

## NABS redundancy guide

### For those with less than two years' service at current employer

Redundancy can be a challenging experience and NABS is here to help guide you.

If your company makes the decision to proceed with redundancies, our redundancy guides can help explain everything you might need to know, such as:

- What happens during the redundancy process
- Advice on remuneration
- Guidance on your rights and what to expect
- Tips for each stage of the journey

The process of redundancy can be sometimes be a stressful and emotional experience.

If you need support or would like to talk to one of our friendly and impartial advisors about your individual situation, just give us a buzz by calling the **Advice Line on 0800 707 6607**.

### Who this guide is for

This guide is for those who have been with their employers for less than two years. In this guide you can find out about the following topics:

1. What is redundancy?
2. What are my rights if I have less than 2 years' service?
3. The consultation - what is it?
4. Length of the consultation period
5. Employee representatives
6. Guidance on consultation
7. What will I be paid?

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## 1. What is redundancy?

Redundancy can happen if your company identifies that the role you occupy is no longer needed; it has become redundant.

There must be a business reason for the selection of your role for redundancy, such as cost cutting due to a reduction in revenue or an organisational restructure meaning certain roles are no longer needed (this list is not exhaustive).

## 2. What are my rights if I have less than 2 years' service?

If you have less than two years' service you have limited rights, in that you are not protected from unfair dismissal laws.

This means it is possible for your employer to terminate your employment without showing that they have chosen you reasonably and they do not have to follow a fair consultation process.

However, it is considered best practice for employers to undertake fair selection and consultation for all employees, regardless of length of service.

Although you have limited rights with less than two years' service, you do have some protection:

### **Automatically Unfair Reasons**

You cannot be made redundant if the reason for the redundancy falls under one or more of these **automatically unfair reasons** (this list is not exhaustive):

- Reasons relating to maternity or pregnancy
- You are a member of a trade union or have been involved in related activity
- You are a part-time or fixed-term employee
- You are a whistleblower, i.e. you have reported a person in your organisation or the organisation itself for undertaking unlawful or immoral activity
- You have taken steps to observe health and safety requirements
- You are an employee representative
- You requested a statutory right, such as a request for minimum wage

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Note, however, that you can be made redundant if one or more of these situations applies to you; they just can't be the reason for the redundancy.

### **Discrimination**

You are also protected from **discrimination** under the Equality Act 2010. This means the reason for the redundancy must not be due to one or more of the nine protected characteristics:

1. Age
2. Disability
3. Gender reassignment
4. Marriage or a civil partnership
5. Pregnancy or maternity leave
6. Race, ethnicity or country of birth
7. Religion or a particular set of beliefs
8. Sex
9. Sexual orientation

For example, it might be considered discrimination if you are chosen for redundancy because you need to leave work early due to caring for someone who is disabled.

As with the automatically unfair reasons, it is possible to be made redundant if one or more of the protected characteristics applies to you either directly or indirectly; they just can't be the reason for the redundancy.

### **Victimisation**

You are protected from being chosen for redundancy due to **victimisation**. This means that your employer cannot choose you for redundancy because you have raised discrimination concerns in the past; for example, if you raised a concern about sexual harassment in the business.

Remember, you could have raised the above concern and still be chosen for redundancy; it just cannot be the reason for the redundancy.

## 3. The consultation – what is it?

The **consultation** is a chance for employer and employee to meet to discuss the potential redundancy. During the consultation, the employer will explain the reasons for needing to make redundancies and explore options to see if redundancy can be avoided (seeking alternative roles in the business, for example).

If no alternatives can be found, the employee will be made redundant at the end of the consultation process.

The employer could consult with an employee directly, an employee representative or a trade union representative.

You have the right to remain on the payroll and in receipt of all benefits during consultation.

## 4. Length of the consultation period

The **length of the consultation period** will depend on the number of employees facing redundancy:

### a) Fewer than 20 employees facing redundancy

If **fewer than 20 employees** are being made redundant, there are no set rules to follow, but it's good practice for employers to fully consult with employees.

In this instance, a consultation often lasts between one and two weeks.

### b) 20 to 99 employees facing redundancy

The consultation period should be a minimum of 30 days **when 20 to 99 employees** are to be made redundant at one establishment over a period of 90 days or fewer.

The consultation period should be a minimum of 45 days when 100 or more employees are to be made redundant at one establishment over a period of 90 days or fewer.

## 5. Employee representatives

If there are **more than 20 people being made redundant** then one or more employee

representative(s) may be appointed (this saves the employer from consulting with every affected employee individually).

The role of employee representatives is to represent the views of all employees at risk of redundancy so that the employer gives consideration to these during the consultation process. This is called collective consultation.

Collective consultation should involve all affected individuals regardless of length of service or whether they are on fixed term or permanent employment contracts.

Affected employees will also be consulted with individually. This often happens after collective consultation but can run alongside it.

## 6. Guidance on consultation

It's not essential that agreement is reached during a consultation; best practice is for genuine dialogue to take place, with a view to reaching agreement.

### **Our guidance for the consultation is:**

- Feel free to ask any questions you may have
- Do not feel pressured into making any decision during the meeting(s). You can ask for more time if you need to consider your options
- You may want to make notes of any key points
- Best practice is for your employer to allow you to be accompanied by a trade union representative or a colleague
- The role of the person accompanying is to take notes and somehow help keep the conversation on track (you may want to speak to this person about points you wish to cover beforehand). The person accompanying cannot answer on your behalf

The first meeting, in particular, is often considered a **fact-finding meeting** for the employee. It's advisable to have a clear idea of the topics you'd like to discuss and the questions you'd like answered before you go to the consultation meeting.

### **Some points you could consider discussing are:**

- Are there ways to avoid redundancy?
- Has the company explored alternative roles?
- Are you required to work during the consultation?

- Will you be required to work your notice period if you are made redundant?
- Will your employer allow you time off to look for a new job?
- How will communications about work be managed, both internally and externally?
- What might a redundancy package look like?
- What might your reference look like?

It is best practice for your employer to consider your input and if they decide to go ahead with redundancy, **they must confirm this in writing.**

## **Suitable Alternative Roles**

If you're pregnant, on maternity leave, shared parental leave or adoption leave and your employer identifies a suitable alternative role within the company or group, you are entitled to be offered this over and above other employees who are at risk of redundancy but not pregnant or on maternity, shared parental or adoption leave. You wouldn't need to apply for it. The alternative job must be suitable and appropriate for you in the circumstances which means you have the capacity for the work and it must be no worse than your previous job with regard to location, terms, conditions and status.

This protection is in place from the moment you notify your employer that you are pregnant and for 18 months after your expected week of childbirth or the actual birth date of your baby (if you have notified your employer of this).

For adoption leave, this protection continues for 18 months after the child's placement.

For shared parental leave, the protection continues for 18 months after the date of the child's birth or placement if you take six or more consecutive weeks of shared parental leave (but have not taken maternity or adoption leave). If you take less than six weeks leave, the protection will end on the date the leave ends.

If the role is suitable and appropriate and you reject the role you would lose your right to redundancy pay.

## **7. What will I be paid?**

If you have **less than two year's service**, you will be given a final payment of:

- Days worked up until the consultation period which are yet to be paid
- Days worked during the consultation period

- Days not worked during the consultation period if your employer has said you do not need to work
- Your contractual notice period
- Any accrued but unused holiday

**You are not entitled to a statutory redundancy payment.**

There are three options for payment of your notice period:

1) You may receive **Pay in Lieu of Notice (PILON)**: this is a lump sum payment of your notice when your employment terminates at the end of the consultation period. This means you will no longer be on the payroll or in receipt of any company benefits for the length of your notice after your employment is terminated. Bear in mind that you may be able to refuse PILON if this is not in your contract.

2) You may be required to work your notice and remain on the payroll in receipt of all benefits. You can ask your employer if there is an option to finish your notice early and receive the rest as PILON.

3) You may be put on garden leave for the length of your notice. This means you do not work but remain on the payroll, in receipt of all benefits. This enables your employer to keep you away from clients but on call for any queries your employer may have. Check your contract to see if this is an option. If you start a new job during garden leave, you will curtail your notice period and therefore payment of this in full.

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