

Downturns: HR guide

Introduction

In economic **downturns** employers are often faced with many difficult decisions. Employers may have cash flow problems and struggle to be able to pay their fixed costs including salaries. Business planning can be particularly hard. Here are a few options for employers to consider.

General temporary lay-offs

Employers would still be obliged to pay an employee their salary unless the employment contract allows the employer to **lay-off**. In those circumstances an employee would be entitled to certain statutory guaranteed pay. The maximum an employee can receive is £29 a day for five days in any three-month period. The maximum payout would therefore be £145.

If the **lay-off** has been for four weeks in a row or six weeks in a thirteen-week period an employee could resign and claim statutory redundancy pay (though this would be subject to eligibility).

Can an employer cut an employee's pay?

Generally, employers cannot impose **pay cuts** on the workforce and have to get their consent. If an employer imposes a salary cut without the employee's agreement the employee may continue working but make it clear that they are working under protest.

Alternatively, the employee might resign on the basis that the employer has fundamentally breached their contract of employment. Depending on the circumstances, various claims could be considered.

However, if an employer cannot get the employee's agreement there is another option open to the employer. Providing the employer can demonstrate a sound business reason for the lower salary, carries out consultation as required, warns that any continued refusal could result in the employment being terminated and offers re-engagement on the new terms, a subsequent dismissal could be fair.

Is an employer able to force an employee to take annual leave?

An employee does not necessarily have the right to choose when they take their [holiday](#) leave and an employer could tell an employee when to take their leave. However, an employer has to give appropriate notice. The required notice has to be twice as long as the length of the holiday. So if an employer requests an employee to take five days' holiday, they need to give the employee ten days' notice of this.

Redundancy

An employer may decide that the only viable option is [redundancy](#).

A **redundancy** technically occurs when the dismissal is due to the closure of the business, the closure of the workplace where the employee was employed or reduced requirements of the business for employees to do work of a particular kind.

Employees who have at least two years' service and are made redundant are usually entitled to statutory **redundancy** pay. The payment is calculated by reference to length of service, age and earnings (up to a maximum of £544 per week with an overall cap of £16,320). Here is a link for [calculating these payments](#).

In order to dismiss fairly the employer should consult with the individual before a decision is reached, carry out a fair selection if appropriate and search for suitable alternative roles. Also, depending on the number of proposed redundancies, the employer may have obligations to [consult the workforce collectively](#).

Generally, employees need to have at least two years' continuous service with their employer to bring an [unfair dismissal](#) claim. There is no minimum service requirement though for discrimination claims or collective consultation claims.

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

If you need any advice on **downturns** 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.