



Collective consultation: HR guide

Description

Introduction

Depending on the number of proposed redundancies, employers may have a duty to carry out **collective consultation**. In this guide I explain the obligations.

When does the duty arise?

Where there is a proposal to dismiss as redundant twenty or more employees from one establishment within a ninety-day period the employer must carry out **collective consultation**.

Establishment means store, branch or location where the employee was assigned and not the whole of the employer in the wider sense. It means that employers who have a number of establishments do not have to carry out **collective consultation** obligations for stores, for example, where the headcount is less than twenty employees.

However, the proposed new legislation will effectively remove the concept of one establishment and require employers to take into account proposed redundancies across the whole of the business.

Redundancy has a wider meaning than for statutory [redundancy](#) unfair dismissal purposes. It means a dismissal that is not related to the individual concerned. It could include where an employer changes terms and conditions through termination and reengagement.



Who has to be consulted?

The employer must **consult** appropriate representatives of affected employees. Affected employees are employees affected by the proposed dismissals or affected by proposed measures in connection with the dismissals. The employer has to engage with the trade union and where there is no trade union recognised for affected employees, elected employee representatives. The Department for Business, Energy and Industrial Strategy must be notified too.

How long should the consultation last?

Consultation must begin in good time. There is no time limit on how long the **consultation** should last. However, where twenty to ninety-nine redundancies are proposed there must be thirty days minimum **consultation** before any dismissal takes effect and where one hundred or more redundancies are proposed there must be forty-five days minimum consultation before any dismissal takes effect.



Information to be provided

The following information must be provided in writing to the appropriate representatives:

- The reasons for the proposals.
- The numbers and description of employees whom it is proposed to dismiss as redundant.
- The total number of employees of any such description employed by the employer at the

establishment in question.

- The proposed method of selecting the employees who may be dismissed.
- The proposed method of carrying out the dismissals.
- The proposed method of calculating the amount of any redundancy payments to be made.

Form of consultation

As a basic minimum **consultation** needs to be undertaken with a view to reaching an agreement on ways and means of avoiding the dismissals, reducing the numbers of dismissals and mitigating their consequences.



Special circumstances

An employer may be able to rely on the special circumstances defence when it is not reasonably practical to consult in good time or provide the requested information. An employer would though still need to take such steps as are reasonably practicable.

Remedies

Employment tribunals may make protective awards when employers breach the rules on providing information, **consultation** and electing representatives. The maximum award is ninety days gross pay for each dismissed employee. The proposed new legislation will, however, alter the maximum award to one hundred and eighty days gross pay for each dismissed employee.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on collective consultation or have other employment law queries please do not hesitate to [contact](#) me on [020 3797 1264](tel:02037971264).

Do check mattgingell.com regularly for updated information.