

Redundancy and Maternity Issues

Deborah Hely, Partner

0161 934 3025

dhely@dacbeachcroft.com





Can you make
an employee
on maternity
leave
redundant?

Can an employee on maternity leave be made redundant?

- No general bar
- But, range of practical difficulties and risks:
 - discrimination claim re selection
 - discrimination claim re assessment of performance prior to and during maternity leave
 - Carrying out proper consultation

Assessment of performance

Assessment can be difficult where long period away from work



Giving employee benefit of doubt not always right



Give special treatment only where proportionate means of achieving legitimate aim



Look for ways of creating comparable criteria that is absolutely necessary for the job

Consultation

Consultation during OML and AML is still required except during compulsory period



Agree process with employee



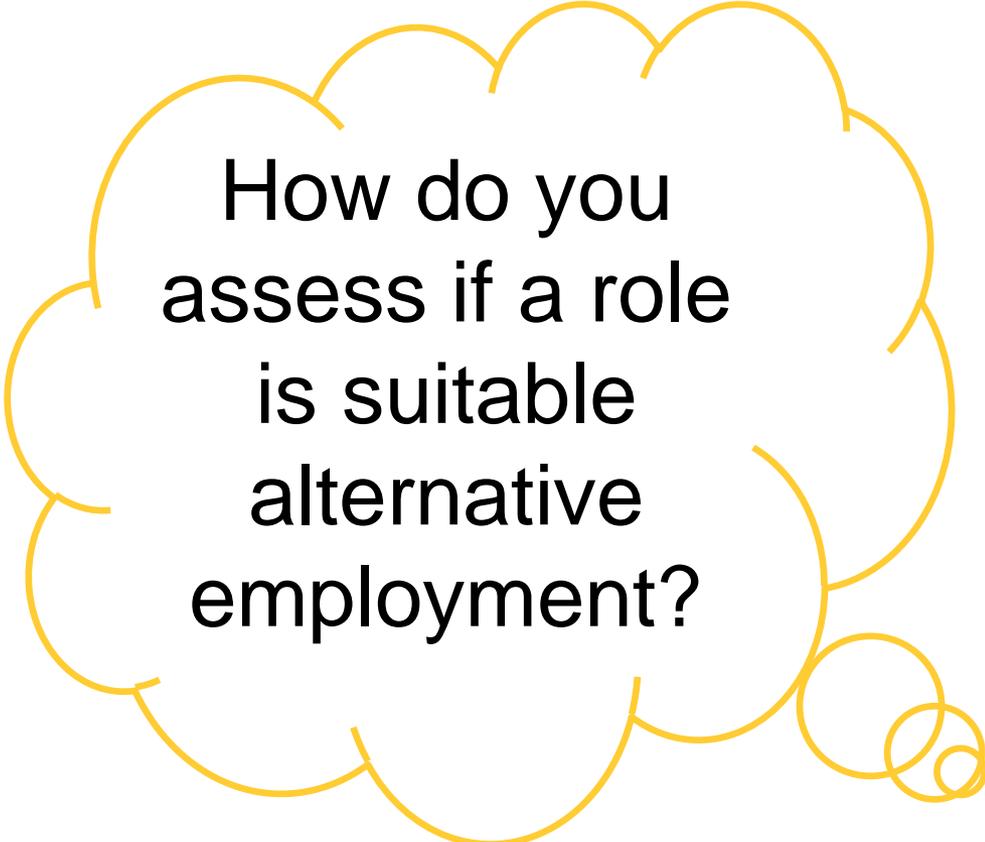
May need to use a KIT day or meet off site



How does the
right to
suitable
alternative
employment
work?

Suitable alternative employment

- Right to be offered any suitable available vacancies if own role is redundant during maternity leave period
- Right applies as long as role is “suitable”: low threshold (employee may not be the strongest candidate)
- Right kicks in after pooling and selection stage

A yellow thought bubble with a scalloped border and a small tail at the bottom right. Inside the bubble, the text "How do you assess if a role is suitable alternative employment?" is written in a black, sans-serif font.

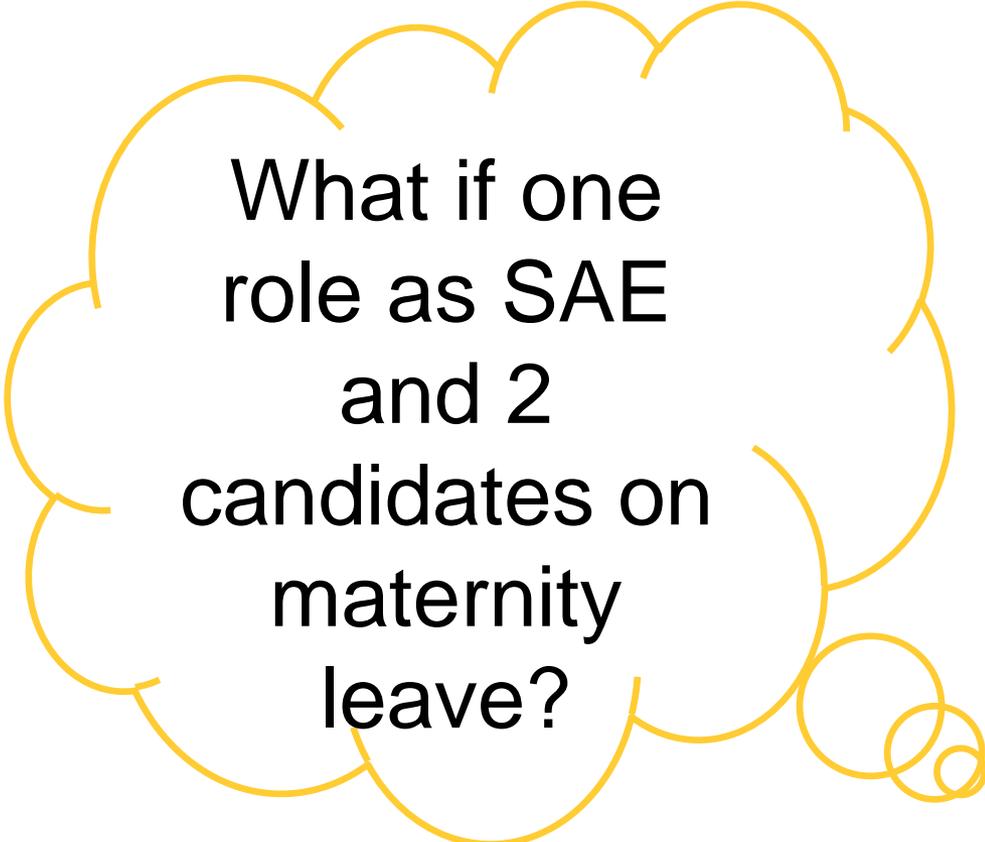
How do you
assess if a role
is suitable
alternative
employment?

What is suitable alternative employment?

Work must be
suitable and
appropriate

and

Capacity, place of
work and other
terms must not
be substantially
less favourable



What if one
role as SAE
and 2
candidates on
maternity
leave?

One job, two candidates

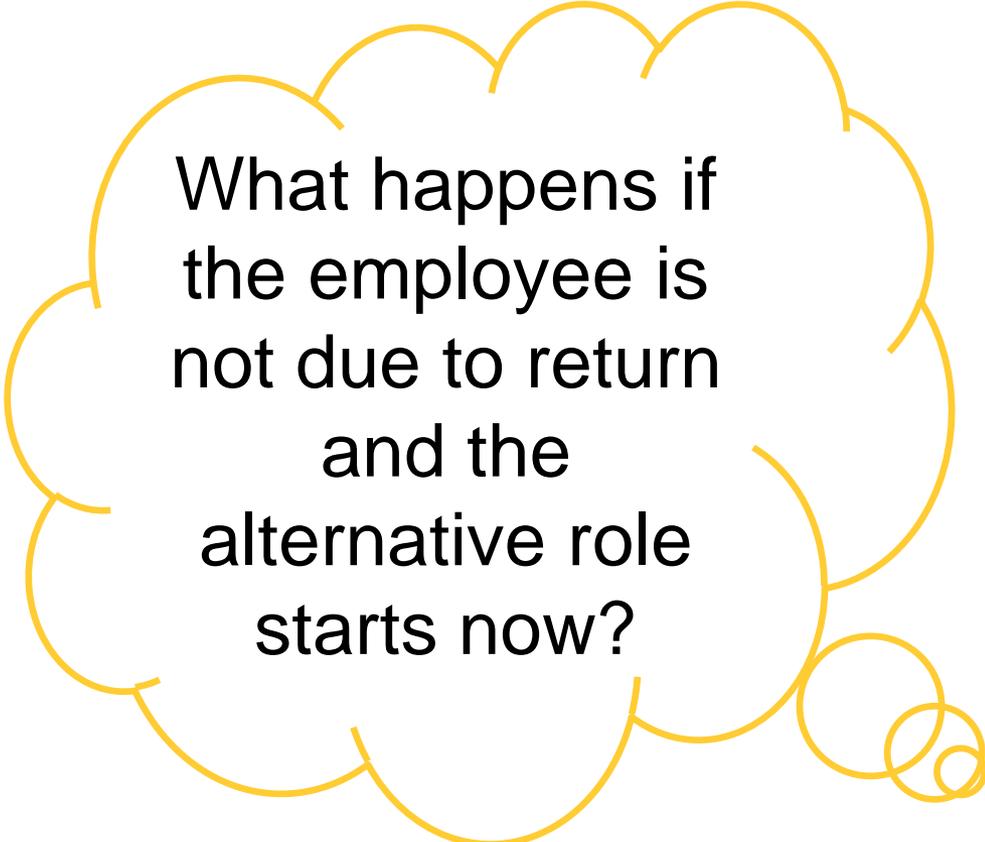
Competitive selection



What about
suitable
alternative
employment and
shared parental
leave?

Shared parental leave and SAE

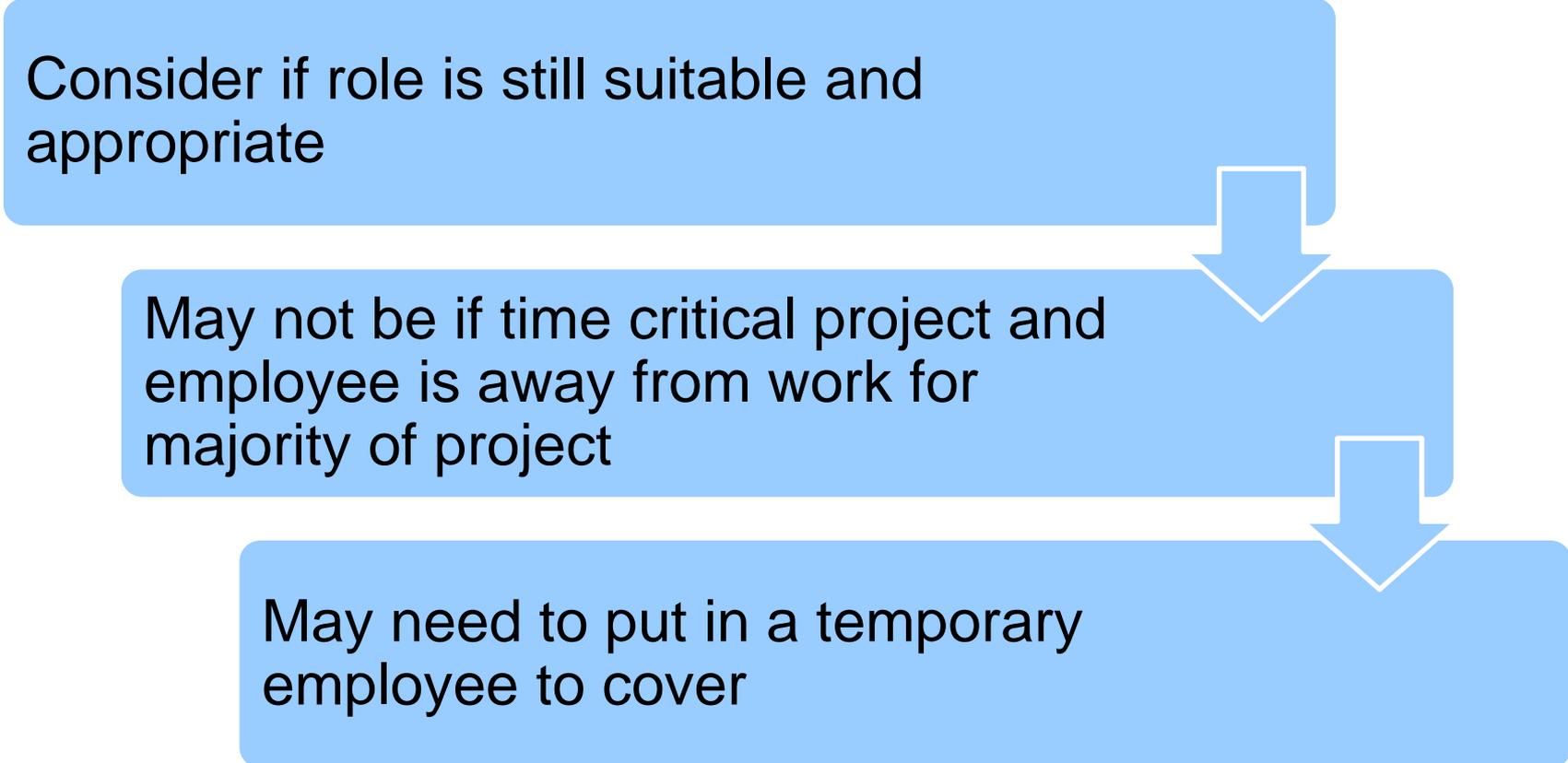
Priority in same way as maternity leave



What happens if
the employee is
not due to return
and the
alternative role
starts now?

Employee on leave so can't start new role

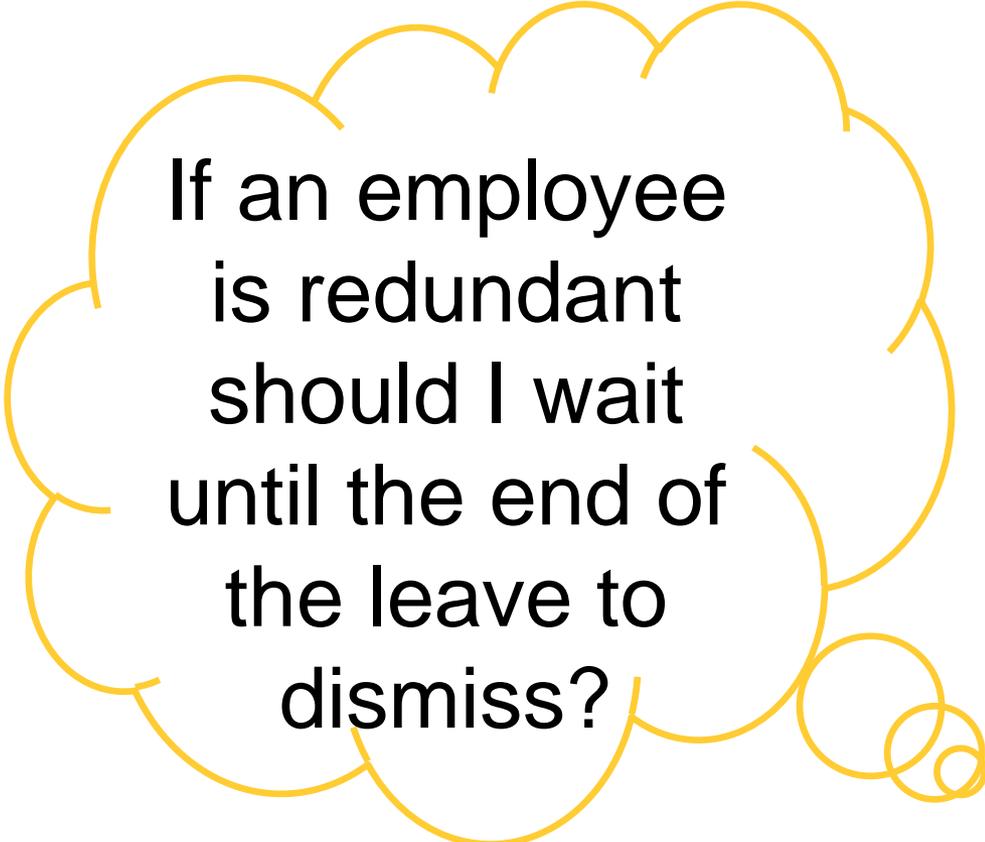
Consider if role is still suitable and appropriate



```
graph TD; A[Consider if role is still suitable and appropriate] --> B[May not be if time critical project and employee is away from work for majority of project]; B --> C[May need to put in a temporary employee to cover];
```

May not be if time critical project and employee is away from work for majority of project

May need to put in a temporary employee to cover



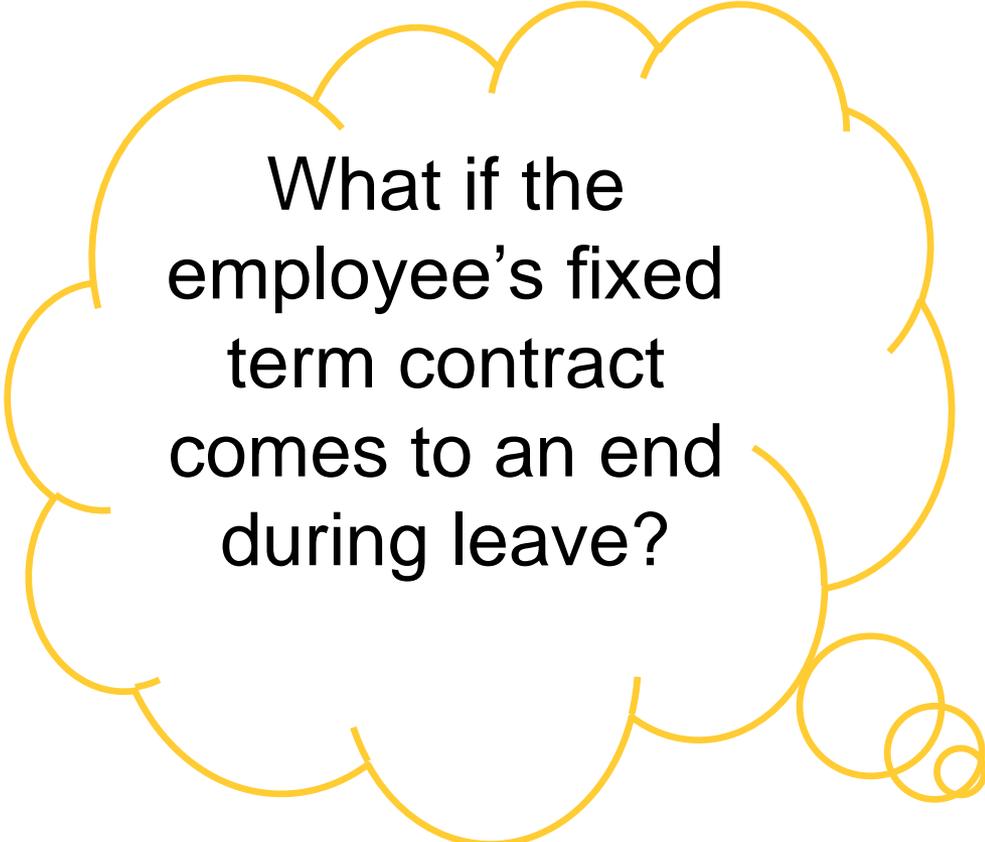
If an employee
is redundant
should I wait
until the end of
the leave to
dismiss?

When should dismissal take place?

Can be when it is confirmed that the role is redundant and no SAE

Some employers wait until the end of the maternity leave period

If you wait remember to consider SAE in future and to provide notice



What if the
employee's fixed
term contract
comes to an end
during leave?

End of FTC during maternity leave?

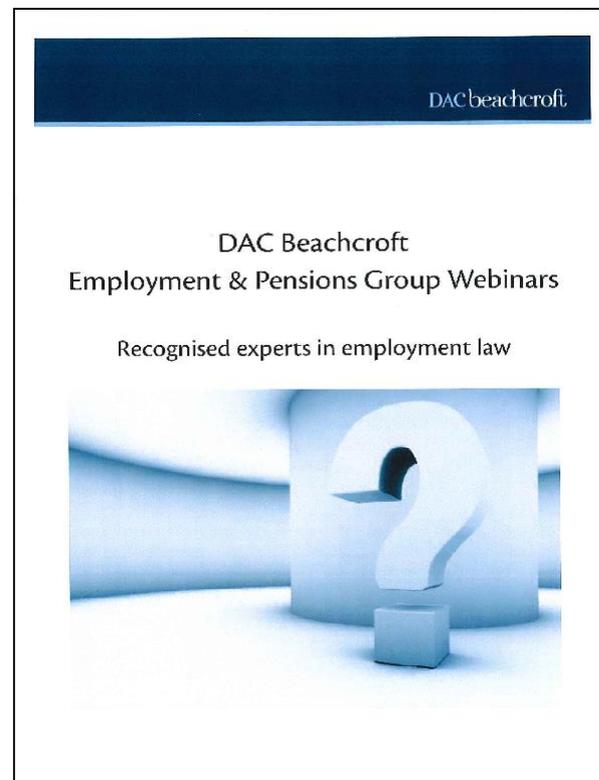
If SOSR
reason for end
of contract, no
entitlement to
redundancy
pay

No obligation
to wait for
return to work
to consult

But, right to be
considered for
suitable
alternative
employment

Introducing our Webinar Programme

- <http://www.dacbeachcroft.com/en/gb/collections/collection-page/?collectionId= 8296>



If you need further assistance please do
contact us:

Deborah Hely

0161 934 3025

dhely@dacbeachcroft.com

DAC beachcroft
