Frequently Asked Questions - Employment

For further information and guides on employee related issues see the ACAS website: http://www.acas.org.uk.

Employment Contracts

Does APSCo have a template employment contract for my employees?

We have template contract and guidance available for members to use for their employees available here.

If my employee doesn't sign the contract, does it mean the terms and restrictions are not enforceable?

This will depend on the circumstances of the case. A contract of employment is an agreement made between an employer and an employee, rather than a piece of paper. Where there is written confirmation of this agreement, the terms within it may still be enforceable even if it is unsigned, if in practice the employer and employee have both been working to it.

It is important therefore that employees do not assume that not signing a written confirmation of the contract means that they have not agreed to it or that it is not enforceable. However, enforcing certain terms such as restrictive covenants is very difficult if unsigned so we always recommend a robust process with signatures.

Can I change a term in my employee's contract?

An existing contract of employment can be varied only with the agreement of both parties. You may be able to change the terms of your employee's contract if one of the following applies:

- There is a clause in the contract that allows you to do so (a variation clause); or
- The employee agrees to the change.

The correct procedure to use depends on which of these options applies. You should consult with your employees (or their representatives) about any proposed changes to their contract with the aim of seeking the employee's agreement. If neither of the options applies, attempting to change the terms could be a breach of contract. As case law suggests that tribunals and the courts often place a fairly narrow interpretation on flexibility clauses, an employer should seek legal advice if they intend to rely upon the flexibility clause in their employees' contracts to vary the terms and conditions. You can read further information on how to change your employee's contract in this Acas leaflet.

Restrictive Covenants

Can I prevent my ex-employee from taking up a new job with a competitor?

It is possible to limit **where** a former employee can work. It can be done in the employment contract via, what are often referred to as non-compete clauses. These can however, be difficult to enforce particularly in respect of more junior staff.

A clause restricting the **type of work** the former employee does and who they contact after they leave, is known as a restrictive covenant. Restrictive covenants can be enforceable provided they are reasonable and if the terms go no further than is necessary to protect the justifiable business interests of the employer.

For example, the restrictive covenant or non-compete clause may prevent an employee from working for a competitor within a certain distance of their current employer for a set period of time, or from working with or contacting clients of the current organisation, either on their own behalf or that of another company.

An employee who does not comply with a restrictive covenant may be pursued by the employer for breach of contract. It would then be for the court to decide whether or not the restrictive covenant (either in part or in whole) is enforceable. Employers or employees in this situation may benefit from taking legal advice.

What is a restrictive covenant within an employment contract?

There are broadly four types of restrictive covenant:

- Area covenants – seek to prevent a former employee for working for a competitor, usually within a specific geographic location.

- Non-solicitation covenants – seek to prevent a former employee from soliciting or enticing other employees to leave their employment. This is usually restricted to employees with whom the former employee had material or personal dealings.

- Non-dealing covenants – seek to prevent a former employee from dealing with the clients/candidates of their former employer, whether solicited by the former employee or sought out by the client/candidate.

The restrictive covenants above will have time limits attached to them.

Your contract can also contain a confidential information clause – to prevent a current or former employee from using any confidential information belonging to their employer. Your employment contract should state that the confidentiality clause (amongst others) survives termination of the employment agreement.

Are restrictive covenants enforceable?

Restrictive covenants are traditionally considered as a "restraint of trade", which English Courts will not enforce unless the company can show that the restriction imposed is reasonable and necessary to protect a justifiable business interest.

Covenants that are too wide are less likely to be upheld. For instance, where a former employee is restricted from dealing with clients, this should be limited to clients with which the employee has had material contact in providing specific services (the services should be defined), and the restriction

should not extend for too long if such length cannot be reasonably justified. Broadly speaking, a six-month restriction is more likely to be upheld than a 12 month restriction – although this will depend on the company's ability to justify the reasons for a longer restriction.

When drafting restrictive covenants we would therefore suggest that you get specialist legal advice to ensure that the restrictions you place on your employees are justifiable and hence, more likely to be enforceable. Alternatively, use the APSCo contract of employment and guidance.

It is important to remember that you can only enforce your employment contract if you are not in breach of that contract. The most common breaches occurring on termination are failure to pay notice period or commission due at termination. Therefore, except in the most obvious cases of gross misconduct, it is preferable to pay notice to preserve your contractual rights.

Discipline and grievance

Does APSCo have a template disciplinary and grievance policy?

APSCo has the following policies for dealing with disciplinary and grievances:

- APSCo Model disciplinary and capability procedure.
- APSCo Model disciplinary rules.
- APSCo Model grievance procedure.
- APSCo Guidance on the APSCo Model disciplinary capability & grievance procedures.

The Disciplinary Rules should be read in conjunction with our Disciplinary and Capability Procedure. All documents can be found here.

How do I terminate an employee fairly?

A dismissal occurs when an employer terminates the employee's contract. Just as formal disciplinary action should only be necessary if informal methods have failed to resolve the problem, dismissal should be the last resort in terms of sanctions. The principles for handling disciplinary situations, up to and including dismissals are set out in Discipline and grievances at work: The Acas guide. Members should also follow their own disciplinary process.

Can I terminate an employee within their probation period without following a procedure?

It is always advisable to follow some degree of a fair procedure, even in the probationary period and even where there is no contractual requirement to do so. This could be a final formal meeting at the end of a series of informal chats. Doing so will ensure that there is a paper trail setting out your motivation for terminating their employment and this will assist you in demonstrating the real reason for the dismissal if the matter were to be challenged.

This is not to say you can't dismiss an employee during a probation period 'without' any process. However, an employer needs to be mindful of the risks associated with terminating without any warning or discussion.

For an employee to bring an **unfair dismissal** claim, they will need to have two years continuous employment. It is worth remembering, however, whilst the employee during the probation period will not have the required length of service to bring an unfair dismissal claim, there are other claims that they could bring which have no qualifying period, i.e. **wrongful dismissal**, protected disclosure (whistle blowing), discrimination, health and safety etc.

Can I terminate an employee without notice?

In a few cases employers may dismiss someone without notice on the grounds of gross misconduct. 'Gross misconduct' - seriously bad behaviour, such as violence, theft, fraud, and incapacity due to drugs or alcohol - can warrant a 'summary dismissal' and many take that literally to mean an instant sacking without notice. Employers should give employees a clear indication of the type of issues that could constitute gross misconduct and it is still important to follow a fair procedure as for any other disciplinary offence.

It is important that you don't breach your own contract by failing to give notice without due process. If you do, you can't continue to rely on your contract. This means you could not enforce confidentiality or restrictive covenant clauses.

Employee Sickness

When do I have to pay SSP?

If an employee (full & part time) or agency worker is off sick for 4 or more days in a row (including non-working days) they will be entitled to receive SSP. For further information on agency workers and SSP see our Recruitment and Compliance FAQ's.

The employee in question also has to be earning a certain specified sum per week, which is updated every new tax year (for information on the earnings, see here). The payments should be made at the same time as you would have paid the employee's salary for the same period - so for weekly-paid employees, you pay at the end of the week.

Do we have to pay statutory sick pay (SSP) if we have our own sick pay scheme?

Not if your scheme is as generous as (or more generous than) the statutory scheme. SSP should be deemed to be included in what you pay.

When can we stop paying SSP?

Liability for SSP will end when:

- The employee returns to work.
- The employee has received 28 weeks SSP.
- The employee's contract expires or is brought to an end (for reasons other than avoiding SSP).
- The employee becomes entitled to Statutory Maternity Pay or maternity allowance.

What can I require employees to produce by way of evidence that they are genuinely ill?

You must tell your employees what you expect them to give you as evidence of incapacity for Statutory Sick Pay purposes and when you expect them to give it. You can't withhold SSP for late medical evidence as this could be because your employee is unable to get an appointment with their doctor. For incapacity for 4 to 7 days you may accept self-certification verbally or by letter, form SC2 for self-certification or your own similar form. If the incapacity lasts more than 7 days you can ask

your employee to give you medical evidence or a fit note from their doctor. It is your decision whether evidence of illness is required, and if so, what evidence is acceptable. A doctor's fit note is strong evidence of sickness and is usually acceptable. Your employee must continue to notify you of ongoing sickness. You can withhold payment if there are any days for which you haven't been notified, but not for late medical evidence.

Can we claim back SSP?

You can't reclaim SSP for sick leave any more. This ended from 6 April 2014.

My employee has informed me that they have mental health issues. What should we do?

The Health and Safety at Work Act 1974 imposes a duty on employers to ensure (as far as is reasonably practicable) the health, safety and welfare at work of their employees. Employers are also under a common law duty to take reasonable care of employees' workplace health and safety. The Management of Health and Safety at Work Regulations 1999 require employers to assess workplace health and safety risks for their employees and for third parties. The Health and Safety Executive (HSE) expects organisations to carry out suitable risk assessments, which should include assessing the stress levels of its employees.

Under the Equality Act 2010, an employee's poor mental health can be a disability (determined by legal tests and medical evidence), obliging the employer to make reasonable adjustments. This may include moving employees to an alternative position, management training, workload monitoring, implementing stress and anti-bullying policies, counselling, risk assessments and ensuring appraisals cover potential mental health issues.

Even if the employee's poor mental health is unrelated to their job or does not amount to a disability under the Equality Act 2010, you may still need to make adjustments to their working conditions. Acas has plenty of guidance on managing mental health in the workplace.

If an employee is sick during annual leave or bank holiday, do we pay SSP or full pay?

To pay out holidays instead of giving the employee leave is not allowed until termination of employment. I.e. if a bank holiday or annual leave coincides with an employee being on sick leave or taking sick leave and the holiday counted to the statutory minimum, you would have to pay the employee SSP or give holiday in lieu.

Employee Maternity and Paternity

What is the maternity leave entitlement?

Pregnant employees are entitled to 52 weeks Statutory Maternity Leave if they give the correct notice to the employer. Employees don't have to take 52 weeks if they don't want to, however, the first 2 weeks following the birth must be taken or 4 weeks for those who work in a factory. A pregnant employee has the right to both 26 weeks of ordinary maternity leave as well as 26 weeks of additional maternity leave. To qualify for maternity leave, a woman must tell her employer at least 15 weeks before the baby is due:

- That she is pregnant;
- The expected week of childbirth, by means of a medical certificate if requested;

- The date she intends to start maternity leave. This can normally be any date which is no earlier than the beginning of the 11th week before the baby is due. It is best to advise the employer as soon as possible.

Once notification has been given to the employer they must write to the employee, within 28 days of receiving her notification, setting out her return date. The employee must give eight weeks' notice to change the return date.

Temporary workers are not entitled to maternity leave, although they are entitled maternity pay, if they qualify. For further information on agency workers and maternity, see our Recruitment and Compliance FAQ's.

What is the maternity pay entitlement?

Statutory maternity pay (SMP) will be payable if an employee has been employed continuously for at least 26 weeks ending with the 15th week before the expected week of childbirth, and has an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions. SMP is payable for 39 weeks; for the first six weeks it is paid at 90 percent of the average weekly earnings. The following 33 weeks will be paid at the SMP rate or 90 per cent of the average weekly earnings whichever is the lower. The standard rate for SMP is reviewed every April and can be reviewed here.

Some employers may have contractual maternity pay which can be more than the statutory rate, for example 26 weeks of full pay. Contractual maternity pay will depend on the terms and conditions of employment. Temporary workers are entitled to maternity pay if eligible.

Can I re-claim maternity pay?

As an employer, you can usually reclaim 92% of employees' Statutory Maternity (SMP), Paternity, Adoption and Shared Parental Pay. To reclaim the payments, include them in an Employer Payment Summary (EPS) to HM Revenue and Customs (HMRC).

You can reclaim 103% if your business qualifies for Small Employers' Relief.

What notice does my employee have to give when taking maternity leave and when returning to work?

At least 15 weeks before the baby is expected, your employees must tell you the date that:

- The baby is due.
- They want to start their maternity leave - they can change this with 28 days' notice.

You must then confirm their leave start and end dates in writing within 28 days. Employees can change their return to work date if they give 8 weeks' notice. You can't refuse maternity leave or change the amount of leave your employees want to take.

What notice does my employee have to give for maternity pay?

Your employees must give you 28 days' notice of the date they want to start their SMP. This is usually the same date they want to start their leave.

You can refuse to pay SMP if your employee doesn't give you this notice and they don't give you a reasonable excuse.

My employee is off sick when she is pregnant – can we start maternity leave early?

Maternity Leave will automatically start 4 weeks before the baby is due if the employee is off work for pregnancy-related illness. If the baby arrives early the leave will start on the day after the birth. The employee has the same rights to paid sick leave as any other employee (apart from the last four weeks of pregnancy before the EWC.).

What benefits must I provide whilst my employee is on maternity leave?

During the maternity leave, the employee is entitled to benefit from all her normal terms and conditions of employment, except for remuneration (monetary wages or salary). Benefits such as pension payments, a company car or a mobile phone that are considered a 'benefit in kind' should be provided also during maternity leave. If however, the benefit is solely used for business purposes, they do not have to be provided during maternity leave.

Employees can do up to 10 days' work during her maternity leave without losing any Statutory Maternity Pay. These days are called Keeping in touch days and are optional. Both employee and employer need to agree that the Keeping in touch days will be used. Payment for these days should be agreed before the employee comes into work.

Are we required to pay commission whilst someone is away on maternity leave?

The general position is that bonus or commission payments that are part of your salary or regular earnings or performance-related pay are likely to be regarded as remuneration so are not payable during maternity leave. Employees are entitled to SMP or your contractual scheme, not their usual remuneration.

An employee is entitled to be paid any sum earned before the start of her maternity leave regardless of whether it is actually paid after her leave has started. She should be paid it in the usual manner and on the day it is normally due. It would be maternity discrimination to refuse to pay the proportion of any bonus or commission that relates to the time that your employee was actually at work.

Are we required to pay management bonuses that are due on a quarterly and annual basis, if the individual is away for a proportion of that period on either maternity or paternity leave?

The position in UK law regarding an employee's entitlement to a bonus during maternity leave is extremely complex and inconsistent. Remuneration includes the monetary payments under an employee's contract that are replaced by maternity pay during maternity leave. The guiding principle is that a bonus that is retroactive pay for work done (such as a performance bonus) may be reduced pro-rata for any time spent on maternity leave during the bonus period. For example, if they were at work for half the year and on maternity leave for the other half of the year, they should get half of the bonus (subject to meeting any conditions). Where the due date for payment of commission falls during maternity leave, if the commission relates to work they did before they started maternity leave, this would be payable. Note that the two-week compulsory maternity leave period must be treated as time worked for this purpose.

If the discretionary bonus is based on attendance, absence on maternity leave might have an impact on the bonus received. Similar to a contractual bonus based on company performance, if the discretionary bonus is dependent on either attendance or individual performance the employer can

pro-rata the bonus payment based on your attendance. In other words, any absence on maternity leave other than the first two weeks could affect your bonus.

Whether a bonus is contractual or discretionary and the reason for its payment impacts on whether or not it amounts to remuneration. For example, a contractual bonus that makes up part of an employee's pay, such as a performance-related bonus payment, is likely to be classed as "remuneration" and therefore not be payable during maternity leave (although it would amount to sex discrimination not to pay the proportion of the bonus that relates to the period when the employee was at work). Arguably, a bonus that is not part of normal salary, such as a discretionary Christmas bonus, could come outside the definition of remuneration and be payable.

Is my employee entitled to have her job back after maternity leave?

If the employee has been on maternity leave for 26 weeks or less, they are entitled to return to the same job after maternity leave. The pay and conditions must be the same as, or better than, if the employee had not gone on maternity leave. It is considered unfair dismissal and maternity discrimination if you state that the employee cannot return to the same job. If they are returning after more than 26 weeks they still have the right to return to the same job but if you have a good business reason why they cannot return to the same job, you can offer the individual a suitable alternative job on the same terms and conditions. Employers should be careful when making this decision and take further legal advice.

If a redundancy situation arises, she must be offered a suitable alternative vacancy if one is available. If there is no suitable alternative work, she may be entitled to redundancy pay.

Can I make my employee redundant whilst pregnant/on maternity leave?

You can sometimes make an employee redundant whilst on maternity leave and it would not be deemed as discrimination or unfair dismissal but the employees will have greater protections. It will be a fair and non-discriminatory to make them redundant when they are on maternity leave if all of the following apply:

- There's a genuine redundancy situation at work.
- Redundancy is not being used as a way of disguising that they are being dismissed because of their pregnancy.
- They are not selected for redundancy because of pregnancy or maternity.
- They are included in all communications or consultation about the redundancy.
- Any selection criteria used doesn't directly or indirectly lead to a selection for redundancy because they are on maternity leave; and
- You consider suitable alternative work for them where it's available in the same way as they would if they were not on maternity leave.

If you are considering making an employee who is pregnant or on maternity leave redundant, we would suggest you obtain further legal advice. In some circumstances a role should be offered to an individual on maternity leave ahead of other employees.

Do I have any obligations in respect of a pregnant employee's health and safety?

There are important issues you must take into account. You must ensure that all pregnant employees take at least two weeks off work (four weeks, in the case of employees who work in factories) immediately following the birth. In addition, you must assess the health and safety risks posed to

pregnant workers if the work is of a kind that could involve a risk of harm or damage to them or their baby.

If this assessment reveals that the health or safety of the employee is threatened, you must take all reasonable measures to avoid the risk. If there is still a risk, you must alter the employee's working hours or conditions of work, if this would remove the risk and it is reasonable to do so. Otherwise, you must suspend the employee on full pay for as long as is necessary to protect her health or safety, or that of her baby.

My employee who is on a fixed term contract is pregnant. Do I have to re-new her contract?

Generally speaking, a temporary or fixed term contract has no special status in law. Fixed term employees will have all the rights of a permanent employee. In fact, it is unlawful to treat fixed term workers less favourably than permanent workers. They have all the maternity and health and safety rights of ordinary employees. If you do not re-new a fixed term contract, it is still a dismissal under law and has the potential to be an unfair dismissal, depending on the circumstances. It is automatically unfair to dismiss a woman because she is pregnant or intends to take maternity leave, even if this means that she is unable to work for the majority of the contract, whether because of maternity leave or because of health and safety reasons. If you are considering dismissing an employee who is pregnant or on maternity leave we would suggest you obtain further legal advice.

What happens to my employee's holiday when they are on maternity leave?

During maternity leave, an employee is entitled to receive any contractual benefits she would normally receive if she was at work, apart from remuneration. Employees on maternity leave retain their entitlement to statutory holiday throughout ordinary and additional maternity leave. If the employee is also entitled to contractual annual leave (that is, annual leave that you provide over and above the statutory minimum) she will continue to accrue this additional contractual entitlement during OML. If the employee can't take all the holiday leave they're entitled to during a particular year, they can carry it over to the following year. Many employers allow employees to add all of their annual leave on to the beginning or end of the maternity period.

Employee Holiday Pay

What is the minimum statutory provision for paid holiday?

Under regulation 13 of the Working Time Regulations 1998 (SI 1998/1833), workers have the legal right to a minimum of four weeks' paid holiday. Regulation 13A, brought into force by the Working Time (Amendment) Regulations 2007 (SI 2007/2079), introduced entitlement to a further period of 1.6 weeks' annual leave. The minimum 5.6 weeks' paid leave can include any paid time off in respect of bank and public holidays.

The method for calculating the amount to be paid is laid down by statute; for example, for workers whose remuneration and hours are the same every week, a week's pay is the amount payable per week under their contract. An employee who begins employment part way through a leave year is entitled to a proportion of the annual leave equal to the proportion of the leave year that is left to run. Gov.uk has a tool to calculate holiday entitlement.

Can I include bank holidays in my employee's holiday entitlement?

Yes - bank or public holidays do not have to be given as paid leave. An employer can choose to include bank holidays as part of a worker's statutory annual leave.

How do I calculate holiday for part-time employees?

For part-time employees, holiday entitlement is calculated on a pro-rata basis and cannot be replaced by a payment in lieu. So if a member of staff works two days a week, they will be entitled to 11.2 days (5.6 x 2). Any unused holiday above four weeks (the first four weeks cannot be carried over) may be carried over into the following leave year.

Can I allow my employee to carry over holiday?

The employee's contract will state how many days' leave they can carry over into the next year. If a worker gets 28 days' leave, they can carry over up to a maximum of 8 days. If the employee gets more than 28 days' leave, their employer may allow them to carry over any additional untaken leave. If the employee can't take all of their leave entitlement because they're already on a different type of leave (for example sick, maternity or parental leave), they can carry over some or all of the untaken leave into the next leave year. An employer must allow a worker to carry over a maximum of 20 of their 28 days' leave entitlement if the worker couldn't take annual leave because they were off sick.

Do I need to include commission in my employee's holiday calculation?

Results based commission must be factored into holiday payments for the 4 weeks of statutory annual leave required under European law. There is no requirement to do this for the additional 1.6 weeks of statutory annual leave provided under UK law, or for any additional contractual annual leave allowance. This was confirmed in the case of Lock v British Gas Trading Ltd. There is still uncertainty as to how this ruling should be applied by employers and how to calculate the commission which should be included as part of the holiday pay. Despite the ambiguity it is our recommendation that employers may wish to begin paying holiday pay including notional commission over a representative reference period now in order to limit further potential exposure. Any decisions on holiday pay and amendments to commission schemes and contracts will be fact specific and so we recommend that employers seek legal advice from one of our legal affiliates in order to assist them with this. You can read an APSCo update on holiday & commission here.

How do I calculate holidays for different types of workers?

No matter the working pattern, a worker should still receive holiday pay based on a 'week's normal remuneration'. This usually means their weekly wage but may include allowances or similar payments. Some of these payments might include the situations described earlier on this page, such as commission.

For workers with fixed working hours - If a worker's working hours do not vary, holiday pay would be a week's normal remuneration.
For workers with no normal working hours - If a worker has no normal working hours then their holiday pay would still be a week's normal remuneration but the week's pay is usually calculated by working out the average pay received over the previous 12 weeks in which they were paid.
For shift workers - If a worker works shifts, a week's holiday pay is usually calculated by working out the average number of hours worked in the previous 12 weeks at their average hourly rate.

Can I pay holiday in lieu?

While workers are in employment, 5.6 weeks of their annual leave (this is the amount all UK workers are statutorily entitled to) must be taken and cannot be 'paid off'. Anything above the statutory allowance may be paid in lieu but this would depend on the terms of the contract.

When a worker's employment is terminated, all outstanding holiday pay that has been accrued but not taken (including the statutory allowance) must be paid. This is the same for temporary workers.

Redundancy

What is redundancy?

Redundancies are a form of dismissal and can happen when an employee's job no longer exists. This may be due to an employer needing to reduce their workforce, close the business, or that certain work is no longer needed. Redundant employees may be entitled to:

- Redundancy pay.
- A notice period.
- A consultation with your employer.
- The option to move into a different job.
- Time off to find a new job.

How can I ensure my redundancy process is fair?

Redundancies are subject to a range of requirements and failure to observe them could give rise to claims for unfair dismissal. The best way to reduce the risk is to have a procedure and stick to it. In addition, if you are making individual employees redundant you must follow fair and reasonable procedures. Refer to the Acas guidance on redundancy for more specific advice on fair and reasonable procedures in redundancy.

How much notice do I have to give when making an employee redundant?

There is no statutory fixed period of consultation required where you are making fewer than 20 employees redundant. However, check your employment contracts and any policies/agreements in case you have a contractual obligation to do so. You are, however, required to have meaningful individual consultation. If you are proposing to dismiss 100 or more employees for redundancy from one establishment within 90 days or less, consultation must begin at least 45 days (previously 90 days) before the first dismissal takes place. If you are proposing to dismiss between 20 and 99 employees for redundancy at one establishment within 90 days or less, consultation must begin at least 30 days before the first dismissal takes place.

If an employee has less than two years' service (and so wouldn't qualify for a redundancy payment) is it still a redundancy?

Yes. While employees with less than two years' service will not qualify for a statutory redundancy payment, the reason for terminating the contract will still be redundancy and a fair process should be followed.

If I am closing my business, will the Government pay statutory payments to my employees?

Provided that the employees would have been entitled to statutory payments such as redundancy pay, notice pay, arrears of wages and outstanding holiday pay, the National Insurance fund can make statutory payments if your business is unable to. However, this is in very specific circumstances only and can be a complex area. To find out more about redundancies if your business is insolvent or closing, contact the Redundancy Payments Service Helpline (managed by Acas) on 0845 145 0004.

Does an employee have a right to be accompanied during consultation meetings in small-scale redundancy situations?

There is no statutory requirement to allow an employee to be accompanied for this reason but double-check to see if your employee contracts, policies or union agreements require you to do so. It is usually good practice to allow employees to bring a work colleague or union representative into such meetings and can help increase staff confidence in your handling of the process.

If I sell my business, do I have to make my staff redundant?

No. If you are selling your business in most circumstances, your staff will transfer as part of the business. There are specific rules to protect employees from dismissal if the sole or principal reason for dismissal is the transfer itself. For more information on this area, contact the Acas Helpline on 0300 123 1190.

Do zero-hours contract workers qualify for redundancy pay?

In many cases, a zero-hours contract refers to a genuinely, casual relationship where an employer recruits a 'worker' rather than an 'employee'. Only 'employees' are covered by redundancy rules. It is very important to assess the employment status of your staff accurately. A wrong decision here could give rise to a successful claim of unfair dismissal. For more information about zero-hours contracts, see Acas's guidance on zero-hours contracts.

Can a clause in a contract waive the right to a statutory redundancy payment?

No. A contract of employment cannot remove an employee's right to a statutory redundancy payment or any other statutory right. However, a contractually enhanced redundancy pay scheme may improve on the statutory entitlement.

Can I make a part-time employee redundant?

Yes. However, you are statutorily required to make sure you do not treat your part-time employees less favourably than your full-time employees, so ensure your consultation process and selection criteria do not inadvertently penalise part-time employees.

The employee selected for redundancy has been part-time for the past 12 months but full-time for six years before that. How do I calculate redundancy pay?

There are different methods to calculate redundancy pay, depending on whether employees have regular or irregular hours of work and if their pay varies with the amount of work they do. However, the calculation methods all focus on what the employee is currently receiving (or receiving on average) in terms of a 'week's pay'.

Therefore, the fact that the employee had worked full-time originally is unlikely to affect the 'week's pay' calculation. But, the fact that the employment was continuous means that it will count towards the part of the overall redundancy calculation that uses the employee's length of service. If you need basic assistance calculating your redundancy payments, visit GOV.UK - Calculate your statutory redundancy pay and for more complex calculation queries contact the Redundancy Payments Service Helpline (currently managed by Acas) on 0845 145 0004.

Is a voluntary redundancy a resignation?

No. The fact that an employee volunteers for redundancy doesn't mean the employment contract is terminated by mutual consent. Instead, voluntary redundancy is recognised as a redundancy dismissal.

If my business is changing, how long do I have to wait before I can recruit again?

There is no fixed period of time following a redundancy exercise in which you need to avoid recruiting. If your business situation genuinely changes unexpectedly and a role you previously made redundant has to be re-created because you now need new staff, you can recruit as and when you like. Remember that any staff working their redundancy notice periods should be given the chance to trial these new roles first if they are potentially suitable and reasonable alternatives.

If I recruit again, do I have to offer a job to the person I made redundant?

If you're recruiting into roles you've recently had to make redundant, you may wish to proactively recruit your original employees as there is a good chance their skills and experience will give your business efficiency savings and advantages that you may not get with completely new employees. However, you're not statutorily obliged to do so.

Can an employee who is pregnant or on maternity leave be made redundant?

Yes. However, absences related to pregnancy or maternity leave should never negatively affect an employee's selection criteria score. Similarly, it is automatically unfair to select an employee for redundancy because she is pregnant or on maternity leave.

Also, women on maternity leave who have been selected for redundancy have a statutory entitlement to be given priority above any other employee (even where others are more qualified or experienced) to be offered any suitable alternative vacancies. For more detail on maternity and redundancy see the joint Acas & EHRC guide Managing redundancy for pregnant employees or those on maternity leave.

Can an employee see other people's selection scores?

Usually not. Individual selection scores are a matter between that employee and the employer. However, where there is concern over the scoring, it may be appropriate to anonymise your employees' scores and subsequently share them - but only if it's absolutely necessary and can be made genuinely anonymous.