



Employment alert

When is a new role suitable for a redundant employee?

As we all know, redundancy is one of the fair reasons to dismiss an employee. It is a dismissal situation that is entirely in the employer's hands so there should be no claim for unfair dismissal as long as you handle it properly (ie follow a fair procedure and act fairly throughout).

One of the key features of handling a redundancy dismissal fairly is identifying any suitable alternative roles and offering them to those selected for redundancy. If you fail to do this the dismissal will be unfair. If you offer a suitable role which the employee unreasonably rejects you will not have to make a redundancy payment.

We have seen redundant employees complain about roles not being offered, because although employers thought were unsuitable, the employees felt differently. And we have seen employees complain that being offered unsuitable roles was demeaning to them. Often an employee will reject a job that the employer regards as suitable for him/her but claim that it was unsuitable in order to receive a redundancy payment.

Therefore what does a "suitable alternative role" mean, exactly?

In the recent Employment Appeal Tribunal ('EAT') case of *Ward v Commission For Healthcare*, the employee's managerial role was made redundant. The alternative role offered to her involved only half of her previous budget and a quarter of the staff and it was less client-facing. She complained that it was unsuitable for her. The Tribunal felt that the issue was touch-and-go but ultimately the result was that they found the role suitable and so she did not receive a redundancy payment. She appealed to the EAT.

Is the alternative role suitable?

The Tribunal will approach this question from an impartial position and it is hard to predict. As an example, if the new job is 60% the same as the redundant one and involves no real loss of seniority a Tribunal may well find that the job is suitable. Then it will look at the employee's reasons for refusing to accept it.

Is the employee's refusal reasonable?

When assessing whether an employee's refusal to take the alternative job is reasonable or not, the Tribunal will view the question from the employee's point of view (on the facts available to them at the time). It will also give the employee the benefit of any doubt. So, in the example above, the Tribunal might conclude that because of the additional travelling involved and the employee's family commitments, the job was not suitable for her.

The decision in *Ward v Commission For Healthcare*

What this case decided was that the more suitable the new job is for the employee, the harder it is for her to show that it is reasonable to refuse it. If the job is only just suitable, rather than overwhelmingly suitable, this is a factor which the employee (and the Tribunal) is entitled to weigh into the equation in deciding whether it was reasonable to reject it.

Conclusion

Our advice is to circulate details of all alternative positions to all potentially redundant

employees. By all means give them your views as to which ones you consider suitable for them but do not suggest in the early stages that your mind is closed on the other positions. That way, the employee cannot later accuse you of not offering a suitable job and must pin their colours to the mast in the early stages of the redundancy process.



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