

## NABS redundancy guide

### For those with two years of service or more 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 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 are facing redundancy and have been with their employers for two years or more.

In this guide you can find out about the following topics:

#### 1) What is redundancy?

- What is redundancy?
- What are the possible reasons for redundancy?
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#### 2) What is the redundancy process?

- The consultation
- Length of the consultation period
- Employee representatives
- Guidance on consultation

- Other employees in the same role as you
- Explanation of pooling and scoring

### **3) I'm facing redundancy. What will I be paid?**

- Types of redundancy pay
- How your redundancy package is worked out
- Notice period
- Tax
- Payment of your redundancy package

### **4) What options do I have, if I think the process has been unfair?**

- Genuine redundancy
- Unfair reasons for redundancy
- Fair process
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### **5) What are the options for taking a different role in my company?**

- What is a suitable alternative role?
- Can I trial a suitable alternative role?
- How do I accept a suitable alternative role?
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### **6) What is voluntary redundancy?**

- Considering voluntary redundancy
- The impact of taking voluntary redundancy

## 7) What happens if I'm facing redundancy while pregnant or on maternity leave?

- Facing redundancy while pregnant or on maternity leave
- Suitable alternative roles
- Maternity pay

## 1. What is redundancy?

In this section, you can find a definition of redundancy and potential reasons for 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).

Redundancy is a last resort for employers once they have exhausted all other potential avenues; for example recruitment freezes, re-deployment of roles, pay cuts or a reduction in contractors (this list is not exhaustive).

If a company is following best practice they will apply a fair process to identify who to make redundant. The company will identify which roles they need to make redundant first, then follow fair process to identify which of the employees currently fulfilling those roles they will make redundant. A company should not simply pick individuals for redundancy.

### **What are the possible reasons for redundancy?**

The most common reasons for redundancy are:

- Your role in the company, or the service you offer, is no longer required
- Your employer is looking to cut costs
- The business is closing down or moving site
- There is a reduction in workforce

These are just some of the reasons why redundancy takes place.

## 2. What is the redundancy process?

### **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.

Failure to consult when making redundancies is likely to be considered unfair dismissal.

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

### **Length of the consultation period**

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

#### **If there are fewer than 20 employees being made redundant**

If fewer than 20 employees are made redundant, there are no set rules to follow, but it's always good practice for employers to fully consult with the employees. In this instance, a consultation often lasts between one and two weeks.

#### **If there are 20 to 99 employees to be made redundant**

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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.

## **If there are over 100 employees to be made redundant**

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.

## **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.

## **Guidance on consultation**

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 suitable alternative roles?

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- 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?

Your employer should consider your input and if they decide to go ahead with redundancy after consulting you, they must confirm this in writing.

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

The consultation process must be meaningful, and consideration must be given to all points raised.

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 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

### **Other employees in the same role as you**

You would expect your employer to start the redundancy process by determining which roles are at risk of redundancy.

If a role is at risk of redundancy, all employees in that role are pooled together. If you're in a unique role, there will be no pool.

**Being in a pool doesn't necessarily mean you will be made redundant.** Once the company has established the pool of people at risk of redundancy, they should use a fair selection process to determine who will be made redundant from the pool.

The most commonly used method is to identify the criteria needed to fulfil the remaining roles and then score employees against the criteria. Employees who score the lowest will be selected for redundancy.

### **Explanation of pooling and scoring**

Best practice is for your employer to tell you about who is in the pool and what the criteria is during your consultation.

Potential criteria for employees to be scored against might include:

- Skills, qualifications and aptitude to perform role
- Standard of work
- Attendance

The criteria could be weighted if the company feels some criteria are more important for the business going forward than others (for example, aptitude to perform the role might have a greater weighting than attendance). An employer must show they have used a fair and objective approach to reach their decision.

An employer should use objective criteria that does not discriminate; for example, against those who work flexibly because of a disability. Your redundancy could be unfair if the person scoring did not reach their decision objectively.

You have a right to see the scoring criteria and your own score but you cannot see others' scores.

## **3. I'm facing redundancy. What will I be paid?**

In this section, you can find out about the following topics:

- Types of redundancy pay
- How your redundancy package is worked out
- Notice period
- Tax
- Payment of your redundancy package

## **Types of redundancy pay**

As a minimum, you'll be entitled to receive the following:

- Statutory redundancy pay or contractual redundancy pay (depending on your employment contract)
- Notice pay – either worked or paid in a lump sum
- Untaken accrued holiday pay

If your company is able to make any additional payments over your contractual or statutory redundancy pay, these are called “ex gratia” payments. These payments are over and above what you're legally entitled to and are tax-free up to £30,000. You might be expected to sign a Settlement Agreement if “ex-gratia” payments are being offered and are not referred to in your original contract.

## **How your redundancy package is worked out**

You will be entitled to redundancy pay if you've been employed by your company for two years or more.

Your redundancy package consists of both contractual and statutory elements. The contractual element includes contractual redundancy pay (enhanced above statutory pay), notice period pay and outstanding holiday pay.

Your company could offer you either statutory or contractual redundancy pay:

**Statutory redundancy pay** - this is a basic weekly amount you're legally entitled to receive, and this is capped at £700 per week.

The amount of statutory redundancy pay you receive will depend on your age and the number of complete years of service with your employer.

For each full year you've worked at your company, you'll receive:



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- 0.5 week's pay if aged under 22
- 1 week's pay if aged between 22 and 41
- 1.5 week's pay if aged over 41

The maximum total amount you can receive in statutory redundancy pay is £21,000 and the number of years used to calculate your total will be capped at 20, so if you've been employed by the same company for more than 20 years, the first 20 of these will be used in the calculation.

**Contractual redundancy pay** – you may be entitled to additional or enhanced redundancy payments on top of the statutory amounts above if this is detailed in your employment contract.

## Notice period

Check your contract for the **length of your notice period** in the first instance.

If your notice period is unclear for any reason, you can refer to these statutory minimum notice periods which outline what you're legally entitled to receive:

- At least one week's notice if you've been employed by your employer for between one month and two years
- One week's notice for each year if employed between two and 12 years
- If you've been employed for 12 years or more then the notice period is 12 weeks

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.

## Tax

You won't pay tax on the contractual or statutory redundancy pay element of the redundancy package up to a total of £30,000. Notice pay, even if you're Paid in Lieu of Notice (PILON) and holiday pay will have Tax and National Insurance deducted as usual.

## Payment of your redundancy package

Your employer will usually make this payment to you directly, although there are some circumstances (such as when a company goes into liquidation) in which you would be eligible to apply for statutory redundancy pay from the government.

## **4. What options do I have, if I think the process has been unfair?**

### Genuine redundancy

If you've been working for your employer for at least two years and your role becomes redundant, your employer needs to be able to show the basis for their decision. If they're unable to do this satisfactorily, they risk the redundancy being considered unfair which could result in a claim against them.

In a genuine redundancy, your role could be considered redundant if the work you do no longer exists or has diminished substantially, or your role is no longer required within the structure of the business. Equally, redundancies are likely to occur if your workplace is closing or your employer is going out of business.

To clarify, your employer must have a real business reason to make you redundant; some other reasons could be:

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- Your particular skills are no longer needed
- After a company re-structure, your work has been divided up between other staff
- The business is taken over by another company

### **Redundancy for an unfair reason**

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

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.

### **Fair process**

If you've worked for your employer for at least two years, you would expect your employer to follow a **fair redundancy process**.

Part of a fair process is for your employer to share with you in writing how they intend to carry out the redundancy process, so that you're aware of the steps; this may appear in your contract or staff handbook.

As a starting point, you would expect to be invited to at least one individual consultation meeting with your employer to discuss the redundancy and the process that they will be following. This meeting is also an opportunity to hear from your employer:

- The reasons for redundancy

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- Any ways of avoiding redundancy
- Why they've selected your role for redundancy
- Why you've been selected for redundancy, if there are others in the same or similar roll
- If there are any alternative suitable roles available
- Any questions you may have about the process and next steps

It's often useful to view this meeting as a fact-finding session, with a view to having a further consultation meeting, if you still have questions, concerns or want clarification.

It's not essential that agreement is reached during a consultation; the aim is for genuine dialogue to take place, with a view to reaching agreement. The consultation process must be meaningful, and consideration must be given to all points raised.

If you'd like guidance on how best to manage your consultation meetings, please feel free to contact the NABS Advice Line on 0800 707 6607 or at [support@nabs.org.uk](mailto:support@nabs.org.uk)

### **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, you may have been subject to disability discrimination if your employer chooses you because you have a flexible working agreement due to a disability.

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.

## **Settlement agreements**

Your employer might offer you a settlement agreement. A settlement agreement is a legally binding agreement signed by you and your employer. It prevents you from taking any legal action against your employer, often in return for an incentive, such as a financial package. It may also include other conditions.

Once an agreement is reached, the contract needs to be signed by a solicitor that is independent of the company. Your employer will often pay for a solicitor to sign the agreement, as part of the Settlement Agreement. You can ask the solicitor for guidance in negotiation, but your company is not obliged to pay for this element of their time.

If any of the process feels unfair to you, then you may find it useful to ask your company about the basis for their process. You may also wish to ask them about the appeal process. Do contact us here on the NABS Advice Line if you want guidance on how best to approach a conversation with your company. We can also provide a list of independent solicitors if required.

## 5. What are the options for taking a different role in my company?

## **What is a suitable alternative role?**

As part of the consultation process and with a view to avoiding redundancy, your employer may offer you a suitable alternative role within your company or the wider group or network.

An alternative role is considered suitable based on the following:

- The similarity of the work required in the alternative role to that of your current role
- The terms should be similar to, or the same as, your current role. There should be no reduction in pay and benefits
- Your ability to do the role, including your skillset and other factors relating to your individual circumstances
- There should be no changes to status or changes to hours and location

In order to understand if an alternative role is suitable, you can ask your employer about each of these points. You might wish to follow up in writing so that you have a record.

You can also ask to see the job descriptions for your current and the alternative roles so that you can make a comparison.

Your employer has a duty to offer you a suitable alternative role, if there is one available; otherwise, the process is likely to be deemed unfair.

The consultation is an opportunity to raise any concerns regarding suitable alternative employment but if the redundancy has already taken place, you might consider appealing the redundancy.

You can also call the NABS Advice Line for a free, impartial chat about your rights and your options.

## **Can I trial a suitable alternative role?**

If you and your employer agree on a suitable alternative role, you are entitled to a 4-week trial of that role so that both parties can address any concerns and decide if it is working.

You and your employer may agree to extend the trial period; for example, if you need

training. If you are on annual leave or away from work due to sickness, it will remain at 4 weeks, unless otherwise mutually agreed. You may wish to request any agreement in writing.

During the trial, you might want to keep open communication about the role and its suitability with your manager and HR, so that you can address any concerns that might arise.

## **How do I accept a suitable alternative role?**

If you would like to accept the role at the end of the 4-week trial, you may want to confirm your acceptance in writing, requesting a new contract and job description.

## **Refusing an offer**

### **Reasonable refusal**

If you reasonably refuse an offer of a suitable alternative role, you will still be entitled to redundancy payment and any other termination payments such as PILON and accrued but unused holiday.

Make the refusal in writing either before your current role ends or before the end of the 4-week trial of the alternative role. You may lose your right to claim statutory redundancy pay if you do not.

A refusal may be considered reasonable if it is clear the role is not suitable; for example, because it has a reduction in pay and status or if it transpires at the end of the 4-week period that you do not have the right skill set for the role (this list is not exhaustive).

You may also be considered to have reasonably refused a role in other circumstances; for example, if you were not given enough information to understand what the job would involve, or if there is a gap of over a month before your new job starts.

### **Unreasonable refusal**

If you unreasonably refuse an offer of a suitable alternative role, before or after a trial period, you may lose your right to a redundancy payment, receiving the normal termination

payments only, such as pay in lieu of notice (PILON) and accrued but unused holiday.

As an example, a refusal may be deemed unreasonable if you turn down the role purely because you are unhappy about the redundancy or if your employer can show the role meets all the requirements of a suitable alternative role.

If you do not feel the role on offer is a suitable alternative, for example because the pay is lower or because a change in job location means you would have a longer journey to work, share your concerns with your employer as soon as possible, with a view to reaching an agreement or to considering other alternatives.

### **Can I accept an alternative role that is not considered suitable?**

You may also be given the opportunity to apply for an alternative role that is not considered suitable; for example, a role at a different office, that has a reduced salary, or requires a different skillset.

If you secure the role, you are entitled to a 4-week trial in the same way that you would be for a suitable alternative role and you could expect any changes to be confirmed in writing.

Note that if you accept an alternative role that is not considered suitable, any new terms and conditions will apply if you are made redundant in the future. So, for example, if you take a reduction in pay, your new, reduced pay would apply to any future redundancy payments.

## **6. What is voluntary redundancy?**

### **Considering voluntary redundancy**

Some employers may start a redundancy process by offering voluntary redundancy to all staff. They may offer an enhanced redundancy package as a financial incentive to those that volunteer.

If you volunteer for redundancy and are selected, you would expect the company to continue



the redundancy process in the normal way, following all best practice steps to ensure the process is fair. In effect, the status of “voluntary” falls away once you’ve been selected.

We’d encourage you to carefully consider the benefits of taking voluntary redundancy compared with not putting yourself forward. If you do volunteer, you may not be accepted for redundancy. If you don’t volunteer, you may still be selected for redundancy if the company has to make compulsory redundancies. However, if you’re not selected you may retain your role or may be offered an alternative role.

### **What is the impact of taking voluntary redundancy?**

Just because you volunteer for redundancy, it doesn’t automatically mean you’ll be selected. The company will need to assess whether your role is still required or can be done by others.

Before volunteering for redundancy, find out all the information that might impact your decision, for example:

- What financial, or other, incentive the company is offering
- What your overall redundancy package will be (you can ask for a breakdown if this is unclear)
- What State Benefits can you claim, if you need to
- Whether Income Protection or Mortgage Protection policies still pay-out for voluntary redundancy. If not, you may prefer to sacrifice the financial incentive of the voluntary redundancy and settle for the more basic compulsory redundancy package

We’re here on the NABS Advice Line if you’d like to talk to a friendly, impartial Advisor about what your options are. You can email us at [support@nabs.org.uk](mailto:support@nabs.org.uk) or call us on 0800 707 6607

## 7. What happens if I'm facing redundancy while pregnant or on maternity leave?

In this section, you can find out about the following topics:

- Facing redundancy while pregnant or on maternity leave
- Suitable alternative roles
- Maternity pay

## **Facing redundancy while pregnant or on maternity leave**

If you're pregnant or on maternity leave, you are entitled to be consulted with about proposed redundancies that may affect you, with as much warning as possible. Your redundancy must be genuine and the process fair, and you would expect the consultation to include discussions around:

- The reasons for the proposed redundancy and the roles being affected
- Alternatives to redundancy, such as voluntary redundancy, or reduced working hours
- The selection criteria used to score you and how this scoring was carried out (If you are part of a 'pool' of employees with the same or similar role who are all at risk of redundancy, scoring may be used to determine who will be made redundant)

It's important to note that although being pregnant or on maternity leave doesn't make you exempt from redundancy, if you feel your selection for redundancy has been based on reasons related to your pregnancy or maternity leave, you may wish to explore the protection available to you under unfair dismissal and unlawful discrimination law.

## **Suitable alternative roles**

If you're pregnant, whilst 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 of 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.

## **Maternity pay**

### **I'm pregnant and am being made redundant. Will I still receive maternity pay?**

If you qualify for statutory maternity pay (SMP), you will still receive it.

SMP applies if you:

- Earn an average of at least £120 a week
- Have provided your employer with at least 28 days' notice and proof that you're pregnant
- Have worked for your employer continuously for at least 26 weeks continuing into the 'qualifying week' (the 15th week before your expected week of childbirth)
- You are made redundant before going on maternity leave but after the beginning of the 15th week before the baby is due

This payment would be in addition to your statutory redundancy payment and other payments such as notice pay (if this is being paid in a lump sum) and untaken accrued holiday.

If you're made redundant and your employment ends before your qualifying week you may be able to claim Maternity Allowance from the government instead.

### **I'm on maternity leave and am being made redundant. Will I still receive maternity pay?**

If you are on statutory maternity leave and pay when your employment ends due to redundancy, you will be entitled to the remainder of your statutory 39 weeks' maternity pay.

If you were in receipt of contractual maternity pay, this payment would typically stop on the date you are made redundant. You would receive statutory maternity pay for the remainder of the period.

You would also be entitled to any other redundancy payments owed to you.

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 or emailing [support@nabs.org.uk](mailto:support@nabs.org.uk).

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*NABS Redundancy Guide- For those with more than two years' service at current employer*

*Updated 11/04/24*