

Redundancy

Termination of Employment Series

Redundancy

It is important to note that statutory redundancy is the minimum payments to which you may be entitled in a redundancy situation. In many unionised employments, trade unions have successfully negotiated better redundancy settlements for their members.

Where there is the possibility of a redundancy, short-time or lay-off situation occurring in your workplace, you should **consult immediately with your trade union** who will make you aware of your entitlements and any other implications. They will also be able to provide you with accurate information and advice on your situation.

General definitions

What is redundancy?

Redundancy occurs where a worker's job ceases to exist and the position is not replaced due to a number of conditions such as:

- ➔ The deteriorating financial position of the company
- ➔ Not enough work to retain you in employment
- ➔ The company closes down
- ➔ Reorganisation or restructuring of the company resulting in the position becoming unviable
- ➔ Due to a decrease in his employer's requirement for employees of his kind and qualifications.

The two significant features of redundancy are "impersonality" and "change". Redundancy is a substantial ground justifying dismissal. However, it should be noted that selection for dismissal in contravention of an agreed or established procedure is an unfair dismissal. An employer must act fairly in relation to the criteria to be applied in making a selection for redundancy, including the procedural and substantive aspect of the employer's decision

What is voluntary redundancy?

This occurs when your employer wishes to reduce their workforce and asks for volunteers for redundancy. If you volunteer in such circumstances you retain your entitlement to statutory redundancy. An employee cannot volunteer for redundancy unless a statutory redundancy situation exists.

It is crucial that you are aware of all the implications of volunteering for redundancy. Before you make any final decisions in relation to your employment and possible redundancy, you should seek advice from your union official.

What is lay-off?

Lay-off occurs where there is a shortage of work but it is considered that this will only be for a temporary period. Once the appropriate notice is given, any employee who is “let go” in this situation will be regarded as laid-off.

If no notice is given, there may be a claim for redundancy. If in doubt of the situation you find yourself in, you should consult with your union representative for clarification as soon as possible.

What is short-time?

This arises when your employer reduces your working hours and your earnings and hours are less than half your normal weekly pay. If your employer wishes to put you on short time they must provide you with notice of the new arrangements and indicate that it is for a temporary period. Failure to do this may result in a claim for redundancy.

For more information and advice on this and similar situations, please contact your trade union representative.

If your employer has notified you of possible future changes to your working terms and conditions, you should contact immediately your union.

Eligibility

I am to be made redundant, do I have an automatic entitlement to redundancy?

Similar to other statutory entitlements, there are a number of conditions which have to be met to be eligible for entitlement to statutory redundancy. They are:

- ➔ 104 weeks continuous service
- ➔ Aged from 16 years
- ➔ Employment is terminated due to redundancy

If you are concerned about redundancy, you should seek support and advice from your union representative who will be able to provide you with assistance and information regarding your statutory entitlements. They may also be able to negotiate an improved scheme with your employer.

My employer is offering me different working conditions, what should I do?

As a general rule, where the terms and conditions offered are different from those of the existing job, the offer must be of “suitable employment”. Where there is a material deterioration in the terms and conditions of employment, a case of redundancy may exist.

If an employer is proposing to change your working conditions, it is imperative that you notify immediately your union representative or union official of any proposed changes to your current working conditions. Changes to working conditions should always be the subject of negotiations between your union and employer.

Does the issuing of a P45 always mean there is a redundancy?

Not in all cases. A P45 could simply mean that a person is being **laid off** for a period of time.

I was laid-off recently, can I claim redundancy?

If you were laid off or put on short time for more than:

- 4 continuous weeks OR
- 6 broken periods of weeks and all 6 weeks fall within a 13- week period

you are entitled to claim for a redundancy lump sum, provided your employer does not counter claim by offering 13 weeks continual employment. If this is the case, you then cannot demand to be given notice under the Minimum Notice legislation as you are considered to have voluntarily left your employment.

For further information contact your local union representative or official.

Redundancy payments

I have recently been told I am to be made redundant, how do I calculate my entitlements?

The statutory redundancy lump-sum entitlement is calculated as follows:

- 2 weeks pay for every year of service (subject to a ceiling of €500 per week).

- A bonus week's gross pay, subject to the statutory ceiling, is added to that payment to get your final statutory redundancy lump sum figure.

This calculation is based **only on your entitlements** under the law. It should be noted that your trade union can enter negotiations to improve on your statutory redundancy entitlement.

It is also worth pointing out that under the redundancy payments scheme (Redundancy Payments Act 1967-2003) your employer is entitled to a **60% rebate** (of the statutory lump sum only) from the Social Insurance Fund provided they have given you **2 weeks notice**.

As there may be scope to increase the payments made to you, you should notify your union to ensure they can become involved in any redundancy negotiations with your employer.

What is the maximum gross pay per week used for calculating redundancy payments?

For employees given notice, the maximum figure, or "ceiling" is €500 per week. Any income higher than that is disregarded for redundancy calculation purposes.

For further information on redundancy related issues, you should contact your union official as soon as possible.

Is a redundancy lump sum payment taxable?

A statutory redundancy lump sum, which under the law must be paid, is entirely tax-free.

If you receive a payment above and beyond the statutory payment (an ex-gratia payment), that is taxable, but only when it goes over a certain limit.

Payments for redundancy above the statutory minimum amount are generally the subject of union negotiations, therefore you should contact your union official for information and further advice on this and related matters.

Redundancy & Notice

I was only given a weeks notice of redundancy, is this legal?

Under the Minimum Notice and Terms of Employment Acts 1973 to 2001, there is an increasing scale of entitlement to notice of redundancy linked to your length of service (which has to be 2 years or more). The notice periods are as follows:

Length of Service Minimum	Notice
2 years to less than 5 years	2 weeks
5 years to less than 10 years	4 weeks
10 years to less than 15 years	6 weeks
More than 15 years	8 weeks

Therefore if your service is 2 years or more, you are entitled to at least 2 weeks notice.

Please note you must have 2 years service with your employer to be entitled to statutory redundancy.

In the case that you have less than 2 years service, you should consult with your union for negotiated provisions.

What is the minimum period of notice required for redundancy?

As far as Redundancy Payments Section is concerned, the main requirement is that there must be at least 2 weeks notice, which is required by the Redundancy legislation. All of the longer periods of notice come under the Minimum Notice and Terms of Employment Acts 1973 to 2001 [previous section].

My employer wants to make me redundant with immediate effect and has offered me an additional payment, should I accept?

Under the Minimum Notice & Terms of Employment Acts 1973 to 2001 you are entitled to **minimum periods of notice**, depending on your length of service with your employer.

However, with your consent, you can waive your right to notice or you can accept a payment in lieu of such notice.

Like all other work related issues, it is worth obtaining the advice of your union representative to ensure you get the best arrangement possible.

If a person is given insufficient notice of redundancy, being told on Tuesday 1st that they will be made redundant on Thursday 3rd, and given money to compensate them for the remainder of their two weeks notice, (payment in lieu of notice), what date of termination is inserted on the RP50?

The date used is the date that would have been applicable if they had got their full notice. See section on minimum notice provisions.

I am being made redundant at the end of the month but I need to attend for an interview before then, am I entitled to go to it?

During the period of notice of redundancy, employees should be given reasonable paid time off to look for other work or to make arrangements for training for future employment.

For further information on this and how redundancy in your workplace might affect you, you should contact your union official immediately.

Change of ownership

My company has changed ownership. I left on Friday evening and started in the exact same job on Monday morning with the new owner, is that a redundancy?

No. Under Transfer of Undertakings legislation, you should be re-employed by the new owners, without break of service. Of course, if the new owners carry out a complete re-organisation, effectively changing your working conditions, then there can be a redundancy situation. As long as you are employed by an economic entity which means an organised grouping of resources which has the objective of engaging in an economic activity whether or not that activity is for profit or whether it is central or secondary to another economic or administrative entity then the regulations can apply to your situation.

The crystallisation of contracts of employment is the best example of what happens when a transfer takes place. Originally, the contract of employment was not transferred with an undertaking but that is not the case now.

If you are in any doubt or have any worries about your current employment situation, you should immediately contact your union official for support and advice.

Redundancy & Unfair Dismissals

Can a person be paid both a redundancy lump sum and compensation for unfair dismissals on foot of a taking a case to the Employment Appeals Tribunal?

No, both cannot be claimed. You are either made redundant or you are dismissed.

In a redundancy situation, the actual job disappears, see the earlier section on redundancy. The Redundancy Payments Act 2003 emphasises the objective nature of redundancy as being work-related by using the phrase redundancy “for one or

more reasons not related to the employee concerned”.

In a dismissal situation, an employee is asked to leave, whether fairly or unfairly, and is simply replaced by another person doing exactly the same job. Contact UnionConnect @ 0818 300 900 for the factsheet on unfair dismissals for further information.

Redundancy Calculations & Reckonable service

What is reckonable service?

Not all service is “reckonable” which means it is taken into consideration when calculating a redundancy payment.

Reckonable service is when an employee:

- Is at work
- Absent from work due to sickness, holidays or with your employer’s permission
- On Maternity leave
- On Force Majeure Leave (defined by Parental Leave Act)
- Absence from work due to **lock-out [hover note]**
- Any period of service where continuity is preserved because of an order for re-instatement or re-engagement under the Unfair Dismissals Act 1977-2001

What is not included as reckonable service?

The following will not be included as reckonable service, occurring in the last 3 years of service, and therefore will not be used to calculate your redundancy payment.

- Any absence over 52 consecutive weeks if due to an occupational accident or disease as defined by the law

- Any absence over 26 consecutive weeks because of illness or injury other than that defined above
- Any absence over 13 weeks in any 52 weeks which is authorised by the employer but not mentioned above
- Any absence because of a strike in the business or industry in which the employee is employed

How are “excess days” calculated for redundancy entitlement purposes?

All “excess” days will be credited as a proportion of a year. For example, 91 days, which almost amount to a quarter of a year (24.93% to be exact) will therefore give the employee an extra 24.93% of a years service, on top of whatever number of full years they have worked.

The simple formula used for calculating the proportion of a year to be credited to the employee is 91 divided by 365 = 24.93%.

I have moved to different companies over the years, when does my reckonable service start?

The reckonable service is from the start of your employment at the last company. If that company is a subsidiary of the previous company, then it would be the start of employment in the previous company.

What is the difference between Ordinary Illness and Occupational Injury and how does it affect redundancy calculations?

Ordinary Illness means illnesses which people can get in general e.g. influenza. The first 26 weeks of such leave are allowable in calculating a redundancy lump sum.

A full 52 weeks are allowable (reckonable) in respect of an **Occupational Injury**, which is work-related (occupational accident or injury).

If an employee is on sick leave for 8 months, with 6 months therefore being reckonable, and 2 months being non-reckonable, returns to work for, say two weeks and goes sick again, does the 6 months of reckonable service start again?

Yes. An employee can go out sick, return to work, go out sick again, and return again, and in each case gets the full benefit of 6 months sick leave being reckonable. Again, this question of non-reckonable service applies only to the last 3 years of employment.

I was receiving Unemployment Benefit due to being temporarily laid off. Does this affect the calculation of how much redundancy payment I am due?

Yes. If it is a lay-off, all the period of lay-off is non-reckonable for redundancy purposes. This means it must be excluded in deciding how many years you served and therefore in calculating how much redundancy is due.

However, periods of short-time, in contrast, are fully reckonable. All of this applies only to a 3 year period ending on the date of termination. There is no non-reckonable service prior to this 3 year period.

Is absence from work due to a strike reckonable for redundancy payment purposes?

No. It is regarded as non-reckonable service (only in the last 3 years of service).

What is the situation regarding workers on what is called “fixed-purpose” contracts?

The Redundancy Payments Act 2003 safeguards the right to redundancy of a worker employed under a “fixed-purpose” contract i.e. where the exact duration of the contract was incapable of being determined at the beginning.

If the contract is not renewed following the fulfilling of the purpose, the fixed-purpose contract therefore ceases, a redundancy situation can arise.

Redundancy & statutory leave

Can an employee be made redundant while on Maternity Leave or on Additional Maternity Leave?

No. Notice of Redundancy (included in RP50) cannot issue when a person is on Maternity Leave or on Additional Maternity Leave.

If you are on maternity leave and are concerned about your workplace situation, you should contact immediately your trade union representative. They will be able to make representations to your employer on your behalf.

Are Maternity Leave and Additional Maternity reckonable for redundancy calculation purposes?

Yes, the first 26 weeks of maternity leave and additional maternity leave are both fully reckonable for redundancy calculation purposes

The same applies to protective leave or natal care absence within the meaning of the **Maternity Protection Act 1994**.

Please note that all this applies only to the 3 year period ending on the date of termination of employment. Absences from employment before that period are always fully reckonable.

Is Parental leave reckonable for redundancy calculation purposes?

Yes, the full 14 weeks of parental leave are fully reckonable for redundancy purposes (under the Parental Leave Act, 1998).

So also is force majeure leave within the meaning of the Parental Leave Act 1998. Again, the 3 year rule referred to above applies here also.

Is Adoptive Leave reckonable for redundancy purposes?

Yes. Since 1st of March 2007, the first 24 weeks of Adoptive Leave have been reckonable under the Adoptive Leave Act, 1995 (as amended). The additional 16 weeks Adoptive Leave (unpaid) are also reckonable.

Again, the **3 year rule** referred to above applies.

Is Carer's Leave reckonable for redundancy purposes?

Yes. Carer's Leave, up to a maximum period of 104 weeks in respect of any one care-recipient, is reckonable. Again, the 3 year rule applies – non-reckonable service applies only to the last 3 years of service. Everything before that is fully reckonable.

Redundancy & Part-time Workers

What is the position regarding the redundancy rights of Part-Time Workers?

The Redundancy Payments Act 2003 has secured the rights of part-time workers to a statutory redundancy payment through amending insurability requirements for redundancy to bring them into line with the Social Welfare Acts and the Protection of Employees (Part-Time Work) Act 2001.

Part-time employees cannot be treated in a less favourable manner than comparable full-time employees in relation to conditions of employment. In particular, there is recognition for the rights of workers to statutory redundancy in the following cases:

- casual employment
- subsidiary employment (where a person depends on another employment for his/her livelihood)
- employment of inconsiderable extent i.e. very low wage.

Redundancy & working abroad

What is the redundancy position regarding employees who commence working abroad?

Under the Redundancy Payments Act 2003 employees who start work in a company abroad, work there for some time and are then transferred to the company or an associated company in the Republic of Ireland and work here for at least 2 years before being made redundant, will have **all of their service counted** in calculating their statutory redundancy entitlements.

If an employee gets the benefit of a house or childminder facilities as a benefit-in-kind, how is this calculated for RP50 purposes (calculation of statutory lump sum payment)?

It is up to the employer and the employee to agree figures between them for rent and childminder costs, to be inserted in the form as weekly benefits-in-kind. It is important that you seek the advice from your union official when dealing with all workplace issues, particularly redundancy.

I work for an agency who is under contract to a company, who is considered to be my employer?

As a general rule, whoever pays the wages is deemed to be the employer. So if the agency pays your wages, then it is responsible for making a statutory redundancy payment to you.

What are the time limits for applying for a rebate and for a lump sum?

6 months for a rebate (from the date of payment of the lump sum by the employer) and 52 weeks (one year) for a lump sum, though the Employment Appeals Tribunal (EAT) has the power to extend the lump sum deadline from 52 weeks to 104 weeks. The 52 week deadline applies both to the making of a claim to the employer (Form 77) and to the making of a claim to the EAT in a situation where the employer disputes payment of redundancy.

I am an apprentice who is to be made redundant. Am I entitled to lump sum payments?

Yes, provided you fulfil the usual conditions and are fully insurable for all benefits under the Social Welfare Acts etc. However, when you finish your apprenticeship, your employer has one month in which to end your services without paying redundancy.

If you have been or are to be kept on for more than one month after completing your apprenticeship, the period spent as an apprentice over 16 years of age will be reckonable in calculating the redundancy lump sum.

What is a piece-worker?

A piece worker is a worker whose pay fluctuates according to the work performed e.g. a person living on bonuses, commissions etc, in contrast to a person with a fixed rate of pay per week, as is the situation with most people.

I am a pieceworker, how is my pay calculated for redundancy purposes?

You will need to go back 13 weeks from the date of termination. You then take a 26 week period ending on this date. Total pay for this 26 week period is calculated, with total hours worked also calculated.

Total pay is divided by total hours to get your pay per hour. Weekly pay for redundancy purposes is calculated by multiplying this hourly rate by the number of hours normally expected to be worked in a week.

It might be noted that where an employee does not work for any week or weeks during this 26 week period, these “empty” weeks are not counted for redundancy purposes, and the most recent week or weeks counting backwards are taken into account instead.

You should always contact your union if you are unsure how to calculate any entitlement due to you under the law or as part of a collective agreement.

I am in dispute with my employer who has claimed that I don't have any right to a lump sum. What should I do?

You can bring a case under the Redundancy Payments Acts, 1967 to 2003 to the **Employment Appeals Tribunal**, which is an independent body.

However, it is advisable in all instances of workplace dispute, that you bring the matter to the attention of your union official who will be able to advise you. In the case that you need to go to the EAT, your union will provide support and advice.

My employer has refused to pay me my redundancy entitlements. What should I do?

You can send your employer Form 77, applying for a redundancy payment. If they continue to refuse, but agrees to fill out and sign RP50 (redundancy Certificate), which acknowledges your right to a payment, as opposed to actually making the payment, you can then apply to Redundancy Payments Section of the Department for payment from the Social Insurance Fund (SIF).

If the employer does not even agree to signing Form RP50, then you can apply to the EAT. If successful, they can ask the employer again for payment. If it is again refused, they can apply to Redundancy Section for payment from the SIF.

It is advisable in such instances as outlined above, that you contact your union official who will be able to assist you in resolving this matter.

I am a seasonal worker, can I get redundancy payments?

Yes, but only at the usual commencement time of your seasonal work. Only if at that time you are not then re-employed does the question of redundancy arise, but not until then.

If you have any difficulties with this or other workplace issues, you should contact your union official to discuss your situation in more detail.

Does the minimum wage affect redundancy payments?

On Form RP50, the total gross weekly wage (shown in section 2 on the back of the form) divided by the number of hours worked per week (on the front of the form) should never be lower than the existing minimum wage (currently €8.65). Otherwise it is an underpayment and the employer is not entitled to the 60% rebate until full payment is made.

I was on a career break and have only recently returned. Can I get a redundancy payment?

Yes, provided you fulfil all the other conditions such as being fully insurable if you are not a part-time worker etc. According to the Redundancy Payments Act, 2003, career break-type absences “authorised by the employer” are fully reckonable for redundancy purposes in respect of redundancies notified/declared as and from 10th April, 2005.

What is a collective redundancy as opposed to an ordinary redundancy?

A collective redundancy generally means a large scale redundancy. At the very minimum, there must be at least 20 people employed, with at least 5 of them being made redundant. This can rise to an entire workforce of hundreds of people being made redundant.

The legislation applicable here, the Protection of Employment Act, 1977, which requires that both the Minister for Enterprise, Trade and Employment and employees’ representatives should be consulted at least 30 days in advance of people being made redundant, is entirely separate from the Redundancy Payments Acts, 1967 to 2007. A separate guidance booklet on the Protection of Employment Act, 1977, dealing with collective redundancies, is available from the Department.

Under amending regulations 21st December, 2000 – The European Communities (Protection of Employment) Regulations, 2000, may present a complaint to a Rights Commissioner that an employer has contravened Section 9 or 10 of the 1977 Act in relation to the requirement to consult with employee representatives and give them all the relevant information.

Are employees of FÁS CE/JI Schemes entitled to a redundancy payment?

Yes. If you are an employee of a FAS CE/ JI scheme and fulfil the usual criteria, you are entitled to be paid by the company/ organisation that employs you.

By agreement with FÁS, it is always the responsibility of the employer to pay you, rather than the Department through the SIF Fund. Redundancy Payments Section then gives the employer the appropriate rebate.

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