

Redundancy and maternity leave – alternative vacancies

Businesses that make redundancies 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, the business did not consider whether any suitable alternative employment existed within its business.

This newsletter sets out the key issues a business needs to consider.

Extent and duration of the search for alternative vacancies?

- A business is **not** obliged to **create** alternative employment for redundant employees where none already exists. However, the business should make a thorough search for alternative employment and document that search. This will enable the business to show the steps it has taken if it has to produce evidence in defence of an unfair dismissal claim.
- Make sure the 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. A business 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 the 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, the business does 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 there are other vacancies, the business is then entitled to undertake a competitive interview process and appoint the candidate it considers to be the best for the job, even if this is based on a subjective view. The business simply needs 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.

If you would like to discuss any of the matters raised in this newsletter please contact

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The information in this newsletter is not meant as a substitute for advice on particular issues and is written in general terms. You should seek specific advice before taking any action based on the information in this newsletter.

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This newsletter outlines the law as it stands at the date of writing in January 2015

- When the business has identified one or more possible alternative jobs, it 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 the business is preparing any timetable for a redundancy exercise.

Bringing vacancies to the attention of potentially redundant employees?

- A 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, the business 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, the business's intranet or notice boards).
- If the business uses internal methods of communication, 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 the business has provided in any meetings and providing details of the vacant roles.
- The business 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 (this process is 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.
- A business will need to make arrangements for other potentially redundant employees to be considered for vacancies in which they are interested. For example, once the business has provided details of the available vacancies, it 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.