

Citation

COVID-19

# Redundancy: a starter checklist for employers

A free guide from Citation's HR & Employment Law experts.



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# Redundancy: a starter checklist for employers

The economic shock waves from the COVID-19 crisis have left many employers forced to consider making redundancies to make sure their businesses are in the strongest position to survive and thrive as the UK gradually comes out of lockdown.

While redundancy is never a pleasant topic, it's certainly one that requires careful consideration and expert guidance. Our HR and Employment Law experts have put together a checklist of five of the key things you'll need to think about before embarking upon a redundancy process.



## Have you got a clear business case for why you need to make redundancies?



Set out the reasons why you're proposing to make these changes – this makes sure that employees fully understand the business' challenges.



This will also help if your redundancy process is scrutinised further down the line.



It will also help keep your process on track as a reminder that although these measures are difficult and unwelcome, they may be unavoidable unless an alternative solution can be found.





## Have you considered how many roles will be affected?



If you're planning to make 20 or more employees at one establishment redundant within a 90-day period, statutory rules on consultation will apply.



These include minimum periods of consultation – which is 30 days for 20 or more employees, or 45 days if the number of redundancies is 100+.

It's essential to comply with the rules regarding collective consultation as a failure to do so can result in each affected employee being granted a protective award of up to 90 days' pay (and, in the case of a failure to complete an HR1 form notifying the Department for Business, Energy & Industrial Strategy of the redundancies, this can be treated as a criminal offence with a potentially unlimited fine).



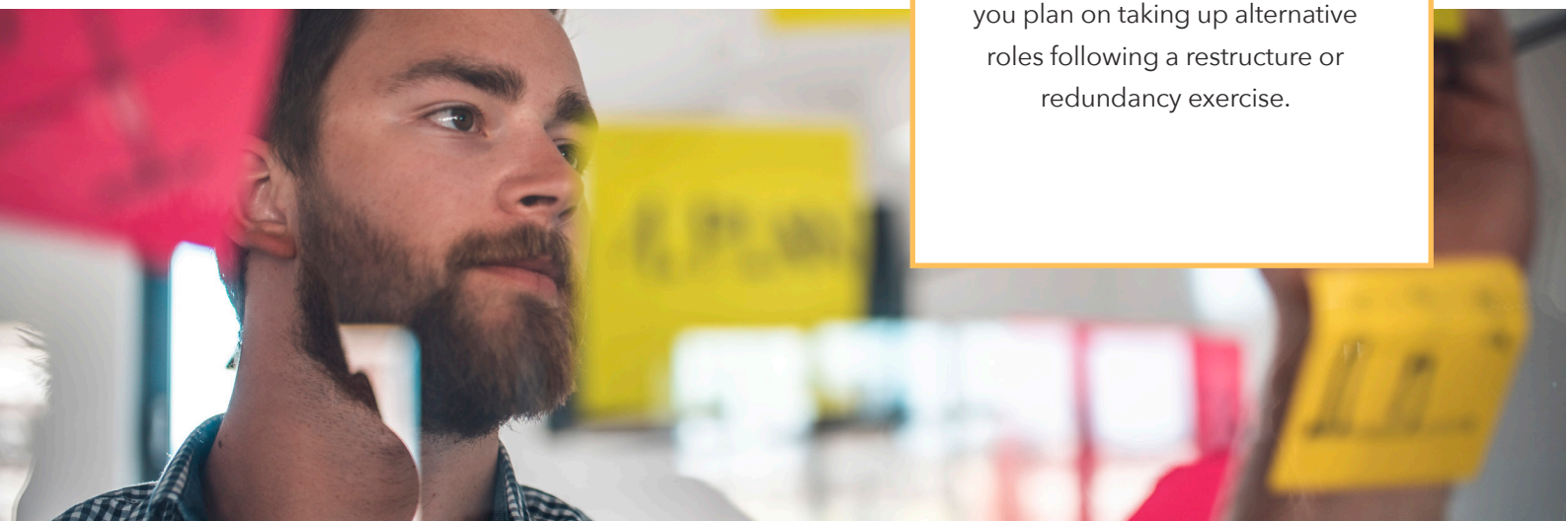
### IMPORTANT

It's important to consider at the beginning how many roles you anticipate will be affected by the changes you need to make. That's because the number of roles affected may trigger collective consultation obligations.



### REMEMBER

It's important to remember that for the purposes of these rules, redundancy is not limited to people actually leaving your business, but will also include people subject to changes to their terms and conditions and people you plan on taking up alternative roles following a restructure or redundancy exercise.





## Have you got a plan for consulting with your employees?

If an Employment Tribunal can see that redundancies have arisen from a genuine business need, they will not try to substitute your decisions with their view on how you should run your business.

Instead, they will focus their attention on whether you have followed a fair process in implementing the changes.



The foundation for this will be consulting with your employees on the proposals before reaching any decisions.



If you're making less than 20 redundancies, the collective consultation rules will not apply which means that you do not have a minimum consultation period to follow but you must still consult, and that consultation must be full and meaningful.



### REMEMBER

Throughout this time it must be clear that the redundancies are simply proposed, and no final decision will be made until after consultation has ended (otherwise you risk the process being viewed as unfair because the consultation was a sham).



## If you are losing only some roles from a larger group carrying out the same or very similar roles, do you have a fair and reasonable plan for selecting who to choose?

Applying a fair method of selection is an essential part in demonstrating that redundancies have been carried out fairly. Ideally the selection criteria should be:



**Objective** - for some roles this is easier than others. For example, when selecting amongst a sales team, there will be lots of objective information available in terms of sales figures, meeting sales targets etc. In other roles, this may be more difficult.



**Aligned to the needs of the business** - think back to your business case in point 1. Can you show that you've selected roles as they relate to your business case for redundancy?



**Non-discriminatory** - for example, if absence levels are included, ensure that this does not discriminate against any employees who, for example, have disabilities that have caused higher levels of absence.





## IMPORTANT

The proposed selection criteria should be put to the employees for comment before scoring as part of the consultation process.



## TOP TIP

CONSIDERATION SHOULD ALSO BE GIVEN TO THE FAIREST WAY OF SCORING THE CRITERIA.



## Make employees aware of any alternative vacancies



It's very important to keep employees informed of any alternative roles which may be available within the business (or in any associated company).



It's best practice to provide information on all vacancies rather than withholding information on some because you believe they would not be suitable for the employee.



Employees offered an alternative role have a legal right to a 4-week trial period. You can agree a longer trial period with the employee if some element of retraining is required as long as this is agreed in advance of starting the role and the agreement is clear as to when the trial period will end.



Employees who have been made redundant during maternity leave have extra protection under the law and must be offered any suitable alternative role over any other available candidates.

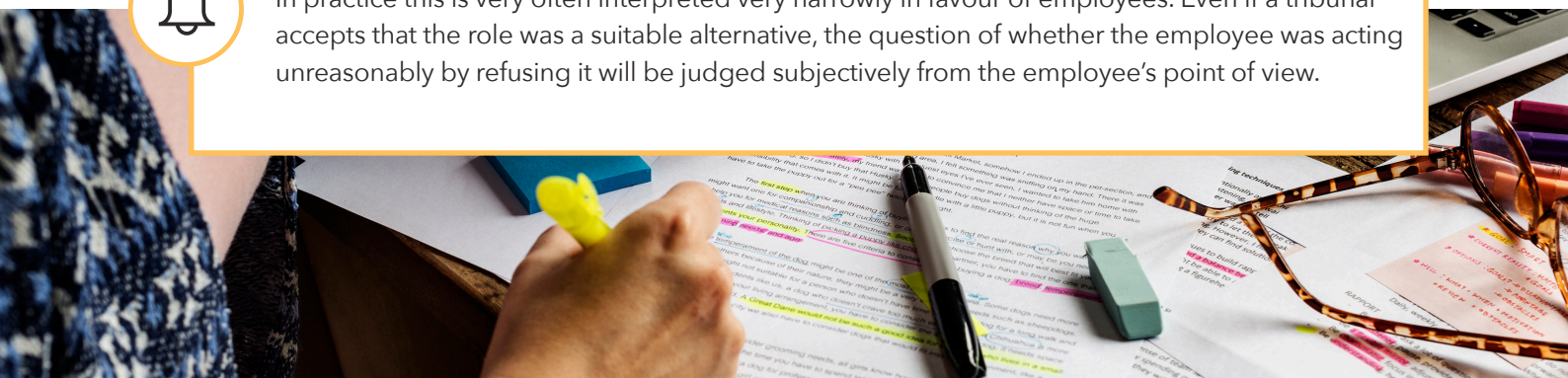


Where an employer offers a redundant employee what they consider to be a suitable alternative employment within the business and the employee unreasonably refuses to accept this, they can lose their entitlement to a redundancy payment.



## REMEMBER

In practice this is very often interpreted very narrowly in favour of employees. Even if a tribunal accepts that the role was a suitable alternative, the question of whether the employee was acting unreasonably by refusing it will be judged subjectively from the employee's point of view.





# A helping hand when you need it most

The redundancy process is one that every employer dreads having to face. They're never pleasant and involve a lot of complex Employment Law. It's a lot to face on your own.

With Citation, you don't have to be alone when facing the prospect of embarking on the redundancy process. Our team of HR and Employment Law experts are only ever at the end of a phone call, and you can lean on their guidance to rest assured that you're ticking every box as you go.

If you're interested in making our expert team part of your team, just give us a call today on **0345 844 1111** to talk us through what your business needs and we can get the ball rolling.

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