

## **Redundancy: Navigating Your Rights and Responsibilities**

At HKKLAW, we specialise in guiding both employees and employers through the legal intricacies of redundancy. Redundancy can be a challenging time for all involved, requiring sensitive handling and a clear understanding of legal rights and procedures.

Our expertise ensures that employees understand their rights and entitlements and understand the fairness of the process, while employers are equipped with strategies to implement fair and lawful redundancy procedures to mitigate the risk of legal claims.

Whether you are facing redundancy or managing it within your organisation, HKKLAW is committed to providing clear, practical support and expert legal advice.

### **Guidance on Redundancy**

**When is an Employee Redundant?** Redundancy occurs when an employer needs to reduce their workforce because a job no longer exists or will exist or intend to carry on that business in the place where the employee was employed or the fact that the requirements of a business for employees to carry out work of a particular kind have ceased, diminished or expected to cease or diminish, often due to changes in the company's circumstances or needs..

**Qualifying for Statutory Redundancy Pay** Employees with at least two years of continuous service are typically entitled to statutory redundancy pay. The amount depends on the employee's age, length of service and weekly pay, up to a statutory maximum. Redundancy rights are available for fixed-term employees working under a contract if they meet these criteria.

**Challenging the Fairness of Redundancy** Employees can challenge the fairness of a decision to be selected for redundancy and the failure to find alternative employment.

### **Key Areas to Consider for Fairness:**

- **Rationale:** Employers must have a clear, legitimate reason for redundancy, communicated transparently to affected employees. However please note that the law generally regards the rationale for the redundancy to be a business decision on which Tribunals should not sit judgment.
- **Pool for Selection:** The group of employees from which redundancies will be made should be fairly chosen, with a logical basis for inclusion.
- **Selection Criteria:** Criteria should be objective, measurable, non-discriminatory and applied consistently to all employees within the selection pool. The reason for selection should not be automatically unfair: usually a reason connected with pregnancy, trade union activities or the assertion of various statutory rights.
- **Consultation:** Employers are required to consult with employees/ employee representatives about the redundancy, including discussions on avoiding redundancy, reducing the number of redundancies and mitigating their consequences.

- **Suitable Alternative Employment:** Offering alternative roles within the organisation can mitigate the impact of redundancy, with considerations for the employee's skills and location. Offers of suitable alternative roles should be made where available, with refusal only on reasonable grounds.
- **Bumping:** This involves displacing another employee to retain a potentially redundant employee in a different role.
- **Trial Periods:** Employees have the right to a four-week trial period in any alternative employment offered, to assess suitability without losing their right to statutory redundancy pay.

**Consultation Period:** In certain redundancy situations, the law mandates minimum consultation periods. For redundancies involving 20 to 99 employees at a single establishment, the consultation must start at least 30 days before any dismissals take effect. For 100 or more employees, the period extends to at least 45 days. These minimum periods are designed to provide sufficient time for discussion, allowing employees to understand the rationale behind the redundancy, explore alternatives and negotiate terms.

For redundancies involving fewer than 20 employees, there is no legally prescribed consultation period, though employers are still expected to conduct a fair and reasonable consultation process with affected employees.

**Time off Work:** An employee who is under notice of redundancy and who have been continuously employed for at least two years are entitled to reasonable time off during their notice period to seek new employment or arrange training for future employment. This entitlement is aimed at facilitating a smoother transition to new work opportunities, ensuring that individuals have the support and time necessary to secure employment elsewhere. Employers are required to pay employees for this time off, up to a maximum of 40% of a week's pay.

**Appeals:** There is no obligation to provide an appeal against a redundancy decision.

**Time limits for claims:** Claims should be brought to an Employment Tribunal within three months less one day from the dismissal date.

HKKLAW's approach to redundancy matters is informed, strategic and empathetic, ensuring both employees and employers navigate these challenging times with confidence and legal precision.