
Restructuring guidelines

NOTIFY EMPLOYEES OF PROPOSED RESTRUCTURING

Hold a meeting with affected employees to notify them of the proposal. Communicate (in writing): the reasons for the restructuring; the information relied upon to reach that decision; details of the proposed new structure; the timing of the process; and the proposed selection criteria and process. Be sure to:

- Follow any applicable employment agreement and policies
- Ensure that there is a sound commercial basis for the restructuring and that it is supported by accurate and sufficient information
- Articulate the proposed outcomes and the reasons for the restructuring clearly and comprehensively
- Provide employees with the supporting information, and invite them to ask for more if they need it
- Provide source financial information if you are relying on financial performance to justify the restructuring – it is crucial that this is accurate, and that analysis based on financial reasons can be supported by the source documents
- If you do not want to provide certain information or documents, consider alternatives such as providing a summary or redacted document, and explain your reasons for refusing to disclose any information that has been requested
- If you are concerned about the confidentiality of financial information, it may be reasonable that the employee/s are allowed a limited timeframe to simply view and assimilate the information, rather than being provided with copies of documentation
- Provide draft job descriptions for new roles
- Be prepared to provide employees with all information relevant to the restructuring. While you can withhold information if you have good reason for doing so (confidentiality, privacy or unreasonable prejudice to your commercial position), the threshold is high
- Explain to employees individually what the impact of the restructuring may be for them. That is, each employee should be given a letter addressing their specific circumstances
- Advise employees they can have a support person present at any meeting and seek advice.

CONSULTATION WITH EMPLOYEES

Employers must consult with employees before any redundancy proposal is implemented. Consultation involves listening to an employee's views on the proposal, considering his/her responses and then deciding what to do. Be sure to:

- Give employees an opportunity to express their views prior to making a final decision
- Invite employees to seek advice/involve a support person
- Amend the proposal to take into account employees' feedback, as appropriate and if necessary issue and consult on an updated proposal
- Respond to alternative proposals put forward by the employee, and to requests for further information
- Amend timeframes to accommodate any reasonable request for extensions of time, or to allow the employee/s time to consider further information
- Be available and engage with employees during the consultation process to explain why their feedback has or has not been accepted (if applicable).

SELECTION FOR REDUNDANCY OR NEW POSITIONS

Consult and be transparent with employees about any selection process, the selection criteria and weightings. When selecting employees for redundancy or to fill vacant positions, it is important to:

- Remember that good faith (including disclosure) obligations apply to selection
- Consider whether a selection process is even necessary. Can you simply consult and appoint?
- Give employees written job descriptions and person specifications for any new positions
- Use the selection criteria previously advised to employees
- Prepare selection documentation on the basis it may be seen by employees and third parties
- Ensure that decision-makers record their assessments appropriately
- Consult with unsuccessful employees and give them an opportunity to comment on assessments that are relevant to that decision, including negative assessments and comparisons with other candidates
- Consider any feedback from employees before the final selection decision is made.

REDEPLOYMENT

Employers are obliged to proactively explore redeployment opportunities for employees whose roles are disestablished. If a new position is created, or if there are other vacant positions which the employee could do, you need to have good reasons not to appoint an employee who will otherwise be made redundant. The closer the new position is to the employee's disestablished position, the greater the responsibility and the scrutiny will be:

- In considering whether a position is sufficiently different to be a 'new' position, take into account the tasks, level and nature of the position, and the terms and conditions attached to it
- Consider the affected employee's job description and what he or she actually does – this is important to ensure you are able to reasonably identify relevant redeployment opportunities
- Consider offering redeployment (without a selection/appointment process) if an employee can do the job, even if some up-skilling, reduced wages/salary or other changes (eg additional travel) are required
- Explain the reasons why redeployment is not being offered (if applicable) and consult with employees
- If an employee does not have a realistic chance of securing the new position, or if you have doubts about their chances, say so and explain why
- If you can, deal with redeployment opportunities from the outset of the consultation process, so that the employee has all relevant information and can give feedback about this together with their feedback on the proposal itself.

DECISION-MAKING AND NOTIFICATION OF FINAL STRUCTURE

Notify employees in writing of your decision on the final structure. Include the feedback that was considered and explain why the final structure was chosen. Notify employees in writing if their position has been disestablished and be sure to:

- Talk to the employees who are to be made redundant first and in person
 - Ensure employees are supported and that you discuss ways of minimising the impact of redundancy on them
 - If you want to pay notice in lieu, you should consult the affected employee
 - Ensure that all contractual and statutory entitlements are met (eg notice, redundancy compensation, annual holiday pay)
 - Consult further with affected employees if circumstances change during the redundancy notice period, as good faith obligations will still apply. For example, if redeployment opportunities become available during this timeframe
 - Document the terms on which employees are being redeployed into new roles, and consider any contractual consequences (eg a technical obligation to pay redundancy compensation) and whether any new or special terms need to be agreed.
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