



**APRIL COMPLETE CARE SOLUTIONS LTD
(The “Company”)**

Redundancy

April Complete Care Solutions Ltd

14 Hendre Road,
Pencoed, Bridgend
CF35 5NW

Telephone 01656 863963

Fax 01656 865373

Issued – 12/05/17

REDUNDANCY

1. ELIGIBILITY

To be eligible for a redundancy payment an individual dismissed by reason of redundancy must be an employee aged between 18 and 64 with at least two years' continuous service with the same employer.

The following are not entitled to receive a redundancy payment:

- (a) temporary workers engaged under a contract for services are classed as self employed and generally cannot bring a claim for a redundancy payment unless the Court or Employment Tribunal finds that an employment relationship exists between the worker and employment business. [Please refer to Chapter 3A "Employment Status of Temporary Workers".]
- (b) employees over the normal retiring age for their job. Where there is no normal retiring age employees aged 65 and over may not bring a claim for a redundancy payment;
- (c) employees normally working abroad;
- (d) employees on fixed term contracts of two years or more who have waived their right to a redundancy payment;
- (e) employees who unreasonably refuse the offer of suitable alternative employment in a redundancy situation.

2. DEFINITION OF REDUNDANCY

An employee will be dismissed by reason of redundancy if the dismissal was due to one of the following reasons:

2.1. Job redundancy

This is where the employer has ceased or intends to cease to carry on the relevant business or because the need for employees to carry out work of a particular kind has ceased or diminished or is expected to do so. This will be the case whether the cessation of business is permanent or temporary.

2.2. Place of work redundancy

This may occur where the employer's business relocates or closes so that the need for employees to carry out work of a particular kind in that location ceases.

2.3. Employee redundancy

This will occur where the requirement for the number of employees to do work of a particular kind has ceased or diminished or is likely to do so. Although this will clearly extend to the situation where the employee is dismissed because his own job has disappeared through lack of work, this will also cover situations such as, initial over-manning, new technology, re-organisation of work methods or independent contractors being taken on to do the same work.

The employer must be able to show that he was reasonable in treating redundancy as a sufficient reason for dismissal of the employee in question. This may include considering methods of avoiding redundancies such as providing employees with as much warning as possible, consultation taking place individually and on a collective scale and identifying proper pools from which selection is made.

The fair selection criteria should be as objective as possible. Factors that should be taken into account include:

- (i) length of service;
- (ii) attendance record;
- (iii) disciplinary history;
- (iv) flexibility;
- (v) teamwork and co-operation.

It is therefore important to keep detailed personnel records about relevant matters.

3. OFFER TO RENEW OR RE-ENGAGE

An offer to renew employment is the offer to re-employ an individual in the same or in some other suitable employment, for example, where the employer secures new customers and finds that his work is beginning to increase again and offers the employee his job back. An offer of re-engagement involves an offer of a different job with the same or an associated employer. Employers are associated if one is a company of which the other has control of if both are companies of which a third person has control.

The offer must:

- (a) be made by the employer or an associated employer; and
- (b) made before the contract of employment comes to an end;
- (c) be an offer to re-employ the employee in the same or in a different job; and

- (d) take effect within four weeks of the end of the original contract.

If the employee accepts an offer in accordance with the above requirements, then continuity of employment will not be broken because he is treated as though he has not been dismissed. As a result he will not be entitled to a redundancy payment.

If the employee rejects the offer then the question of whether or not he is entitled to redundancy payment turns on whether the alternative employment offered was suitable. If the alternative employment offered was unsuitable, he will be entitled to a redundancy payment. If he has unreasonably refused suitable alternative employment, the right to a redundancy payment is lost. The key factors taken into consideration by the Employment Tribunal are pay, nature of duties, status, hours, location and whether the new job is substantially equivalent to the old job.

4. TRIAL PERIOD FOR SUITABLE ALTERNATIVE EMPLOYMENT

The employer and employee have a trial period of 4 weeks beginning with the date on which the employee starts work under the new contract to decide whether or not the new employment offered is suitable. If the new employment involves re-training, the employer and employee may agree to extend the trial period but they must agree the date on which the extended trial period ends.

If either the employee or employer terminates the contract during the trial period for a reason connected with the change, the original dismissal by reason of redundancy will revive. Whether or not the employee is then entitled to a redundancy payment still turns on whether the alternative employment offered was suitable.

5. CONSULTATION

Where an employer intends to make 20 or more redundancies the employer must take the following actions:

- a) consult with trade union representatives where a trade union is recognised in respect of the affected employee;
- b) where no union is recognised, the employer may arrange for the election of representatives or consult with existing employee representatives;
- c) a number of obligations are placed on an employer in relation to the election of employee representatives:-
 - the employer must make arrangements to ensure the election is fair;
 - the employer must decide the number of representatives, and these must be sufficient to represent the employees concerned;

- the employer must decide whether different categories of employees should have their own representatives;
 - the employer must decide the length of office of each employee representative to ensure that it is sufficient to enable the consultation process to be completed; and
 - wherever possible there must be a secret ballot.
- d) where employees fail to elect representatives within a reasonable time, having been invited to do so by the employer, the employer must provide each affected employee with details of the information which it would have been required to provide to representatives.

Consultation must begin in good time. In particular if 100 or more employees are to be dismissed at one business premises within a 90-day period the employer must consult at least 90 days before the first dismissal is to take effect. If less than 100 redundancies, he must consult at least 30 days before the first dismissal takes effect.

When consulting the employee's representatives the employer must state:-

- (i) the reason for the proposed redundancies;
- (ii) the number of employees to be made redundant and the descriptions of employees involved;
- (iii) the total number of employees of those descriptions (referred in (ii) above) employed by the employer at the establishment;
- (iv) the method of selection for redundancy;
- (v) the method of carrying out the redundancy program including reference to agreed procedure and time scale; and
- (vi) the method of calculating any non-statutory redundancy payments.

6. EFFECT OF A FAILURE TO CONSULT

If the employer fails to consult individual employees regarding proposed redundancies the Employment Tribunal may find that the dismissal was unfair. Equally employee representatives are protected from unfair dismissal and detrimental treatment because of their participation in the election. They have a right to reasonable time off during normal working hours to perform their functions, and also to undergo appropriate training to enable them to do so. The Regulations does not specify the amount of time off that is reasonable to

allow time off since this will vary according to each circumstances. However, payment should be at the appropriate hourly rate for the period of absence from work.

Furthermore, failure to consult employee's representatives may result in the employees making a claim for a 'protective award' against the employer unless the employer can show that there are special circumstances that render it not reasonably practicable for the employer to comply with his duty to consult. For example, an unforeseen financial crisis may make it necessary to close down a business at short notice without adequate consultation.

A protective award is an order by the Employment Tribunal that an employer should make payment for the protected period in failing to comply with the consultation process. If a protective award is made each employee is entitled to a maximum of 90 days actual pay.

7. AUTOMATICALLY UNFAIR DISMISSAL

Selection for dismissal due to redundancy in the following situations will be automatically unfair:

- (a) for reasons of trade union membership or non-membership;
- (b) because the employee has asserted a statutory right e.g. the right to be paid the National Minimum Wage or holiday pay;
- (c) on grounds of pregnancy or any other reason connected with pregnancy; or
- (d) if the employee is a health and safety representative.

Employers should also note that some selection criteria could also constitute indirect discrimination, for example, on the grounds of sex, disability or race.

8. REDUNDANCY PAYMENT

A redundancy payment is intended to compensate the employee for the loss of his job with that employer. This is calculated by a formula based on age, length of service and a weeks pay. An employer must provide the employee with a written statement detailing the calculation of the redundancy payment.

Working back from the date of termination of employment an employee's redundancy payment is calculated as follows:

- (1) one and a half weeks' pay for each complete year of continuous employment during the whole of which the employee was between the ages of 41 to 65 inclusive;

- (2) one week's pay for each complete year of continuous employment in which the employee was between the ages of 22 and 40;
- (3) half a week's pay for each complete year of continuous employment in which the employee was aged between 18 and 21.

Redundancy payment for a person dismissed at the age of 64 years old is reduced by one twelfth for each complete month between the 64th birthday and the date of dismissal. In addition years worked under the age of 18 do not count when calculating any redundancy payment.

The maximum amount of years that may be taken into account when calculating redundancy payment are twenty years and a week's pay is subject to a maximum threshold which is set by the Government. [Since 1st February 2003, the maximum threshold for a week's pay has been £260. From 1st February 2004 this rises to £270.](#)

9. EMPLOYMENT TRIBUNAL

Where an employee raises a dispute over the right to receive a redundancy payment or in any of the above-mentioned circumstances, an application will be made to the Employment Tribunal for them to determine these matters. Applications to the Employment Tribunal must be made within 3 months of the end of the employee's employment unless it was not reasonably practicable to do so.

If the employer does not accept a claim for redundancy, then there is a presumption that the dismissal was by reason of redundancy if the matter is referred to an Employment Tribunal. The presumption of redundancy is only applicable in relation to the claim for a redundancy payment and it is open to the employer to demonstrate that the reason for the dismissal was not redundancy but was attributable to another reason.

10. LEAVING BEFORE THE NOTICE PERIOD EXPIRES

If the employer has no objection an employee who has been made redundant and who wants to leave before the end of his notice period, may do so and not lose his claim for a redundancy payment. He should inform his employer of this fact in writing.