

ISLE OF MAN
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1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

There are two main areas to consider in relation to the termination of employment in the Isle of Man:-

1. The possibility that there be a claim for unfair dismissal; and
2. Redundancy.

Unfair Dismissal

The Employment Act 2006 (“the 2006 Act”) provides the requirements for the termination of any employment contract.

The employee must not be ‘unfairly dismissed’. In order for the dismissal to be fair the 2006 Act states that it is for the employer to show the reason (or principal reason) for the dismissal and that this reason falls within one of the categories stated in the 2006 Act or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

The reasons the 2006 Act provides are that:-

- (a) the dismissal related to the capability or qualifications of the employee for performing work of the kind which he or she was employed by the employer to do, or
- b) the dismissal related to the conduct of the employee, or
- (c) the dismissal was that the employee was redundant, or
- (d) the dismissal was that the employee could not continue to work in the position which he or she held without contravention (either on his or her part or on that of his or her employer) of a duty or restriction imposed by or under a statutory provision.

Redundancy

A redundancy situation will usually occur where the employer’s need to carry out a particular kind of work has diminished or ceased.

The 2006 Act states that a person can be deemed to be ‘unfairly dismissed’ if their contract of employment is terminated by redundancy but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and any of the reasons

within the 2006 Act applies. The Redundancy Payments Act 1990, (“the 1990 Act”) also applies if the reason for dismissal is redundancy. This is discussed further in the answer to question number 3.

2. Are there any formal requirements for terminating an employee or groups of employees?

Unfair Dismissal

The 2006 Act provides certain mandatory minimum notice periods for employees.

An employee who has been in employment for more than one month is entitled to:-

- (a) not less than one week’s notice if his or her period of continuous employment is less than 2 years;
- (b) not less than one week’s notice for each year of continuous employment if his or her period of continuous employment is 2 years or more but less than 12 years; and
- (c) not less than 12 weeks notice if his or her period of continuous employment is 12 years or more.

The employee can however, waive their right to these periods of notice and agree payment in lieu of notice with the employer.

The employee also has the right to be given a written statement of reasons for their dismissal. This statement must be provided by the employer within 14 days of any request by the employee. The statement must provide details of the reason for dismissal.

The employee is entitled to receive the written statement of dismissal without having to request the same if dismissed at any time when they are pregnant and at any time after childbirth in circumstances in which her ordinary or additional maternity leave period ends by reason of the dismissal.

Redundancy

If an employment is terminated due to redundancy the requirement for providing a certain notice period as set out in the 2006 Act still applies, as does the requirement to provide a written statement for reasons of dismissal contained within the 1990 Act.

In addition, there are further requirements for redundancies. The employer must consider whether the employee could be placed in an alternative role within the organisation and the employer must ensure that they consult with the employees in the redundancy process.

It must also be considered if any collective agreements are in force and whether these affect the termination of employment.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

The reasons the 2006 Act provides under which the redundancy would be unfair are the same as any other unfair dismissal case as detailed in the answer to question 4 below.

The way in which employees are chosen for redundancy must be fair and understood by the employees. Factors which may be taken into account may be:-

- skills or qualifications
- standards or work performance
- aptitude for specific sorts of work
- attendance and disciplinary records.

The 1990 Act also applies if the reason for dismissal is redundancy. Redundancy payments are only required to be made to employees who have had a minimum of two years continuous employment at the organisation.

If an employee unreasonably refuses an offer of suitable alternative work, he will not be entitled to a redundancy payment. It would be for the Employment Tribunal to decide whether the refusal was unreasonable or not.

Provisions are contained within the 1990 Act which stipulate the redundancy payment an employee is entitled to.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

Unfair /Wrongful Dismissal

An employee can make a claim for either wrongful or unfair dismissal to the Isle of Man employment tribunal under the 2006 Act. Wrongful dismissal cases may also be brought in the Isle of Man Courts of Justice.

A wrongful dismissal claim can be brought where the terms of the employee's contract of employment have not been complied with by the employer.

Unfair dismissal may be claimed where a contract of employment was not terminated for the correct reasons (as contained in the answer to question 1 above). Reasons for an unfair dismissal claim include dismissal due to:-

1. Involvement in health and Safety matters;

2. Claiming their rights to annual leave and other working time cases;
3. Acting as the trustee of an occupational pension scheme;
4. Protected disclosures;
5. Assertion of statutory rights;
6. Trade union membership or activities;
7. Asserting their right to minimum wage;
8. Flexible working rights;
9. Asserting right to be accompanied to a disciplinary or grievance hearing;
10. Dismissal for protected industrial action;
11. Racial discrimination;
12. Religious discrimination; and/or
13. Sexual orientation.

Redundancy

If any of the procedures required by the 2006 Act or the 1990 Act are not followed then the employee can challenge the employers' decision to terminate employment.

A redundancy can be deemed to be unfair if the decision to terminate employment is made in accordance with any of the 13 factors above. If the redundancy is not fair then a claim can be made to the Isle of Man Employment Tribunal.

Further claims can also be made by the employee if the employer fails to consult with the employees in the process of redundancy or if they fail to offer the employee any suitable alternative employment if this is possible.

The 1990 Act states that any questions arising under the 1990 Act as to the right of an employee to a redundancy payment, or as to the amount of a redundancy payment, should be referred to the Isle of Man Employment Tribunal.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

Unfair Dismissal

If no written reasons for dismissal are given to the employee the Employment Tribunal can make a declaration as to what they believe the employer's reasons were for

dismissing the employee and can make an award that the employer must pay the employee two weeks pay.

If a termination of employment is found by the Employment Tribunal to be unfair then certain Orders can be made. These Orders may include an order for reinstatement of the employee, an order for re-engagement and/or compensation.

The sum of compensation which can be awarded is prescribed by the 2006 Act and includes a basic award and a compensatory award. The basic award is calculated on the basis of how many years continuous employment the employee has had with the organisation at the rate of a week's pay (presently subject to a cap at £480) multiplied by each completed year of continuous employment. The compensatory award can not exceed £50,000. In addition, there is an award for injured feelings which is subject to a maximum of £5,000.

Redundancy

Under the 1990 Act if written reasons are not provided to the employee for redundancy the employer is guilty to an offence and liable on conviction to a fine not exceeding £200.

If a redundancy is found by the Employment Tribunal to be unfair, then certain Orders can be made. These Orders may include an order for reinstatement of the employee, an order for re-engagement and/or compensation.

If the employer does not make the redundancy payments in accordance with the terms of the 1990 Act the Employment Tribunal can order the employer to pay the same. Where any offence is committed under the 1990 Act by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate can also be found to be guilty of that offence.

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

1. Failure to follow the correct procedures in the Acts/ failure to give correct notice; and
2. Incorrectly classifying a dismissal as a redundancy (i.e. the redundancy must be genuine. The role in which the employee is working in must no longer exist)

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

The 2006 Act provides that in certain cases where the employer can show that they are insolvent or that their business has ceased that the Isle of Man Government's Department of Health and Social Security may make pay to the employee out of the Manx National Insurance Fund the amount to which in the opinion of the

Department the employee is entitled to in respect of any arrears in pay (but not more than 8 weeks), any other amount entitled under their contract of employment including holiday pay and any basic award for compensation in any unfair dismissal claim.

The Isle of Man has also enacted the Trade Disputes Act 1985 (“the 1985 Act”). The 1985 Act states that where there is a trade dispute, an industrial relations officer may, or at the request of either of the parties must, inquire into all the circumstances of the dispute and offer the parties his assistance with a view to settlement.

Where the matter is not settled, the industrial relations officer may, or at the request of either of the parties must, request that the Isle of Man Council of Ministers establish a court of inquiry. The Council of Ministers can then make recommendations with a view to bringing about a settlement to the dispute.