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This guide should only be used as such, a guide. It is strongly recommended groups and organisations seek the advice of an HR professional.

## Guidance to a Fair Redundancy Process

Many voluntary sector groups and organisations who deliver services in and around Glasgow employ staff and have done for many years. It is extremely important committee and board members understand they are the employers for these staff and there are employment laws which govern working arrangements and rights for staff. Sadly in the current environment, many voluntary sector groups and organisations are facing financial uncertainty and potential crisis.

If you are a committee or board member of an organisation who employs staff, always plan for pay liabilities well in advance and be aware of when you may be in danger of running out of funds.

## Anticipated Funds

If you have applied for funds but do not have them confirmed, then do not rely upon them and start the redundancy process if necessary. It is far less risky for the organisation to do this and withdraw the notices than leave the redundancy process too late to be fair and reasonable (see below). If you suspect there is a problem and you may need to make staff redundant, **act quickly**.

## Employment Status

There are often misunderstandings across the sector regarding employment status and contracts, it is vital committee or board members are clear and should seek advice if they are not. For example, common problems occur when people talk about temporary or sessional contracts and assume these staff do not have rights to notice and redundancy.

Whilst workers do not accrue continuous service, employees do. As soon as an employee reaches the two year point of their employment, they have the right to redundancy and could claim unfair dismissal if their contract is terminated for any reason, including redundancy. The two year point could be reached by someone on rolling temporary contracts as well as a permanent one and they achieve permanency status at the four year point. Check with an HR professional if there is any confusion over whether someone is a worker or employee.

## Liability under Employment Law

If staff are employed as employees, the relationship continues until the termination date has been given in writing. However, to avoid risk of an unfair dismissal claim being raised at employment tribunal, a fair and reasonable process for redundancy must be followed. The requirement is at least two formal 1:1 consultation meetings to which the staff have a right to bring a trade union representative or work colleague. Only once the consultation period has completed can notice of termination be given.

Liabilities continue until this happens including:

- 100% salary
- Continuous service – if the organisation has not started the process or the consultation takes time, they could have reached another full years' continuous service
- Payment for annual leave accrued and not yet taken as at the date of termination
- Statutory redundancy pay based on age, length of service and pay [www.gov.uk/calculate-your-redundancy-pay](http://www.gov.uk/calculate-your-redundancy-pay) and
- Required notice to terminate the contract, which is one week for each complete year of service to a maximum of 12 weeks. For example if you have a staff member who has worked for the organisation for ten years, they have a legal right to ten weeks' notice, most employment contracts state a minimum of four

**Notes:**

- Notice can be completed with active duty or payment in lieu of notice.
- As redundancy is a dismissal, staff must also be given the right to appeal the dismissal, if they wish to do so.
- In smaller groups or organisations, there may not be trade union or work colleagues. It is a legal right to have them present but a group or organisation can at its discretion make a reasonable adjustment to allow a friend or family member to attend instead.
- In exceptional circumstances a group or organisation may ask staff if they will agree to a condensed process. If they do, a record should be kept of this to evidence no coercion has taken place.

### **Furlough**

Staff cannot be on furlough during any notice period, it is illegal to claim furlough if staff are issued with notice. Following recent case law, organisations must consider furlough as an alternative to redundancy.

### **Risks**

If committee or board members have not taken action in time and the organisation has no financial resources to cover the period for a fair and reasonable process as defined above, the last option available would be to use 'Some Other Substantial Reason' (SOSR) for termination of employment; being the organisation is no longer able to sustain employment due to insolvency. If the organisation has no other choice than go down this route, then a letter must be written to each staff member affected to formally terminate employment. All entitlements continue to accrue until notice of termination is given in writing.

This course of action should be only exercised if absolutely necessary. There is significant risk here, in that staff could claim unfair dismissal at employment tribunal and may well win. The reason being, even SOSR dismissal should follow a fair and reasonable process of at least one formal meeting with the right to trade union representative or work colleague and the required notice period given.

Failure to follow a fair and reasonable process could result in an unfair dismissal claim being raised at Employment Tribunal.

If staff are not provided with their statutory and contractual rights and entitlements, they could raise an Employment Tribunal for

- Breach of Contract – failure to provide and pay contractual annual leave entitlement
- Breach of Contract – failure to provide and pay notice entitlement
- Breach of Contract – failure to pay contractual wages
- Unlawful Treatment – unfair deduction of wages
- Unlawful Treatment – unfair dismissal
- Non-payment of statutory redundancy pay

If the committee or board were fully aware of having no anticipated income, no income generation and would become financially insolvent, there is significant risk of staff raising an Employment Tribunal claim and being successful in the claim.

### **Personal Liabilities**

Committee and board members must be aware of the legal structure of their group or organisation and the implications this has on their personal liabilities, for example, if unincorporated, any award made by the Employment Tribunal Judge would be the liability of individual board members, ie they would personally need to pay any awards made. Even with incorporated groups, board members must not act negligently or fraudulently.

**It cannot be stressed too strongly, we advise you make yourself aware of the rights of your staff, given their individual circumstances, and the relevant timelines. Act in a timely fashion and seek professional HR advice.**