

## Payroll

### Exclusions from the Right to a Redundancy Payment

There are a number reasons why certain employees are excluded from receiving redundancy payments: -

- Age

Employees who have reached age 65 or the company's normal non-discriminatory retirement age where this is lower than 65. The new age discrimination legislation implemented in October 2006, outlines that individuals aged 65 or over will no longer be excluded from entitlement to statutory redundancy pay or the right to claim unfair dismissal.

- Misconduct

If the employee is dismissed for misconduct whilst under notice of redundancy, they lose their rights to redundancy pay. Appeals can be made to an employment tribunal which may grant the redundancy payment in full, or in part, or withhold it completely according to the circumstances.

- Suitable Alternative Employment

An employee may lose their right to a redundancy payment if an offer of suitable alternative employment is made by the employer which is unreasonably refused. An offer to re-employ under a new contract of employment, or to renew an existing contract, must be made either by the original employer or an associated employer. The offer must contain sufficient information to enable the employee to decide whether or not to accept it, and to show them the differences between it and the original employment. The offer must be made before the end of the original contract and must take effect within four weeks of the end of that contract. An employee who refuses an offer of alternative employment or, who resigns during the trial period will be disentitled from a right to a redundancy payment, if their refusal or resignation is shown to be unreasonable.

If the alternative employment involves a different type of work or different terms of employment, the employee is entitled to a four-week trial period in the new job commencing from the start of the new contract. If retraining is required, this period can be extended by written agreement. The agreement must specify the date on which the trial period is to end and the terms and conditions that will apply thereafter.

If during the trial period either the employer or employee gives notice to terminate the contract, the employee will be treated as having been

dismissed for the same reason as that which caused the original contract to end (i.e. normally redundancy).

- Excluded Workers

The main groups excluded from or not covered by the statutory redundancy provisions are: -

- Share fishermen.
- Crown servants and the Armed Forces.
- Domestic servants in private households are included under the Act, except where they are close relatives of their employer. Those working under contracts for services would be excluded.

- Fixed-term Contracts

Employees engaged on fixed-term contracts are not covered by the statutory redundancy provisions. Apprentices who are not re-engaged on expiry of their contract of apprenticeship are not entitled to a redundancy payment.

- Employment Outside Great Britain

An employee will not be entitled to a redundancy payment if, on the relevant date, they are outside Great Britain unless under his or her contract of employment he or she ordinarily worked in Great Britain. An employee who under their contract of employment ordinarily works outside Great Britain will not be entitled to a redundancy payment unless on the relevant date they are in Great Britain in accordance with instructions given them by their employer.

- Employment Tribunal Claims

An employee may make a complaint to an employment tribunal claiming a redundancy payment not later than six months after the dismissal. The six-month period runs from the relevant date. For this purpose the relevant date is not extended in a case where the employer has given no notice or short notice to terminate the contract.

An employee may also maintain their right to a payment by giving notice to the employer of the claim — the employee is not bound to refer a claim to a tribunal. Alternatively, a claim of unfair dismissal may have been made to a tribunal. An employee may still retain the right to a payment provided that, within a further period of six months, they have made a claim in writing to the employer or referred the question to a tribunal or, presented an unfair dismissal complaint to a tribunal. The tribunal must consider that it is just and equitable for the employee to receive a payment, having regard to the reason shown by the employee for not taking any steps required during the six-month period. The right to a payment is lost completely outside these time limits.