

## Redundancy Isle of Man Employment Law



The information contained in this brief is relevant to the following Acts:

The Redundancy Payments Act 1990,  
The Employment Act 2006

### **The Right to a Redundancy Payment**

An employee who is:

- dismissed because of redundancy; or
- laid off or kept on short time for a certain time

is in certain cases entitled to be paid a lump sum (a 'redundancy payment') by his or her employer.

### **Eligibility**

To be eligible for a redundancy payment an employee must be:

- an employee
- have continuous employment for 2 years
- dismissed (this includes both non-renewal of a limited-term contract, constructive dismissal and where an employee is given notice by the employer and then gives notice to terminate the employment on a date earlier than the employer's notice).

### **Reason for Dismissal**

The dismissal must be wholly or mainly by reason of

redundancy, i.e.:

- the employer has ceased, or intends to cease, the business, overall or in a particular place; or
- the demand has diminished, or is expected to diminish, for an employee to do work of that kind, overall or in a particular place.

Therefore, if the employer wishes to avoid making a redundancy payment, he must be able to show another reason for dismissal.

### **Exemptions**

Various types of employees are excluded from the right to claim a redundancy payment, for example:

- an employee who is, at the date of dismissal, past a normal retiring age of less than 65 or, if there is no such normal retiring age, the age of 65;
- employees ordinarily working outside the Island;
- a domestic servant employed by a relative.

### **Offer of alternative employment by the employer**

An employee is not entitled to a redundancy payment if he or she is offered, and unreasonably refuses, suitable alternative work with the employer or an associated employer. Whether alternative work is suitable (and whether it is reasonable to refuse it)

will depend on factors such as how the terms and conditions of the new job compare with the previous one, and the location of the new job in relation to the previous one. If the terms and conditions of the new job are different from the previous one, the employee has a trial period of 4 weeks (or longer by agreement, to allow for training) within which he or she may reject the new job. Unless the rejection is unreasonable, the entitlement to a redundancy payment is preserved.

### **Lay-off and Short Time**

An employee is 'laid-off' if he or she receives no work and no pay of any kind from the employer. An employee is on 'short time' if in any week, because of a shortage of work, he or she receives less than half a week's pay.

Where an employee is laid-off or on short time for:

- 4 consecutive weeks, or
- any 6 weeks (of which not more than 3 are consecutive) in a 13-week period,

the employee is entitled to give a notice in writing to the employer stating that he or she intends to claim a redundancy payment. If within 4 weeks of doing so the employee gives notice to terminate the employment, he or she is entitled to a redundancy payment, unless the employer serves a counter-notice. The employer may serve a counter-notice within 7 days, contesting the employee's notice on the ground that there is a reasonable prospect of resumption of work. Unless the employee continues to be laid off or on short time for a further 4 weeks, the employer can dispute the claim to a redundancy payment, and the employee will not be entitled to it unless the Tribunal so decides.

### **Termination Date**

The entitlement to, and amount of, a redundancy payment are determined by reference to the '**relevant date**', which is:

- where the contract of employment is terminated by notice, the date the notice expires;
- where the contract of employment is

terminated without notice, the date when it terminates;

- where the employee is employed under a contract for a limited-term and that contract terminates by virtue of a limiting event without being renewed under the same contract the date when it expires;
- where an employee is given notice by the employer and then gives notice to terminate the employment on a date earlier than the expiry of the employer's notice, the date when the employee's notice expires;
- where the employee gives notice during a trial period, the date when the new contract is terminated (for the purpose of calculating the time within which a claim for a redundancy payment can be made, or the date when the original contract terminated (for any other purpose).

### **Entitlement when an Employee Wishes to Leave Early**

If an employee wishes to leave before his or her notice ends and the employer has no objection a redundancy payment may still be payable. Where an employee gives the employer written notice that he or she wishes to leave early (for example, because he or she has got another job) and the employer objects to this, the employer may issue a written request to the employee asking him or her to withdraw the notice and warning that if he or she does not, the employer may contest any right to a redundancy payment.

### **Tribunal Claims regarding Redundancy Payment**

The employee may refer to the Employment Tribunal the following questions:

- whether he or she is entitled to a redundancy payment, or
- how much the payment should be.

Where the employer has refused to make a payment because the employee left before the end of the notice period despite the employer's objection, the Tribunal will consider the employee's reasons for wanting to leave early, and the reasons given by the

employer for refusing his or her request, and will determine whether the employee should receive all, some or none of the redundancy payment.

### **Time limit for claims for Redundancy Payment**

The right to a redundancy payment lapses 12 months after the relevant date unless within that time:

- a redundancy payment has been agreed and paid;
- the employee has made a claim for the payment to the employer in writing;
- the employee has referred the claim to the Employment Tribunal; or
- the employee has made a complaint of unfair dismissal to the Tribunal.

However, the Tribunal may allow the right to be enforced if such a claim, reference or complaint is made within the following 12 months, and it considers it just and equitable that the employee should receive a payment having regard to the reason why it was not made within the first 12 months.

### **Calculation of Redundancy Payment**

The amount of a redundancy payment is one week's pay for each complete year for which the employee has been continuously employed. A week's pay is capped at a statutory prescribed maximum which is currently £480 per week (when the relevant date is after 20th July 2009. If the relevant date is prior to this date, the statutory prescribed maximum is capped at £420 per week).

Where an employee is within 12 months of attaining age 65, the redundancy entitlement is reduced by one-twelfth for each complete month expired since his or her 64th birthday. The amount therefore reduces to nil at age 65.

In addition to any redundancy payment, the employee will be entitled to receive their contractual notice (or payment in lieu of the same), accrued holiday pay, and any contractual benefits for the duration of the notice period.

### **Notification of Payment**

Where a redundancy payment is made without a reference by the employee to the Employment Tribunal, the employer must give the employee a written statement indicating how it is calculated.

Failure to give a statement without reasonable cause is an offence carrying a maximum fine on summary conviction of £200 (or, if the employee made a request in writing for a statement, £1,000).

### **Redundancy Rebates**

A small employer who makes a statutory redundancy payment to an employee is entitled to a rebate from the Manx National Insurance Fund of a certain proportion of the payment, subject to certain administrative requirements.

### **Unfair Dismissal and Redundancy**

(Employment Act 2006, section 128)

Dismissal on grounds of redundancy is automatically unfair if the employee is selected for various prescribed reasons. Examples are certain reasons connected with pregnancy, childbirth or maternity leave, adoption leave, paternity leave, for taking action of certain kinds in the interests of health and safety; for asserting a right to annual leave, for performing or proposing to perform functions or activities as a trustee of an occupational pension scheme, for making a protected disclosure ('whistleblowing') and for asserting a statutory employment right.

In addition, selecting an employee for redundancy because of his or her sex, or because he or she is married, is unlawful under the Employment (Sex Discrimination) Act 2000.

Also, dismissal on grounds of redundancy may be unfair where an unfair procedure has been carried out and the Isle of Man will generally follow the UK common law so that a dismissal will be unfair on procedural grounds if:

- the employer has failed to give the employee as much warning or opportunity for consultation as practicable; or

- the selection criteria are unreasonable or are applied unreasonably; or
- the employer has failed to offer the employee suitable alternative employment which was available.

There is currently no statutory legislation which prescribes time limits for consultation but generally the earlier that employees are consulted, the more likely it is that the procedure carried out will be deemed to be fair.

Should you have any questions or requests for further information please contact:

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