



White Paper Conference at the Caledonian Club

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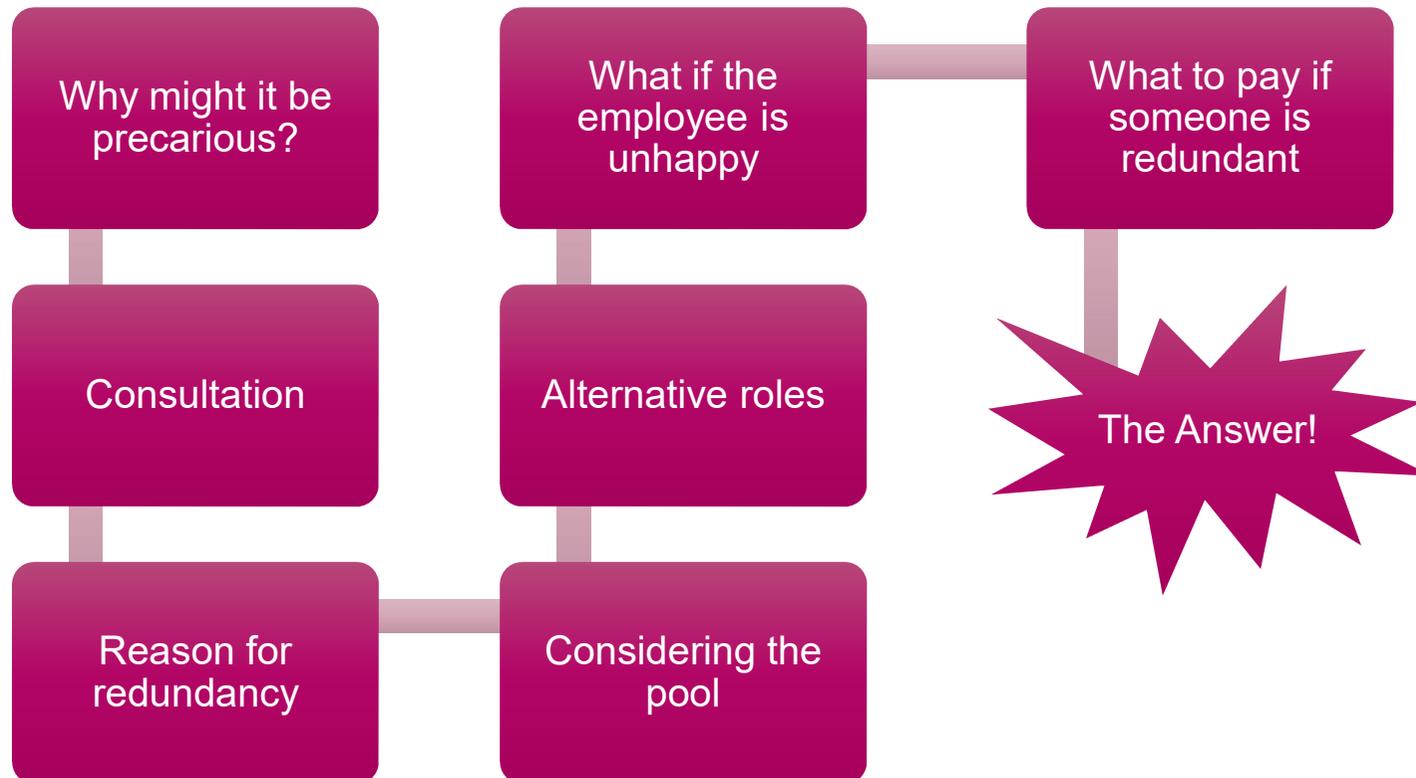
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Question

- How precarious is it to run a redundancy consultation for employees on maternity leave due to return soon?
- What if there are no alternative roles, or they refuse them?



What I will cover



Why might it be precarious to run redundancy consultations for employees on maternity leave?

- Automatically unfair dismissal due to pregnancy, etc
- Unfair dismissal
- Pregnancy discrimination
- AUD by breaching obligation to give suitable alternative employment to an employee during Protected Period



Myth Busters

- You cannot make employees on maternity leave redundant
- An employee on maternity leave made redundant has been discriminated against
- People cannot challenge you if they have less than two years' service

When can it be unfair dismissal?

What is the reason for redundancy?

Pregnancy, etc the sole or principal reason for redundancy (in auto unfair dismissal cases)

- *Underwood and Croxson v Johnson*
- *Sewell v McCowen*
- *Maksymiuk v Bar Roma Partnership*
- *Osborn v Mothercare Global Brand Ltd*

Consultation not in accordance with procedure, or inadequate

Have not selected the employee fairly

Have not considered alternative employment or suitable alternative vacancies adequately

Have not paid what is due

When can it be discriminatory?

- It will be discrimination if unfavourable treatment because of pregnancy, an illness resulting from it, on compulsory maternity leave or the exercise of ordinary or additional maternity leave
- Discrimination can be made out where the protected characteristic had a significant influence on the outcome
- Do not make assumptions about women – *Denysenko v Credit Suisse Securities (Europe) Ltd*
- Don't forget the men... re *Eversheds legal Services v De Belin*

Consultation

- Collective obligations
- Consult on
 - reasons for redundancies
 - selection criteria
 - how assessments are carried out
 - alternative work



Alternative employment

- Obligation on any redundancy to offer alternative employment
- Where employee on maternity leave or during protected period you must offer Suitable Alternative Vacancies (SAV) that exist
- Obligation kicks in before undertaking restructures (*Sefton BC v Wainwright*)
- Only where genuine redundancy takes place, not reorganisation (*Ballerino v Racecourse Association*)
- A pre-existing post does not constitute SAV (*Carnival plc v Hunter*)

What is suitable?

- Suitable and appropriate for employee
- Cannot be substantially less favourable than under previous contract (*Simpson v Endsleigh Insurance Services*)
- For employer to decide on what is suitable in the circumstances

Conundrums

- Does the employer have to offer a better job?
- Do you offer if the new job is not on as good terms?
- Do you offer a pre-existing job? Bumping?

How precarious is it to run a redundancy consultation for employees on maternity leave due to return soon? What if there are no alternative roles, or they refuse them?



Answer

- more rights are engaged and emotions can run high
- can take practical steps to reduce risks or reduce successful challenge
 - follow the procedure
 - consult as you would if she were working
 - Select fairly
 - Consider SAV and other alternative employment
 - Keep thinking of the individual employee

Contact



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