

UNFAIR REDUNDANCY DISMISSAL

An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:-

- a) The fact that his/her employer has ceased or intends to cease:-
 - i) to carry on the business for the purposes of which the employee was employed by him/her or
 - ii) to carry on that business in the place where the employee was so employed.

- b) The fact that the requirements of the business:-
 - i) for employees to carry out work of a particular kind, or
 - ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer or
 - iii) have ceased or diminished or are expected to cease or diminish.

Although redundancy is a potentially fair reason for dismissal, it can be unfair in certain circumstances as follows:-

- 1) There is no genuine redundancy situation. Although a Tribunal cannot look into the rights and wrongs of an employer's decision they can investigate whether the redundancy situation is genuine.

- 2) Failure to consult. The employer should give as much warning as possible of impending redundancies. There is also an obligation upon the employer to carry out a consultation with employees during the redundancy process. Failure to consult may make a dismissal unfair.

- 3) Unfair selection. The employer must choose a fair pool from which to select the redundant employees. Once a reasonable pool is chosen then the employer must choose fair selection criteria and apply them fairly and objectively.

- 4) Suitable alternative employment. The employer must look for suitable alternative employment and offer any suitable alternative available vacancies.

The Tribunal will consider that a dismissal is unfair if the employer fails to meet the overriding test of fairness.

The question of whether the dismissal is fair or unfair depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. It also shall be determined in accordance with equity and the substantial merits of the case.

The same time limits apply as for unfair dismissal.*

It is common for employers to offer employees a 'compromise agreement' in a redundancy situation. **

*See Unfair Dismissal Fact Sheet.

** See our section on Compromise Agreements on www.dsmlegal.co.uk.