

Redundancy selection - identifying a pool

If your business is making redundancies, you must be very careful when drawing up the pool of employees from which you make your selection. Failure to consider the pool is likely to make a dismissal unfair. This guide highlights the key issues that you need to consider.

What is a redundancy situation?

Redundancy can occur where a business decides to close or relocate, or if a business has a diminished requirement for employees to do work of a particular kind.

Identifying the correct pool

Before selecting an employee for dismissal on the grounds of redundancy, your business must consider from which pool of employees redundancy selection should be made. Otherwise the dismissal is likely to be unfair. If there is only one employee carrying out the work that is affected, you may not need a pool.

Discretion over the size of the pool

There are no fixed rules about how a redundancy pool should be defined. As long as your business can show that your choice of pool was reasonable in the circumstances, it will be difficult for an employee (or an employment tribunal) to challenge your decision.

Considerations for identifying the pool

When considering the choice of pool, your business should start by asking two questions:

- Which particular kind of work is disappearing?
- Which employees do the particular kind of work that is disappearing?

If there is a clear link between the kind of work that is disappearing and the group of employees doing that work, then the pool is likely to be easy to identify. Your business should also consider:

- The extent to which your employees are doing similar work.
- The extent to which employees' jobs are interchangeable.
- Whether the selection pool was agreed with union or employee representatives.

Look at the work your employees actually do

Your business should look at the day-to-day activities of your employees and the terms of their contracts. You should concentrate on the reality of the situation, rather than what their contract says in theory they may be required to do.

Consider interchangeable skills

- Identifying the pool becomes complicated if your employees are multi-skilled and do different types of work, or can be required to do different types of work under their contract of employment. In these cases, your employees are more likely to object to being labelled as redundant, particularly if they can point to other employees with whom they share interchangeable skills.

- It may be unreasonable for your business to identify one employee as being in the pool simply because they are doing a particular type of work that is disappearing, and ignore another employee doing different work where the first employee could just as easily do that other work.
- If an employee has previously done other work (other than the kind of work disappearing), it is likely that their skills are interchangeable with your other employees, and so a wider pool may be required.
- Where the work is “low-skilled”, the skills are more likely to be regarded as interchangeable.

“Bumping”

Your business may be entitled to widen the selection criteria for redundancy beyond those employees that are directly affected by the redundancy situation. You can consider “bumping” out of their jobs employees whose roles are not redundant, to be filled by employees whose roles are redundant. There is no obligation on your business to consider “bumping”, but you may fall foul of unfair dismissal law if it would have been reasonable to consider it in the circumstances.

Commercial problems with a wide pool

Your business may be reluctant to draw up a wide pool, even if it would be technically correct to do so, because of the impact that it could have on the morale of your employees. By identifying a narrow pool, or only consulting with those individuals provisionally selected for redundancy, you may be more vulnerable to claims of unfair dismissal. Your business must decide whether the risks to morale and other costs of widening the pool outweigh the risk (and cost) of claims.

More information

This guide is not intended to be a substitute for specific legal advice on your situation, and should not be relied upon as such. However, if you have any questions about the content of this guide or require any further information or advice, please contact Helen Essery, helene@n-v.co.uk.