if there is none in your workplace, under 65;
- continuously employed by your employer for at least two years.

Note: If you have less than two years service at the time you are selected for redundancy you will not be entitled to a statutory redundancy payment, but you may still be entitled to a redundancy payment under your contract or to claim unfair dismissal.

There are some specific categories of people who are excluded from claiming a statutory redundancy payment, including:

- an apprentice whose service ends at the end of an apprenticeship contract;
- a share fisherman;
- an employee of an overseas territory government;
- some domestic servants;

Waiver Clauses

Until 1st October 2002 it was possible for employers to ask employees to waive their rights to a redundancy payment upon the expiry and non-renewal of a fixed term contract

of at least two years. The law has now been changed so that waivers in contracts which are agreed, renewed or extended after 1st October 2002 are no longer valid.

Redundancy and temporary loss of work

If you are laid off or placed on short-time working, you may still be able to claim a redundancy payment. A lay-off takes place when employees receive no pay under their contract because there is no work of any kind for them to do, even though they are available for work. Short-time working is where an employee receives less than half a normal week's pay.

In order for a claim to be made, the period of lay-off or short-time working needs to have lasted for a period of at least 4 consecutive weeks; or to have lasted a total of 6 weeks in any period of 13 weeks (with no more than 3 being consecutive).

Claims must be made in writing to the employer. The employer can refuse to pay only if there is a reasonable expectation that normal working will resume within four weeks, and there will be no further lay-offs or short-time working for at least 13 weeks.

Offers of alternative employment

If you are made redundant and reject a suitable offer of alternative work with the same employer, you may lose your entitlement to redundancy pay. There is a statutory scheme which offers you a 4-week trial period to see whether you wish to take an alternative job offered by the same employer. This can be helpful because it gives you a better idea of what is being offered; it also means that you should be able to protect your right to a redundancy payment if you decide that the alternative job is not suitable for you. However, the law in this area is complicated and you should always seek further advice, to make sure that you do not put your redundancy payment at risk. The same applies if you are due to be made redundant and wish to leave early to take up a job with another employer.

How much will you get?

By law your employer must give you a written statement, explaining how any redundancy pay is calculated.

The amount is based on your age, length of service (up to a maximum of 20 years), and weekly wage (up to a maximum of £250). If your weekly wage varies, an average is calculated over the last 12 weeks.

You get:

- one and a half week's pay for each complete year of employment in which you were aged between 41 and 65;
- one week's pay for each complete year of employment in which you were between 22 and 41;
- half a week's pay for each complete year of employment in which you were over 18 but under 22.

For an employee aged between 64 and 65 the redundancy payment due is reduced by one twelfth for each complete month worked over the age of 64.

Can redundancy be unfair?

Redundancy is a form of dismissal. If a genuine redundancy situation does not exist, then you may still have a claim for Unfair Dismissal.

Even if a genuine redundancy situation does exist, you may also have a claim for Unfair Dismissal if, for example:

- There was inadequate consultation by your employer;

- You were unfairly selected for redundancy;
- Your employer failed to consider the availability of suitable alternative employment.

Normally you need one year's continuous service to be able to claim Unfair Dismissal.

However, there are special cases where you can claim Unfair Dismissal, even though you have less than one year's continuous employment. These special cases include where you have been selected for redundancy for trade union, health and safety, or maternity reasons; or because you have "asserted your statutory rights" (i.e. stood up for your rights under the Employment Rights Act); or have stood up for your right to the National Minimum wage.

Disputes about payment

If your employer is insolvent, or you have tried and failed to obtain a redundancy payment from your employer, you may be able to apply for a redundancy payment from the National Insurance Fund. You will need to apply to the appropriate Redundancy Payments Office (see below), although further details are available from your local social security/Jobcentre Plus offices. Application is made on an RP1 form, which you can usually obtain from your employer's representative – e.g. a liquidator or receiver.

Helpful contact numbers and addresses:

Redundancy Payments Service

A free government helpline is available to answer any of your queries, no matter where in England, Scotland, or Wales you are based. The number to ring is 0500 848489.

Redundancy Payments Offices: Department of Trade and Industry, Redundancy Payments Office

Scotland, Cleveland, Cumbria, Durham, Merseyside, Northumberland, Teesside, Tyne and Wear, Yorkshire

Ladywell House
Ladywell Road
Edinburgh EH12 7UR
0131 316 5600

Buckinghamshire, Essex, Hertfordshire, Kent, London, Suffolk, Surrey, Sussex

PO. Box 15
Exchange House
60 Exchange Road
Watford WD1 7SP
01923 210 700

Wales and all other counties in England

7th Floor Hagley House
83-85 Hagley Road
Birmingham B16 8QG
0121 456 4411

For further details contact:

Employment Rights Advice Service (ERAS)
Low Pay Unit
10 Dukes Road
London WC1H 9AD

Advice line: 020 7387 2522

www.lowpayunit.org.uk

© 2002 Low Pay Research Trust

Disclaimer

The contents of this leaflet are provided as an information guide only. Whilst ERAS makes every effort to ensure that the information provided is legally accurate and up-to-date, it cannot accept responsibility for errors or omissions or the consequences of an individual acting upon information provided. If you are considering taking action, you are advised to seek further advice first.