



ISME GUIDE TO REDUNDANCY

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The Redundancy Payment Acts 1967-2007 provide for an employee to receive a lump-sum payment in the event of losing his/her job through redundancy.

The Protection of Employment Act 1977 provides for the protection of groups of workers faced with redundancy. It obliges the employer (normally employing more than 20 persons) to consult with employees and to notify the Minister for Enterprise, Trade & Employment of the proposed redundancies at least 30 days in advance of the first dismissal taking effect.

Summary Points

- The employee is entitled to a lump sum of 2 weeks statutory redundancy payment for every year of service regardless of age *plus* one additional week's pay. (A week's pay is a normal week's pay subject to a maximum of €600.00 as outlined in the legislation.) All excess days should be calculated as a portion of 365 days i.e. 4 years 192 days equates to 4.52 years.
- The employer pays the lump sum to the employee. The employer may then be entitled to a 60% rebate from the **Social Insurance Fund**. (This must be claimed within six months of the date of redundancies).
Note: if the employer fails to comply with any provision concerning redundancy notice, the Minister has the discretion to reduce the rebate to 40%.
- The entitlement to a lump sum payment applies to full-time and regular part-time employees who have been in continuous employment for at least 104 weeks, not counting employment prior to the employee's 16th birthday.
- An employee is considered redundant when dismissed from his/her employment for reasons such as closure of the company or the company continuing in business with a requirement for fewer employees.
- The entitlement to a lump-sum payment does not apply to an employee dismissed for reasons such as misconduct or inefficiency.
- An employee must not be made redundant for reasons such as trade union membership/activities, religious or political convictions, race or colour or pregnancy.

Selection for Redundancy

A redundancy situation in general means that the job no longer exists and the person is not replaced. The emphasis is on the job and not the person in contrast, for example, to a situation where a person is dismissed for alleged misconduct or where a person voluntarily resigns.

When selecting those who will be made redundant an employer is required to do so with clear objective criteria, such as last in first out. Where a selection criteria has been agreed between the employer and a union then they must be followed unless exceptional circumstances exist. When selecting, an employer should also consider alternative positions in the company or work pattern, before making anyone redundant.

Failure to act fairly may result in an employee maintaining they were unfairly dismissed as they were “unfairly selected” for redundancy.

Offers of Employment on the right to Redundancy Payments

- If the employer offers the employee who is to be made redundant a renewal of his contract or to re-engage him under a new contract, whose terms and conditions are the same as the previous contract, and will come into effect before the date of dismissal, then should the employee accept this offer, the employee will be looked upon as never being dismissed and his service will be continuous.
- If the employee refuses the offer, his/her dismissal will take effect and may lose the entitlement to redundancy payment.
- If an employer makes an offer in writing to the redundant employee to renew or re-engage the employee under a new contract which differs wholly or in part from those of the previous contract and if the new/renewed contract takes effect not later than four weeks after the date of dismissal and the employee accepts the offer then his/her employment will be seen as continuous.

Should the employee refuse the offer, his/her dismissal will take effect but the employee will only be entitled to a redundancy payment if it can be shown that the refusal of the offer was not unreasonable. (The employer's offer of employment must constitute an offer of suitable employment in relation to the employee).

- If an employee whose job is no longer available and is offered alternative work by the employer, the employee is entitled to take it for a trial period of not more than four weeks. If during that period the offer is refused, this temporary acceptance will not operate to make the employee's refusal as unreasonable.

Change of ownership

- Where there is a change in ownership and the employee by arrangement continues to work for the new owner without a break in employment, he/she is not entitled to a redundancy payment but his/her continuity of employment is preserved for the purposes of a redundancy payment in the event the employee is dismissed by means of redundancy by the new employer at any future date.
- An employee cannot be made to accept employment with a new employer but any unreasonable refusal of employment will effect his/her entitlement to a redundancy payment. The fact of a change of owner of the business will not be seen in itself as a good reason for refusal.
- Should a new owner merely buy the property, this will not constitute a change in ownership, and the former employer will be liable to pay redundancy payment which might be due to the employee for the loss of the job.

Calculating Service

- The following absences do not count as service for the purpose of calculating the lump sum. Please note however that these absences only apply to the final 3 years of service ending on the date of termination of employment. For example, if an employee was working in a company for a period of 10 years the absences referred below only apply to the final 3 years and all absences in the previous 7 years are deemed to be fully reckonable.
 - More than 52 consecutive weeks due to occupational accident or disease;
 - More than 26 consecutive weeks because of illness due to some other cause;
 - Periods spent on strike. (absence due to lock-out is counted as service);
 - Absence due to lay-off by employer;
 - More than 13 weeks in a year for some other reason approved by the employer.

Calculation of Redundancy Payment

- Two weeks pay for each year of service (Max €600 per week) irrespective of age (All excess days should be calculated as a portion of 365 days in the final year), plus
- One additional week's pay

Claims for redundancy payment must be made within 26 weeks of the date that the employee was dismissed.

Lay-offs and Short-time

- Only if there is a provision in the contract of employment to lay off or place on short time, or agreement between the employer and the employee(s) concerned or a union representing the employees, can an employer legally take this action.
- An employee may be entitled to redundancy payments when laid off or put on short time for either four weeks running or six weeks in a thirteen week period and may make a claim for such a payment. **Short-time is defined as working less than half the normal weekly working hours or for less than half the normal weekly earnings.**
- If the employer has grounds for believing that within four weeks he will take the employee back for at least 13 weeks full working, then a counter notice may be served on the employee.
- The employee will only be entitled to a redundancy payment if he/she is kept on short-time or laid-off for the four consecutive weeks following his/her claim.

Minimum Period of Notice

- The employee must be given a minimum period of two weeks notice with the RP50 form (this form can be downloaded from the Department of Enterprise, Trade & Employment website at www.entemp.ie). A shorter period of notice may reduce the amount of the rebate to the employer. The employee may be entitled to additional notice under the Minimum Notice and Terms of Employment Acts 1973 - 2001 and

Terms of Employment (Amendment) Act 1994, or by the employees contract of employment.

Time off to Look for Work

- During the final two weeks of redundancy notice, the employee is entitled to paid time off to look for work.

Collective Redundancy

- In the event of collective redundancies, the employer is obliged to consult with employee representatives, provide employees with specified information and notify the Minister for Enterprise, Trade & Employment at least 30 days in advance of the first dismissal taking effect.
- A Collective Redundancy arises where an employer proposes to make :
 - 5 redundancies in an establishment normally employing 21 - 49 persons, or
 - 10 redundancies in an establishment normally employing 50 - 99 persons, or
 - 10% or more of workforce in an establishment normally employing 100 - 299, or
 - 30 or more redundancies in an establishment normally employing 300 or more.

Consultation with Employees' Representatives

- In collective redundancy situations, the employer must consult the representatives of the employees at the earliest opportunity but no later than 30 days in advance of the first dismissal. Where there is no union involved the employees must be advised that they are entitled to elect a representative from within the group of workers affected.
- The consultation with the employee's representatives, for the purpose of reaching agreement, must address the following points:
 - the possibility of avoiding the proposed redundancies **or** of reducing the number;
 - the basis of selecting the individuals to be made redundant

Provision of Information to Employees

- The employer must provide the following information in writing to the employees' representatives:
 - The reason/s for the proposed redundancies;
 - The proposed number and categories of employees to be made redundant;
 - The number of employees normally employed;
 - The period of time during which the proposed redundancies will take effect.

Redundancy Panel

Please note that under the Protection of Employment (Collective redundancies & related matters) Act 2007 a redundancy panel is being set up by the Department of Enterprise, Trade & Employment in accordance with the partnership agreement 'Towards 2016'. The panel will deal with collective redundancies to ensure that they are genuine redundancies as opposed to a situation where workers are replaced by new workers doing the same job for lower wages.

Notification to Minister for Labour

- The employer must notify the Minister for Enterprise, Trade & Employment in writing of the proposed collective redundancy. This information must be given at the earliest opportunity but no later than 30 days in advance of the first dismissal.
- This notice should contain details such as the reasons for the proposed redundancies, the number of redundancies, description and categories of employees affected, the number of employees normally employed and the period during which the proposed redundancies are to take place.
- A copy of this notice must be supplied promptly to the employee's representatives.
- It is unlawful for the first dismissal to take effect before the expiry of the 30 days beginning on the date of notification to the Minister.
- The Minister may request the employer to consult with him/her or with an authorised officer of the Department, with the objective of seeking solutions to the problem caused by the proposed redundancies.

Filing a redundancy claim:

When making a redundancy and filing for a 60% rebate of all statutory redundancy payments the RP50 form (Appendix 1) must be used.

The RP50 has two separate sections:

Section (A) is used for notification of redundancy being made to the Department of Enterprise Trade and Employment.

Section (B) is used to claim for redundancy payment from the social insurance fund.

Alongside the requirement for specific details about the employer and employee such as contact name, company name, duration of service etc, there is a box which must be ticked at the top of section B which is used to pursue a 60% rebate on all statutory redundancy payments made by the company.

Disputes

Employees can make a complaint under the legislation to a Rights Commissioner who may do one of the following:

- Declare that the complaint was or was not well founded.
- Require the employer to comply with the relevant provision.
- Require the employer to pay the employee compensation an amount as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration.

Complaints need to be made within 6 months of the contravention to which the complaint relates. This may be extended to 12 months if the Rights Commissioner is satisfied that the failure to present the complaint was due to reasonable cause.

A party may appeal a decision from a Rights Commissioner to the Labour Court not later than 6 weeks after the date upon which it was communicated to the party.

FREQUENTLY ASKED QUESTIONS ABOUT REDUNDANCY

What is the present standard formula for calculating a redundancy payment?

Under the Redundancy Payments Act, 2003, an eligible employee who is declared redundant is entitled to *two weeks* statutory redundancy payment for every year of service. Employees who have reached 66 years of age and whose date of termination is on or after the 8th of May 2007 are now eligible for a redundancy payment under the Redundancy Payments Acts 1967-2007. A bonus week is added to this. All of this is based on gross pay subject to the “ceiling” of €600. This ceiling is adjusted every few years.

Is a redundancy lump sum payment taxable?

A statutory redundancy lump sum, which under the law must be paid, is entirely tax-free. Only a payment above and beyond the statutory payment (an ex-gratia payment) is taxable, but only when it goes over a certain limit. For further information on this contact the Revenue Commissioners at 1890 60 50 90.

How is the weekly pay of pieceworkers calculated for redundancy purposes?

You go back 13 weeks from the date of termination. You then take a 26 week period ending on this date. Total pay for this 26 week period is calculated, with total hours worked also calculated. Total pay is divided by total hours to get pay per hour. Weekly pay for redundancy purposes is calculated by multiplying this hourly rate by the number of hours normally expected to be worked in a week.

It might be noted that where an employee does not work for any week or weeks during this 26 week period, these “empty” weeks are *not* counted for redundancy purposes, and the most recent week or weeks *counting backwards* are taken into account instead.

If a person goes from company to company over the years, when does their reckonable service start?

From the start of their employment at the last company, unless that company is a subsidiary of the previous company, in which case it would be the start of employment in the previous company.

What is the situation regarding workers on what is called “fixed-purpose” contracts?

The Redundancy Payments Act 2003 safeguards the right to redundancy of a worker employed under a “fixed-purpose” contract i.e. where the exact duration of the contract was *incapable of being determined at the beginning*. If the contract is not renewed following the fulfilling of the purpose, with the fixed-purpose contract therefore ceasing, a redundancy situation can arise.

Can an employee be made redundant while on Maternity Leave or on Additional Maternity Leave?

No. Notice of Redundancy (included in RP50) *cannot* issue when a person is on Maternity Leave or indeed on Additional Maternity Leave.

Are Maternity Leave, Additional Maternity and Parental Leave reckonable for redundancy calculation purposes?

The first 26 weeks of *maternity leave* are fully reckonable for redundancy calculation purposes. Furthermore, in respect of all redundancies notified/declared on or after 10th April, 2005, *additional maternity leave* is also reckonable. The same applies to *protective leave or natal care absence* within the meaning of the Maternity Protection Act 1994.

Is Adoptive Leave reckonable for redundancy purposes?

Yes. Since 1st of March 2007, the first 24 weeks of Adoptive Leave have been reckonable under the Adoptive Leave Act, 1995 (as amended). The *additional* 16 weeks Adoptive Leave (unpaid) are also reckonable.

What is the position regarding the redundancy rights of Part-Time Workers?

The Redundancy Payments Act 2003 has secured the rights of part-time workers to a statutory redundancy payment through the Protection of Employees (Part-Time Work) Act 2001. In line with the provision of the 2001 Act, part-time employees *cannot be treated in a less favourable manner* than comparable full-time employees in relation to conditions of employment

Does the issuing of a P45 always mean there is a redundancy?

Not in all cases. A P45 could simply mean that a person is being laid off for a period of time.

If an employee is laid off or put on short time for more than 4 continuous weeks, or 6 non-continuous, broken periods of weeks, where all six weeks fall within a thirteen week period, are they entitled to claim for redundancy payment?

Yes, provided the employer does not counter claim by offering 13 weeks continual employment, the employee can claim a redundancy lump sum. However, he/she cannot then demand to be given notice under the Minimum Notice legislation as they are deemed to have voluntarily left their employment.

What are the time limits for applying for a rebate and for a lump sum?

6 months for a rebate (from the date of payment of the lump sum by the employer) and 52 weeks (one year) for a lump sum, though the Employment Appeals Tribunal (EAT) has the power to extend the lump sum deadline from 52 weeks to 104 weeks. The 52 week deadline applies both to the making of a claim to the employer (Form 77) and to the making of a claim to the EAT in a situation where the employer disputes payment of redundancy.

Are apprentices entitled to lump sum payments?

Yes, however, when they finish their apprenticeships, their employers have one month in which to end their services without paying them redundancy. If an employee has kept them on for more than one month after completing his/her apprenticeship, the period spent as an apprentice over 16 years of age will be reckonable in calculating the redundancy lump sum should he/she become redundant in the future.

What option is open to an employee when their employer disputes their right to a lump sum?

They can bring a case to the Employment Appeals Tribunal under the Redundancy Payments Acts, 1967 to 2003.

What is the minimum period of notice required for redundancy?

2 weeks notice for an employee with two to five years service (an employee needs at least two years service to qualify for redundancy). 4 weeks notice for an employee with five to ten years service, six weeks notice for employees with ten to fifteen years notice and 8 weeks notice for employees with more than 15 years notice.

APPENDIX 1 RP50 FORM



An Roinn Fiontar, Trádála agus Fostaíochta
Department of Enterprise, Trade and Employment

Redundancy Payments Acts 1967 – 2007
RP50

(A) NOTIFICATION OF REDUNDANCY

See overleaf for instructions on how to complete this form and for terms and conditions
N.B. You may submit your claim on-line at the following web address: <http://www.entemp.ie>
On-line claims are processed quicker as they are automatically validated and recorded on our system.

Claim No:
(office use only)

Employer PAYE No.: * Employer Registered Name: * Trading Name: * (if different from above) Registered Address: * County: * Post Code: * Contact Name: * Contact Telephone No: * E-mail address: * Date of Notice of Termination: * Proposed Date of Termination: * Payee Address: * (if different from above) County: * Post Code: * Employer Signature: * Role of Signee: *	Employee PPS No.: * Employee Surname: * Employee First Name: * Address: * County: * Post Code: * Contact Telephone No: * Date of Birth: * Gender: * <input type="checkbox"/> Male <input type="checkbox"/> Female Administrator Details (if applicable) Administrator PAYE No.: Company Name: Address: County: * Post Code: * Contact Name: Contact Telephone No.: E-mail Address:
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(B) CLAIM FOR REDUNDANCY PAYMENT FROM THE SOCIAL INSURANCE FUND

EMPLOYER REBATE CLAIM <input type="checkbox"/> Please choose	EMPLOYEE LUMP SUM CLAIM <input type="checkbox"/>
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Employment Address: * (if different from above) County: * Post Code: * Business Sector: * Weekly Hours: * PRSI Class: * Gross Weekly Wage: *	Date of Commencement of Employment: * Date of Termination of Employment: * Is Employee a Director/Secretary/Shareholder of this Company? * <input type="checkbox"/> Yes <input type="checkbox"/> No Job Title: * Reason for Redundancy: * Reason for Non-Payment (if appropriate):
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See following page for Breaks in Service (if any)

Redundancy Payment Details

No. of Years Service: *	No. of Weeks Due: *	Statutory Entitlement: * €	Rebate Amount due to Employer: * €
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Rebate Claim Declaration

OR

Lump Sum Claim Declaration

EMPLOYER / EMPLOYER REPRESENTATIVE: * I hereby declare the above employee was dismissed by reason of redundancy, and request payment of 60% of the statutory amount paid to the employee. Signed: _____ Date: _____ Role of Signee: EMPLOYEE: * I hereby certify <u>that I have</u> received payment of € from my employer. (Blue ink only) Signed: _____ Date: _____	ADMINISTRATOR / EMPLOYER: I hereby certify that the above employer <u>has not paid</u> the full statutory redundancy entitlement to the above employee, and payment should now be made to them from the Social Insurance Fund. Signed: _____ Date: _____ Role of Signee: EMPLOYEE: I hereby certify that <u>I have not</u> received payment as outlined above from my employer. (Blue ink only) Signed: _____ Date: _____
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[illegible]



Guide to Completing the Redundancy Form

Fields marked with * are mandatory fields and must be completed before submitting to the Department.

When do I complete Part A?	When you wish to notify an employee of your intention to terminate their employment for reasons as stated in the Redundancy Payments Acts.
When do I complete Part B?	When the employee is leaving and receiving their lump sum payment from you.
Why should I apply on-line?	Online applications are a speedier method of applying for Rebate or Lump sum payments and are processed faster.
IMPORTANT NOTE: To establish a right to a Redundancy Payment, it may be necessary to refer to information from the Revenue Commissioners or other Government Departments. By signing this form, consent is given to the disclosure of such information for Redundancy purposes only. By signing, it is also certified that no other claim has been made in respect of the said employment details and that the claim is <u>not</u> awaiting a Decision from the Employment Appeals Tribunal.	

OPERATION OF THE REDUNDANCY SCHEME & ENTITLEMENTS

What is Statutory Redundancy?	Statutory Redundancy is the minimum Lump Sum payment which an employer is obliged by law to pay all eligible redundant employees under the Redundancy Payments Acts 1967 to 2007.
What are the allowable Reasons for Redundancy?	Closure or relocation of Business, Re-organisation/Rationalisation, Liquidation, Receivership, Bankruptcy, Death of Employer, Insolvency, End of Contract, Sale of Business. See our website at http://www.entemp.ie for complete list of reasons.
Who is eligible for Statutory Redundancy?	A genuine redundancy situation must exist. All employees must be aged over 16 with more than two years (104 weeks) continuous service. All employees must be in fully insurable employment.
What Notification is required?	A minimum of two weeks notice is required. For service of between 2 & 5 years – 2 weeks notice, 5 & 10 years – 4 weeks notice, 10 & 15 years – 6 weeks notice, over 15 years – 8 weeks notice.
How are Statutory Redundancy Entitlements calculated?	Two weeks pay for every year of service, together with a bonus week. Weekly pay is subject to a ceiling which is €600. The on-line redundancy calculator can be found at: http://www.entemp.ie
Who can claim a Rebate?	Any employer who pays the correct Statutory Redundancy Lump Sum Entitlement to an eligible employee.
What steps are required to claim a Rebate?	The composite redundancy form RP50 must be fully completed, signed by the Employer and Employee, and submitted. It should cover Notice of Redundancy, Confirmation of Receipt of Redundancy and Application for Employers Rebate and be submitted within 6 months of the employee receiving their Lump Sum. Rebate Claims can be submitted on-line at http://www.entemp.ie and a signed hard copy submitted to Redundancy Payments Section at address below.
Who can claim a Lump Sum?	All eligible employees as above, where the employer fails to pay.
What steps are required to claim a Lump Sum?	The composite Redundancy Form RP50 must be completed, signed by the Employer, Employee, and where appropriate, the Administrator and submitted within one year of the Redundancy. If the Employer fails to pay, a case may be taken to the Employment Appeals Tribunal to establish entitlement to Statutory Redundancy. Lump Sum Claims can be submitted on-line at http://www.entemp.ie and a signed hard copy submitted to Redundancy Payments Section at address below.
What if the Employer is Insolvent?	If appointed, an administrator may apply to the Department on behalf of the Employee on-line at http://www.entemp.ie . If no appointment was made, an employee can make an application for Lump Sum payment directly to the Department by completing the Redundancy Form RP50 as above.
How do I calculate the Weekly Wage figure?	The Weekly Wage figure is calculated as the Gross Weekly Wage at date of Declaration of Redundancy (see website in relation to lay-off or short-time), together with average regular overtime, Bonuses and Benefit in Kind.
What happens if I have irregular / part-time work?	Total pay over a 26 week period, 13 weeks before the date of Declaration of Redundancy is divided by total hours worked in that period to get an average hourly rate of pay which is then multiplied by the normal weekly working hours.
What is meant by Breaks in Service?	All lay-off, absences due to long-term ordinary illness and due to occupational injury or disease. Periods of Strike, etc. All reasons apply only on the last 3 years prior to redundancy. For a full list, please see our website at http://www.entemp.ie
(When) Do I need to supply Supplementary Information?	When there is an Employment Appeals Tribunal Decision in favour of paying Statutory Redundancy.
Where can I get more information?	From Employment Rights Information Section, Department of Enterprise Trade & Employment, O'Brien Road, Carlow. 059-9178990. Lo-call 1890 808090, Redundancy Payments Section, Department of Enterprise Trade & Employment, Davitt House, Adelaide Road, Dublin 2 or our website at http://www.entemp.ie