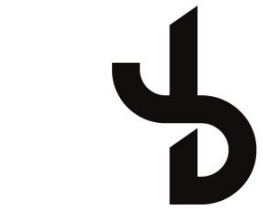
REDUNDANCY, DISMISSAL OR TEMPORARY LAY-OFF

A brochure on employment law



Jussbuss

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1. INTRODUCTION CONCEPTS

Redundancy and dismissal

Cessation of employment relationship

An employment relationship ceases if the employee personally gives in notice of termination, or is given notice by his or her employer. The employment relationship ends in that way, and the employee must finish work once the period of notice expires. There are requirements as to the grounds which an *employer* can use for issuing notices of redundancy to employees and the way the redundancy is to be implemented. This will be dealt with in more detail in this brochure (see chapters 4 and 7).

On the other hand, an *employee* can resign his or her position at any time, and he or she does not need any justification for doing so.

Dismissal is a more serious form of termination of the contract of employment. In the case of dismissal, the contract of employment is terminated, and the employee must *finish work immediately*. An employer can only dismiss an employee if the person concerned is guilty of a gross breach of duty or some other significant breach of the employment contract. In that way, an employer requires greater justification to be entitled to dismiss an employee.

Lay-off

Temporary cessation of employment relationship

Lay-offs involve the temporary cessation of employment and the obligation to pay a wage, while the employment relationship survives. The employee continues to be employed, and is entitled and obliged to return to work once the lay-off period comes to an end.

Sources

When a person is in an employment relationship, it is primarily the contract of employment and the Working Environment Act of 17 June 2005 no. 62 (abbreviated to WEA) that regulate permission for redundancy and dismissal. Wage agreements are also important sources in the field of employment law. These are agreements between the trade union of which the employee is a member, and the employer or his or her association, which can provide greater protection that the regulations in the WEA.

Only the general rules in the Working Environment Act have been used as a starting point in this brochure. You ought therefore to be aware that the wage agreement may lead to other solutions to individual issues.

2 FORMAL REQUIREMENTS

Terms and conditions

Notice of redundancy from the employer must fulfil a number of formal requirements:

Environment Act (WEA) § 15-4

- Notice of redundancy must be given in writing.
- Notice of redundancy must be given to the employee in person or sent by registered letter.

- Notice of redundancy must contain information about the employee's right to request negotiations and to raise a legal action, and the deadlines for doing so.
- Notice of redundancy must contain details about the right to remain in post until the case has been dealt with in the courts, and the deadline for requesting this.
- If the redundancy is due to a lack of employment, it must contain details about his or her preferential right in the event of any new appointment (for further details about this, please see chapter 8).
- The notice of redundancy must provide information on who the employer is and the appropriate defendant in the event of any dispute.

WEA § 17-4 (3)

The consequences of any failure to adhere to the formal procedure in a case of redundancy or dismissal is that the deadline for raising a legal action does not start to run. If these rules are not adhered to, the notice of redundancy shall usually be ruled invalid if the employee files a claim concerning this in the courts. Such a claim must be filed within four months of the invalid notice of redundancy having been given. Verbal notice of redundancy from the employer is one example of an invalid termination.

WEA § 17-4 (3)

If the employee so wishes, he or she is entitled to request justification for the redundancy. See further details of this under the chapter on the negotiation meeting (chapters 7.1 and 7.2).

A notice of redundancy may take the following form and must contain the following, at least, to be formally correct:

Lillevik, 20 January 2014

Lillevik Renhold AS
PO Box 7
NO-1234 Lillevik

Name: Peder Ås
Address: Lillevikveien 7, NO-5678 Storevik

Notice of Redundancy

You are hereby given notice of redundancy from your position as cleaner in Lillevik Renhold A/S, with a leaving date of 1 March 2014.

If you wish to claim that this notice of redundancy does not have an objectivity basis, you are entitled to request negotiations pursuant to the provisions of the Working Environment Act §17-3.

Any request for negotiations must be submitted in writing within two weeks of the notice of redundancy being received.

Pursuant to the provisions of the Working Environment Act §17-4 a legal suit must be raised within eight weeks of the conclusion of negotiations. If no negotiations are held, a legal suit must be raised within eight weeks of the notice of redundancy being delivered. If you are claiming compensation, a legal suit must be raised within six months of the notice of redundancy being delivered.

If a legal suit of this type is raised within eight weeks of the conclusion of negotiations or from the notice of redundancy being issued and before the expiry of the notice deadline, you will be entitled to remain in post until the case has been decided in a legally binding judgement or ruling. The same applies if, before expiry of the redundancy notice deadline, you have informed the employer in writing that legal proceedings are being instituted within the eight-week deadline.

The employer and the appropriate defendant is Lillevik Renhold A/S, represented by Managing Director Lars Holm.

If the notice of redundancy is motivated by a lack of work, the following information must also be provided:

You have a preferential right to any new appointment in the company, unless this applies to a position for which you are not qualified. The preferential right applies from the date of the notice and for one year from the expiry of the period of notice.

Yours sincerely

Lars Holm, Lillevik Renhold A/S

3 PERIOD OF NOTICE

WEA § 15-3

To mitigate the effect of a redundancy as far as possible for both parties, there are rules concerning the period of notice. The period of notice is the time during which the employment relationship continues from the date when the redundancy notice is given until the employee relinquishes his or her position.

The length of the legally determined period of notice depends on the seniority rights and age of the employee. In certain cases, an employee is given a longer period of notice when the period of notice is determined by the employer. Below is a schematic summary of the length of the period of notice:

Length of employment	**Employee gives notice**	**Employer gives notice**
In the case of a probationary period agreed in writing	14 days (from date to date)	14 days wea. § 15-3 (7)
0-5 years	1 month	1 months wea § 15-3 (1)
5-10 years	2 months	2 months wea § 15-3 (2)
10 years and more	3 months	3 months wea §15-3 (2)
Over 10 years and where an employee has reached the		
50 years	3 months	4 months wea § 15-3 (3)
55 years	3 months	5 months wea §15-3 (3)
60 years	3 months	6 months wea § 15-3 (3)

When does the period of notice start running?
WEA § 15-3 (4)

The period of notice runs from the first day of the month after notice has been given. For example, if an employee hands in his or her notice on 23 February, the period of notice will start to run from 1 March. If the period of notice is three months, an employee should not normally leave work before 1 June.

When will notice have been received?
WEA § 15-4 (2)

Notice will be considered received once it has been delivered to the employer or employee. This requirement will be fulfilled when the notice of redundancy is in the employer's or employee's postbox, or when the person concerned receives a note to come and pick up a registered letter at the post office.

Redundancy during probationary period
WEA § 15-3 (7) cf. WEA § 15-3 (4)

If notice of redundancy is given while an employee is still in his or her probationary period, the period of notice will run from *the day on which the notice* was given. See further details about the rules in the event of redundancy during the probationary period in chapter 4.2.

Redundancy during lay-off
WEA § 15-3 (9)

An employee who is laid off without pay in conjunction with curtailment or cessation of operations, can claim a one-sided period of notice of 14 days counted from *the date* on which notice is received by the employer.

Contractual periods of notice
WEA § 15-3 (1)

In many cases, periods of notice will be agreed, either in the contract of employment or the wage agreement, which are longer than have been mentioned here. The contract will then apply instead of the statutory regulations.

Shorter periods of notice
WEA § 15-3 (1)

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4 REQUIREMENT FOR FAIRNESS IN THE EVENT OF REDUNDANCY

Introduction

The fairness requirement
WEA § 15-7 (1) and legal precedent

A redundancy will have major consequences for an employee. This is the reason that requirements have been specified for redundancy. A redundancy must be based on fairness. This chapter gives a more detailed explanation of what the requirement regarding a fair basis involves.

A redundancy must be based either on circumstances on the enterprise's, employer's or employee's part. Examples of circumstances that could have their basis, on the part of the enterprise and the employer are financial savings, operational cut-backs and similar factors. Circumstances on the part of the employee, for example, might be when the employee turns up too late for work, performs poorly at work, is disloyal and other similar factors.

Concrete holistic assessment

WEA § 15-7 (1)

In the event of redundancy, an employer must undertake a concrete holistic assessment of whether there are sufficiently strong grounds to make the employee redundant. There is also a requirement that, as far as practicably possible, an employer should discuss the issue of redundancy both with the employee and his or her elected representative. If no such discussions are held, this in itself will not mean that the dismissal is regarded as invalid. However, it will be evident that the employer has not undertaken the necessary assessments. This means that it will be more difficult for an employer to prove that there are fair grounds for the redundancy. The requirement of having to hold a discussion meeting does not apply if an employee him- or herself does not wish this.

Redundancy during probationary period

Requirement concerning a written contract

WEA § 15-6 (1)

The intention behind a probationary period is that the employer will be able to find out whether the employee has the correct characteristics and is suitable for the job to which he has been appointed. To ensure that a probationary period is valid, this must be agreed in writing in the contract of employment, cf Working Environment Act §14-6 subsection one item f, and the probationary period may last up to six months. If an employer does not believe that an employee has the appropriate characteristics, the employee may be made redundant during the course of the probationary period. The grounds for the redundancy must be the employee's suitability for the work, professional competence or reliability. In addition, an employee may be dismissed in compliance with the ordinary rules for redundancy pursuant to the Working Environment Act §15-7, see chapters 4.3-4.6.

In assessing an employee's characteristics, no ideal requirements should be specified but it must be possible to expect that the work performed is of an average level. It is also assumed that the employer has provided instruction, guidance and training in the duties that the employee has been employed to carry out.

WEA § 15-3 (7)

The period of notice during the probationary period is 14 days unless otherwise agreed in writing, cf Working Environment Act §15-3 subsection seven. The fourteen-day period of notice starts to run from the day on which notice is received. If the redundancy notice has not been given before the end of the probationary period, the ordinary rules on dismissal will apply.

Redundancy due to circumstances on the undertaking's side

WEA § 15-7 (1)

Redundancy is often based on cut-backs to operations, rationalisation or reorganisation considerations, but it is not necessary for the enterprise to be running at a loss or to be in a bad financial condition. An employer is not obliged to maintain a post when there is no longer a need for it. However, an employer must be able to prove that the redundancy will lead to a more efficient and rational operation.

Requirements for fairness

In the event of redundancies due to operational cut-backs to operations or rationalisation measures, further requirements are specified concerning the objectivity of the dismissal.

WEA § 15-7 (2)

- That the employer has no other suitable work to offer the employee
- That the company has assessed the enterprise's needs against the difficulties redundancy causes for the employee.

Other suitable work

A consequence of the provision in WEA § 15-7(2)

If an employee is made redundant, the company management is obliged to undertake internal investigations to see whether there are any alternative posts in the enterprise for which the employee would be qualified. If there is only a need for ordinary induction into new duties, the company should offer the employee the position. If the company does not offer him or her this, the redundancy will not be considered fair. If the employee would have to be given new training or education on a fairly large scale to be able to handle the new position, however, the enterprise will not be obliged to offer it to the person concerned.

The company must undertake a concrete, sound assessment

Assessment of interest
WEA § 15-7 (2)

In conjunction with the redundancy, the company has a duty to undertake a holistic evaluation both of its own interests and those of the employee. The management of the company must undertake an evaluation of the enterprise's needs, such as rationalisation and reorganisation, as against the problems redundancy would cause for an employee. If an employee is unable to find a new job before the expiry of the period of notice, he or she would lose income, for example. If an employer has reason to assume that the employee will have problems finding a new job, the employer must take this into consideration during the redundancy evaluation. On the other hand, if a company finds itself in a serious economic crisis, this would make it easier to decide that redundancy would have to be regarded as being fairly based.

Selection

Legal precedent

Even if there are objective grounds for dismissing one or more employees, the company cannot just dismiss anyone. There is also a requirement for fairness concerning the selection. Here, the company must have chosen guidelines for the selection of the persons to be dismissed and must adhere to those. Examples of a lack of fairness might be that the employer allows the employee's religious or political views, engagement with trades unions, and similar, to influence the choice of employees to be made redundant. Some of the most important factors to which the employer ought to pay attention in the selection process include seniority, the employee's suitability and social circumstances.

Seniority

Seniority indicates the length of time the employee has been employed within a company. If several employees have equal standing as regards qualifications and similar, the employee with the greatest seniority will go forward. A company has to do a great deal more if it is to deviate from the seniority principle if the seniority differences in question are significant. Stricter seniority rules may follow from the wage agreements.

Employee suitability

The term "qualifications" is understood to mean a number of the individual employee's characteristics. This will include formal qualifications, relevant experience, personal suitability, usefulness in the post and profitability for the company. Deviating from the seniority principle may be pertinent in cases in which the company has a strong requirement for co-workers with more recent and more up-to-date skills within the enterprise's areas of work.

Social circumstances

There are examples in court practice of deviation from the seniority principle having been accepted when an employer has put emphasis on an employee's social circumstances instead of seniority and suitability. These may be cases in which, out of consideration for the employee's family responsibilities, sickness, mobility, particular indebtedness and alternative job opportunities dictate that the main principles in the selection process ought to be deviated from.

Collective redundancies

WEA § 15-2 (1)

It is *collective redundancy* when at least 10 employees are made redundant in an enterprise during the course of 30 days, without the redundancies being based on the circumstances of the individual employees. Such redundancies are subject to stricter requirements for case processing than normal redundancies.

WEA § 15-2 (2)

In such cases, an employer has a duty to initiate discussions with the elected representatives in the enterprise as early as possible with a view to reaching solutions in which collective redundancies are avoided, or the difficulties minimised. In connection with this, an employee must give the elected representatives all of the information they need to be able to evaluate the case. Even if there is disagreement between the elected representatives and employer, it is the employer who makes the final decision on collective redundancies.

WEA § 15-2 (3)

The company agrees to send NAV notification of collective redundancies. Planned collective redundancies will not come into effect until at least 30 days after this notification is sent to NAV. This rule applies even if the employee's period of notice is shorter.

WEA § 15-2 (5)

Redundancy due to circumstances on the employee's side

WEA § 15-7 and legal precedent

Redundancy or dismissal may be the consequence if an employee neglects his or her duties or behaves in a censurable manner. Below we shall look at circumstances on the employee's part that might provide grounds for redundancy.

Deficient performance

The employment contract and job description together with the work regulations constitute the foundation of the employee's obligations and duties in the company.

An employer can specify requirements for the quality of the work the employee carries out. There are nevertheless limits for how strict the requirements specified may be. Even if an employer is dissatisfied with an employee's performance, this does not in itself constitute objective grounds to make the person concerned redundant. An employer cannot expect "the perfect employee".

Elements in the evaluation

Work performance that is regarded as deficient is determined on the basis of a specific rough assessment. Expectations of work performance will vary in each individual case. Elements that will be of importance in the assessment of performance failure include whether the failure is of *a significant nature,* if it revolves around *a single occasion* or whether it has been going on for a lengthy period and if it is probable that the failure is of *a temporary nature*. Another important factor will be if the employee has an *independent position*.

If the company has tried to give the employee training and instruction without the employee having improved, this would normally provide the employer with fair grounds for redundancy. The employee however must have been given a realistic opportunity to improve. If the employee has been given this opportunity without managing to improve, less will be required to make the redundancy fair. In practice, it will be very significant for written notice to have been given in advance.

For some posts it will be necessary to have a training course or induction into the post's field of work. If an employer has not provided such induction or instruction as might be reasonably expected when someone enters a new position, this could mean that a termination based on deficient performance at work would not be considered fair.

Absence

As regards absence from the workplace, it is important to differentiate between *legitimate and illegitimate absence*. The absence is legitimate if the employee is sick or has made an agreement about being off work. Absence must be notified as quickly as possible. Chapter 5.1 contains further information about redundancy while on sick leave.

For absence to constitute grounds for dismissal, it has to be illegitimate absence of a certain duration. Whether the absence constitutes grounds for dismissal depends on the nature of the work and the conditions at the workplace. At a workplace where the time for starting work is somewhat flexible, turning up late for work cannot just be used as a basis for dismissal. On the other hand, the requirements are less stringent before dismissal becomes fair if the employer has been strict with regard to turning up to the workplace on time. Here too it will be important whether the employer has issued a written warning about the absence and given the employee an opportunity to improve.

Refusal to obey orders

An employer can give an employee orders to undertake various tasks to be

carried out within the enterprise. If an employee does not adhere to orders of this type, the employer could react with redundancy or dismissal.

Examples of a refusal to obey orders is that the employee refuses to carry out a particular task of work or refuses to work overtime without a valid reason.

An employee may have an fair reason to refuse to carry out an order if the order implies a breach of the law, for example. In addition, an important factor would be how clear and distinct the employer's orders were and whether the employee was made familiar with the possible consequences if the orders were not carried out.

Some practical advice in this type of situation is for the employee not to refuse to carry out the work, but to speak up if he or she believes they are not obliged to carry out the work. Then the employee can contact the union organisation or elected representative concerning the situation.

Loyalty
Employment contract and legal precedent

Loyalty and confidentiality, theft and petty theft

The employee is obliged to look after the company's interests. Any breach of the loyalty obligation may form grounds for redundancy or dismissal. A typical example of disloyal behaviour on the part of the employee would be that the employee talks about the company or its product in a negative manner, or that he or she provides competitors with sensitive details of company secrets. The same may apply to very disparaging comments about the company's management or co-workers.

Confidentiality
Law and contract

An employee has a duty to remain silent about production secrets. Any breach of this duty would usually result in dismissal. It is sufficient then for the employee to have provided details about circumstances concerning the company, which he or she ought not to have given, even if the employer has lost no money due to this.

Theft and petty theft

Theft and petty theft are against the law and will usually lead to dismissal being viewed as fair. However, an employer must be able to *prove* that an employee has committed theft or petty theft.

If the petty theft applies to insignificant values, in practice it may be a matter of redundancy and not dismissal.

Serving a prison sentence

Legal precedent

If an employee has to be away from work because he or she is serving a prison sentence, this is considered to be illegitimate absence and may therefore result in fair redundancy. Under all circumstances, absence because of serving a prison sentence of more than 2 months provides fair grounds for dismissing the employee. The Supreme Court has stated that this situation could be different if the employee has only been placed on remand. However, the employee is obliged to notify the employer about the absence.

Intimidation and sexual harassment

Legal precedent

Censurable behaviour concerning colleagues can also lead to redundancy in some cases. This would be the case, for example, if an employee makes undesired sexual advances, ostracises people or carries out an attack on one of his or her colleagues. In the event of such behaviour, the company management could react with redundancy or dismissal. This is not conditional on an employee's behaviour being against the law.

Intoxicant misuse

If an employee stays away from the workplace due to intoxicant misuse, this would form the basis for redundancy or dismissal. The same will apply if an employee turns up for work under the influence. How intoxicated, the type of intoxicant and how often, are significant factors in assessing the legitimacy of sanctions. An attempt ought to e made to resolve the matter in collaboration with the elected representatives.

AKAN

A number of larger companies have introduced the AKAN arrangement, standing for Arbeidslivets Komité mot Alkoholisme og Narkomani [Eng: Economic Community's Committee against Alcoholism and Drug Addiction]. This is an offer to employees with intoxicant problems, and is intended to ensure that these types of employees get help in order to avoid redundancy or dismissal. The arrangement is based on the fact that the person who is employed admits his or her intoxicant misuse and is also willing to enter into a treatment scheme that the company medical officer organises for the people concerned.

Further details about warnings

Legal precedent

If a warning is to be of importance in the event of a redundancy, the employee needs to have been given sufficient time to improve after receiving the warning. The warning may only have an influence on the employee for a limited period after it has been given. However, there is no reason to place exaggerated emphasis on warnings. A redundancy may be fair without warnings having been given at all while, in other cases, several warnings may have been given without there, thereby, being any grounds for redundancy.

Discretionary appraisal

Legal precedent

A *discretionary appraisal* should be used as a foundation when the company wishes to make an employee redundant because of censurable circumstances on the part of that employee. Even if a censurable circumstance, viewed in isolation, does not make a dismissal objective, it may be that several of the elements mentioned, *viewed as a whole,* provide fair grounds for dismissal.

Burden of proof

Legal precedent and legal theory

It is important to note that it is *an employer who has the burden of proof* in these cases. That means it is the employer that has to ensure that the case is so well documented that the court can determine whether the company has undertaken a sound assessment. If the company is not sufficiently able to show that an employee has behaved in a censurable manner, the courts will in most cases decide that the dismissal is unfair.

4.6 Termination on change of work content

An employer has *a right of management* throughout the enterprise. The right of management gives the employer access to undertake individual redispositions and reorganisations of employees as required. This can be based on the circumstances of the enterprise, or on the basis of an employee's own circumstances.

Change to the basic characteristics of the post
Legal precedent

The starting point is that an employer is able to undertake unilateral changes in an employee's working conditions, as long as the basic characteristics remain unchanged. This means that the employer must keep within the framework of the individual employment relationship, as established through the employment contract.

However, determining how far the right of management stretches in such cases is more problematic. If an employer undertakes a redisposition or reorganisation that is outside the bounds of the right of management, this will be regarded as a *redundancy on change of work content*.

Fair grounds for reorganisation

In a redundancy on change of work content, the normal rules of redundancy apply as regards case processing and requirements for fairness. If, without further ado, an employer relocates a managing director to the post of office assistant, this would normally be outside the employer's right of management. This unilateral decision will therefore be in conflict with the formal requirements for redundancies of the Working Environment Act and an employer risks the courts regarding the decision as a wrongful redundancy.

Examples of reorganisation

For example, reorganisation and redisposition may consist of giving employees amended duties, a new work location, transfer to a different department, amended fields of responsibility or work, another type of post or amended working hours. The assessment topic an employer will have to adhere to is therefore whether the redisposition or reorganisation means a change to *the basic nature of the employment relationship*. This will always be dependent on an overall assessment, in which the specific framework of the employment relationship has to be assessed against the consequences the change in question will have on the employment relationship.

For example, it will not be permissible to order office workers to start working as drivers or warehouse workers in agreement with the right of management. The equivalent will apply if an employer reorganises the operation such that a person employed in the job category of baker no longer has baking as his or her main duty. If the contract of employment, for example, permits the employer to move the employee geographically, an assessment must be made of the distance to the new work location, any difficulties caused to the employee and the employer's need for the move, to determine whether it would be within the employer's right of management.

A departmental manager with human resources responsibility as an essential part of the post, cannot be deprived of those human resources duties in agreement with the right of management. A change of this nature on the part of the employer would be classed as a redundancy on change of work content.

On the other hand, an employer may, in agreement with the right of management, order an employee to undertake new duties that are similar in nature to his or her original duties.

5 SPECIAL PROTECTION AGAINST DISMISSAL

Sickness

WEA § 15-8

There are special rules concerning redundancy in conjunction with sickness or accident. If an employee is away from work because of sickness or accident, he or she cannot be made redundant, on those grounds, for the first twelve months after the incapacity to work commenced. After those twelve months, the employee can be made redundant.

WEA § 15-8 (1)

It is only if the absence is due to incapacity to work that the employee has special protection against redundancy.

WEA § 15-8 (2)

It is up to the employer to prove that an employee has been made redundant for reasons other than sickness or accident, and the courts set strict requirements for proof.

WEA § 15-7

Even if an employee is sick, he or she can be made redundant, but in that case the ordinary rules for redundancy will apply as contained in WEA § 15-7, see chapter 4.

Pregnancy/birth

The brochure "Rettigheter ved graviditet og fødsel" [Eng: Rights in the case of pregnancy and birth] contains details of the special redundancy protection that applies in these cases. Contact Juss-Buss if you have any questions concerning this.

Give notice yourself or be given notice?

In an employment relationship, an employee may be faced with a choice between giving notice or being given notice. The consequences are rather different depending on whether an employee personally gives notice or is given notice. If an employee personally gives notice, he or she will lose the possibility of contesting the notice of redundancy.

Waiting time for unemployment benefit

Social Security Act § 4-10 subsection one a-d, cf. § 4-10 subsection two a

Assuming that a person fulfils the usual requirements for receiving unemployment benefit, an employee who is made redundant has a right to unemployment benefit from the fourth day after having registered as unemployed. This is called waiting time. See chapter 10 for further information concerning the rules on unemployment benefit.

6 DISMISSAL

As mentioned in the introduction, the contract of employment ends immediately in the event of *dismissal*. For that reason, much more is required for an employee to be dismissed than would be the case for him or her to be given notice of redundancy. The employee must have been guilty of a gross breach of duty or some other significant breach of the contract of employment for an employer to have the right to dismiss him or her. In the case of a dismissal, the employee must leave work with immediate effect, while in the case of redundancy he or she continues working in the post until the end of the period of notice.

WEA § 15-14 (1)

Leaving with immediate effect

If a dispute should arise concerning whether dismissal is fair or not, this dispute will be handled in the same way as a redundancy. One difference, however, is that an employee essentially has no right to remain in post during the dispute, unless the court rules in favour of this. An employee must then personally take up the case in the courts.

WEA § 15-11 (3)

The court may find the dismissal illegitimate if it was unfair. The court may also decide that the employment relationship should cease even if the dismissal was not justified. This may happen if the court finds that the conditions for *redundancy* are present. See chapters 2 and 4 concerning the conditions for redundancy.

WEA § 15-14 (3) paragraph one

WEA § 15-14 (3) paragraph three

The rule about the court automatically finding invalid a redundancy that was formally incorrect does *not* apply to dismissal. If an employee is dismissed and does not agree with the grounds for this, he or she must raise a case against the employer within eight weeks of the dismissal having taken place.

WEA § 17-4 (1)

In the case of dismissal also, an employee can claim compensation (see more details of this below, in chapter 7.6.2).

WEA § 15-14 (4), cf. WEA § 15-12 (2)

If an employee only wants to claim compensation, the deadline for raising the case is six months.

WEA § 17-4 (1) paragraph two

7 PROCEDURE IN THE EVENT OF DISPUTES ON REDUNDANCY AND DISMISSAL

Entitlement to negotiations

WEA § 17-3 (1) and § 17-3 (2)

If an employee is given notice of redundancy, he or she has a right to request negotiations with an employer.

Within 14 days

To be entitled to have a negotiation meeting held, an employee must request this in writing within *14 days* of notice of redundancy having been received.

If the formal requirements for notice of redundancy have not been fulfilled (see chapter 2 of the brochure), there will be no deadlines for requesting a negotiation meeting.

WEA § 17-3

Even if the deadline is disregarded, an employer *can* accept negotiations. An employer is obliged to hold the meeting as soon as possible, and at the latest, within 14 days of the request being received. If the parties are in agreement, they can agree to hold the meeting later than this. For the negotiation meeting, an employee is entitled to be accompanied by an elected representative from the workplace, a friend or some other advisor, such as a registered legal assistant.

An example of a letter with a request for negotiations on the part of the employee:

Lillevik, 30 January 2014

Employer: Lillevik Renhold AS
Address: PO Box 7 NO-1234 Lillevik

Concerning the notice of redundancy of Peder Ås on 20 January 2014.

The undersigned, Peder Ås, refers to the notice of redundancy received from you dated 20 January 2014. I contest the fairness of the notice of redundancy and hereby request a negotiation meeting, cf. Working Environment Act (WEA) § 17-3.

According to the regulations of the WEA § 17-3 subsection three a negotiation meeting should be held by the employer within two weeks of the request for this being received.

I request a report in writing of the conditions that form a basis for the notice of redundancy, cf WEA § 15-4 subsection three cf WEA § 15-7, and request that I should receive it well in advance of the meeting.

I would like to have my lawyer with me at the negotiation meeting. I can be contacted by telephone on +47 11 11 11 11, so that a time and place for the meeting can be agreed in more detail.

Yours sincerely

Lars Holm, Lillevik Renhold A/S

Employer can request negotiations
WEA § 17-3 (4)

If an employee does not advance a request for a negotiation meeting, but wishes to move to legal proceedings, an employer can *request* that a negotiation meeting should be held first. An employer must advance a request for this in writing at least two weeks after he or she is informed that legal proceedings are being raised. Here too an employer should ensure that the meeting is held, and the employee is obliged to attend.

Negotiation meeting

WEA § 17-3 (5)

The objective of a negotiation meeting is to enable employee and employer to put forward their views on the notice of redundancy and to reach an amicable solution. At the meeting, it is important for those attending clearly to bring out arguments in support of their views. Before the and of the negotiation meeting, a minuted record or an agreement should be drawn up from the meeting and should be signed by both parties. The minutes should normally be written by the employer and should list the viewpoints of both parties and/or the factors on which the parties have reached agreement. The content of the written minuted record has a particular value as evidence. It is important that the minuted record contains details of what has been said at the negotiation meeting.

WEA § 17-3 (5)

The negotiations should be concluded within two weeks of the first negotiation meeting. The negotiations can be extended if both parties are in agreement on this.

WEA § 15-12 (1)

The normal thing at a negotiation meeting is that the employee asks to be able to be reinstated because he or she believes the notice of redundancy to be invalid. If, however, both parties agree that the employee should not be reinstated to the employment relationship, for example because the employee does not want this, and the employee does not wish to move to legal proceedings, it is possible to negotiate for compensation for the unfair termination.

WEA § 15-12 (2)

In addition, it can be agreed that the employee does not need to work during the period of notice, that a positive testimonial and compensation for the unfair process will be provided (see different forms of compensation under chapter 7.6.2). It is also possible to agree a longer period of notice such that the employee is assured of an income while looking for new work. In this context, it is also possible to agree a shorter period of notice if both parties so wish. If the employee has received a dismissal notice, it is possible to try to get the employer to change this to a notice of redundancy. This will often be better for the employee because then he or she has a claim to work out the period of notice and to receive payment for this.

Deadlines for legal action

Important that deadlines for legal action are adhered to

WEA § 17-4

If an employer does not withdraw the notice of redundancy at the negotiation meeting, any employee who still wishes to contest the notice, must move to legal proceedings or give the employer notification in writing of the fact that he or she wishes to take legal action within certain deadlines.

It is important to contact a lawyer or trade union as soon as possible after the notice of redundancy has been received.Trade unions can provide help and legal assistance while the case is ongoing. However, this assumes membership of the organisation for a certain period prior to the dispute with the employer arising. In addition, Arbeidstilsynet (Eng: the Norwegian Labour Inspection Authority) provides general guidance in issues concerning notice of redundancy.

Deadline for raising legal proceedings

When formal requirements have been met

WEA § 17-4 (1) and (2)

If an employer has given notice of redundancy which is formally correct (see chapter 2), and if the employee wishes to be reinstated, he or she must raise legal proceedings within eight weeks of the end of the negotiation. If no negotiations are held, the deadline is eight weeks from the date when notice of redundancy, in writing, reached the employee.

Compensation

If an employee only wishes to claim compensation, the deadline for legal proceedings is six months, calculated from the date on which the notice of redundancy was issued.

When formal requirements have not been met

WEA § 17-4 (3)

If the notice of redundancy does not satisfy the formal requirements (see chapter 2), no deadline for legal action applies. Nevertheless, a person ought not to wait too long, because this entitlement may disappear due to passivity considerations. A notice of redundancy which is formally incorrect and which is contested within four months of the employer receiving the notice of redundancy, will be declared invalid by the courts, unless it would be "obviously unreasonable".

WEA § 15-5 (1)

Entitlement to continue in the post

WEA § 15-11

If an employee has requested negotiations with an employer within two weeks of receipt of notice of redundancy, the employee is entitled to continue at work until the negotiations are concluded.

Continuing obligation to work and pay obligation

If an employee has raised a legal action within eight weeks of the negotiations being concluded and has given *notification of this in writing before the end of the period of notice*, the person concerned is entitled to continue in post while the dispute is ongoing. The entitlement to remain in post means that both the employee's rights *and* obligations to work persist, while the employer also has an obligation to pay a wage during this period. This entitlement to remain in post until the case is decided by the courts can be used in the event of a legally binding judgement. However an employer can go to the courts and request a ruling that the employee should leave his or her post.

If an employee is locked out of the workplace, the person concerned must request to be allowed to return to work (re-commencement) within four weeks of the lock-out. The claim must be put before the courts, and the law will give its ruling on recommencement if it is found that the lock-out is illegitimate.

Legal precedent

The right to continue in post does not apply in the case of dismissal, for participants in labour market programmes, for temporary employees or if someone is employed on a probationary period. A judicial decision must be in place for someone to have a right to remain in post in these cases. An employee must personally bring the case before the court to obtain such a decision.

What may be requested during a lawsuit

Dismissal ruled invalid

WEA § 15-12 (1)

The court should evaluate whether an employee has been given notice of redundancy in an unfair way. If this is the case, an employee may be granted the right to retain his or her job. However, it may be that the court nevertheless finds special grounds for an employee not to be allowed to keep his or her job.

Compensation

WEA § 15-12 (2)

In addition to requesting that the notice of redundancy should be found invalid, an employee can request compensation.
The compensation sum can be divided into three categories:

Loss of income

- If an employee has suffered financial loss, compensation can be requested for *loss of income from work*.

Loss of future income

- If an employee does not return to work, the person concerned can claim compensation for losses in *future income from work*. The scale of the compensation depends on a specific assessment of factors such as the prospects of finding new work. An employee is obliged to try to limit his or her losses in future income from work by trying to acquire new work.

Compensation for non-financial losses

- An employee can claim compensation for *tort and injury* regardless of whether or not he or she has suffered a financial loss. This type of compensation should compensate for any inconvenience or mental strain that has been caused to the employee.

8 PREFERENTIAL RIGHT TO A SUITABLE NEW POST

WEA § 14-2 (1)-(4)

Permanent employment

If an employee is given notice due to circumstances on the enterprise's part, he or she will have a preferential right to any new suitable post in the company. This preferential right applies during the period of notice and for one year from expiry of the period of notice. To ensure that an employee who has been given notice should have a preferential right of that sort, the post in question must be one for which he or she is qualified and he must have been employed for at least twelve months over the course of the past two years.

WEA § 14-2 (2)

WEA § 14-2 (5)

An employee employed for a specific period or to perform a specific piece of work of a temporary nature also has a preferential right. However, the preferential right will *not* apply to employees working in temporary substitute positions. If an employee is given an offer of a new suitable position, he must accept that job within 14 days. If not, the preferential right will no longer apply.

Temporary employment

WEA § 14-2 (6)

If there are several people with a preferential right for the same post, in the selection process an employer must take into consideration the same circumstances as for redundancies based on operations cut-backs, including seniority, qualifications and social circumstances.

WEA § 17-3 (1)

If a dispute arises because the employee believes that an employer has not attended to the preferential right, the employee can also request negotiations and raise legal proceedings in these cases.

WEA § 17-3 (2) b

The deadlines for requesting negotiations or raising legal proceedings run from the date when the employer rejected a claim from the employee concerning a preferential right to a new position, and are the same as for redundancy and dismissal. Read more about this in Chapter 7.3.

A negotiation meeting must be requested within two weeks of the rejection of the claim concerning the post, while legal proceedings must be raised within eight weeks of the negotiations taking place, or of the rejection having taken place.

9 ENTITLEMENT TO TESTIMONIAL

In the event of redundancy

WEA § 15-15 (1)

Once the employment relationship is ended in a legal way and an employee has completed an agreed period of notice, an employee has a right to a neutral testimonial. In that way, an employee should be guaranteed documentation of having worked in the enterprise for the relevant period. The testimonial may be useful when looking for a new job.

WEA § 15-15 (2)

The testimonial must contain information such as name, date of birth, the composition of the work and the duration of the employment relationship. In all cases, an employee can request a more comprehensive testimonial, and may also have a right to it if this is normal within the enterprise and when nothing else follows from the wage agreement.

In the event of dismissal

WEA § 15-15 (3)

An employee who is dismissed is also entitled to a testimonial. An employer will then be able, in the testimonial. to highlight the fact that the employee has been dismissed, without giving the grounds on which it was based.

10 EXTENDED WAITING TIME FOR UNEMPLOYMENT BENEFIT

Social Security Act § 4-10 (1)

Social Security Act § 4-10 (2) a)-c)

Social Security Act § 4-20

According to Folketrygdloven (Eng: the Social Security Act) § 4-10, NAV can, in various cases, make decisions on an extended waiting time for unemployment benefit. This means that the employee will be given a quarantine period from when he or she applies for unemployment benefit until he or she is entitled to have it paid out. The principal rule is a quarantine period of 8 weeks from the date of application. A waiting time of 12 weeks or 6 months can also be set if during the course of the past 12 months a judgement on extended waiting time has been received or a judgement on time-limited loss of unemployment benefit in compliance with the Social Security Act § 4-20.

Social Security Act § 4-10 (1) a)-d)

There are four different circumstances that can lead to an extended waiting time being applied. First, this will be the case if an employee gives notice of leaving his or her position without reasonable grounds. Furthermore, it is possible to have an extended waiting time applied if a person is given notice or dismissed from his or her post and this is due to circumstances for which the employee can be blamed, or if a decision has been received concerning time-limited loss of unemployment benefit in compliance with the Social Security Act § 4-20 (1) a)-c).

"Reasonable grounds" for giving notice of termination of employment may be the fact that giving notice could be an alternative to being made redundant due to retrenchment, or that the health of the employee makes it impossible to stay at work. This means that even if an employee gives notice of termination of his or her job in such cases, that person will not be subject to an extended waiting time. If the resignation is due to a health condition, it is important for this to be documented by a doctor's certificate when you submit your application for unemployment benefit to NAV.

11 LAY-OFF

Introduction

The rules on lay-offs are not fixed by law, but the Principal Agreement between LO (Eng: the Norwegian Confederation of Trade Unions) and NHO (Eng: the Confederation of Norwegian Enterprise) gives partial expression to the applicable law.

The purpose of a lay-off is to resolve a situation in which an employer has a temporary requirement for the employment relationship to cease.

In the event of a lay-off, an employee is released from the obligation to work, either completely or with reduced working hours per day or week. On its part, an employer is released from the obligation to pay employees a wage for the working hours released.

The employee continues to be employed while laid off, with an entitlement and obligation to return to work once the lay-off period comes to an end. During the lay-off period, an employee is free to take work elsewhere, unless the "old" employer needs an employee for fairly short tasks.

Temporary cessation of obligation to work and pay obligation

WEA § 15-3 (9)

If an employee wishes to give notice during the lay-off period, the period of notice will be 14 days, regardless of the usual period of notice in the employment relationship,

Full lay-off is the most usual, but a combination of work and lay-off (partial lay-off) is also permitted.

Prior to lay-off

There are no statutory rules concerning the method to be used for lay-offs, as is the case for redundancy and dismissal. The principal agreement however does contain rules about this, but it only applies to those who are affiliated to this. It is nevertheless assumed in practice that all employers, as a principal rule, *ought* to adhere to the principles of it or the method described in the case of notice of redundancy.

According to the Principal Agreement between LO and NHO, notice in writing must be given 14 days prior to the start of the lay-off. The probable length of the lay-off must be indicated if this is possible. A discussion meeting with the employees must be held before any notice is issued. In the event of a lay-off, an employee neither has a right to request a negotiation meeting nor to remain in post while the dispute is ongoing.

Notice in writing

If an employer does not hold a discussion meeting or does not keep to the notice deadline, this will not automatically form grounds to make the lay-off illegitimate. However, it would be censurable for an employer not to adhere to these principles, a sign of an unjustifiable opinion and a factor in the impartiality assessment (see below).

"Fair grounds"

Principal agreement § 8-1 subsection one as an expression of common law

An employer can undertake lay-offs when fair grounds make it necessary for the company. A fair lay-off assumes that the employee will return to work and that an employer's assessment is built upon a justifiable opinion.

Examples of circumstances that can provide an employer with justifiable grounds for lay-offs are events such as cut-backs to operations, stoppage of operations, fire, flood or other unforeseen events at the workplace which make it impossible to conduct normal operations for a temporary period.

More uncertain is the situation in which major financial difficulties for the employer make lay-offs relevant. Here, an employer may undertake a specific assessment of whether there are any grounds for lay-offs, or if redundancies ought rather to be undertaken. If it seems probable that the finances will be poor for a fairly short period, the solution would be to lay-off the employees. On the other hand, an employer ought to choose redundancy if the poor financial situation is assessed as being long-term or permanent.

A result of the Working Environment Act § 15-12 (2)

Lay-offs should not be used as an alternative to redundancies. Illegitimate use of lay-offs can give an employee a claim for compensation against an employer.
If an employee is laid off, the requirement for "fair grounds" must be fulfilled throughout the lay-off period. It means that an employer regularly has to assess whether there is a foundation for continued lay-offs and to inform the employees during the period. The requirement for objectivity is assumed to be stricter during a lengthy lay-off than during a shorter one.

Principal agreement § 8-1 subsection two

According to the Principal Agreement between LO and NHO, lay-offs of longer than six months are to be agreed between an employee and employer to enable them to be pursued in a legitimate way. A limit of six months for a legitimate lay-off is a guiding standard.

If, after a period, an employee thinks that the lay-off is no longer fair, it would be sensible initially to request a meeting with the employer. On the other hand, this is not an entitlement as in the case of a dispute on redundancy. If this does not lead to progress, the case must go to the District Court. However, in the event of temporary measures, the District Court can rule that a person can immediately be reinstated to his or her post. After that, an employee must move to legal action, but can continue in the post until judgement is reached.

Selection of employees

At the outset, this will be an assessment equivalent to that for redundancy based on conditions within the enterprise, see chapter 4.3.3.

Termination and lay-off

Employee gives notice

If an employee personally gives notice of termination before any notice of lay-off is issued, the person concerned will still have a claim to receive pay during the period of notice. The contractual period of notice will then apply.

WEA § 15-3 (9)

If an employee receives notice of lay-off and then personally gives in his or her notice, the person concerned will only receive salary during the period of notice up to the date on which the lay-off is put into effect.

If the lay-off has come into effect and if an employee *has been laid off*, he or she can choose to give notice with a period of notice of 14 days if this is more favourable than the contractual period of notice. The intention behind the short period of notice is that the employee should have the opportunity rapidly to take up a new job.

As regards pay during the period of notice during lay-off, when the employee has personally given notice, the practice has arisen that a person obtains unemployment benefit from NAV and not a wage from an employer. In other words, an employer must not offer the employee work during this period. If an employer has work to offer the employee, a wage demand should be built up. In theory, however, it is also possible for a wage to be requested instead of unemployment benefit for this period, even if the employer cannot offer the employee any work. The condition is that an employee expresses his or her willingness to work. This issue has not been finally clarified, but there is thus a desire to be able to try either to claim a wage from an employer or to fall back on NAV's practice.

Employer gives notice

If it is an employer who moves to notice of redundancy during the lay-off period, an employee will as a principal rule be entitled to a wage during the period of notice, regardless of whether or not an employer has work to offer. Nevertheless, exceptions may be made for short-term lay-offs when work premises, machinery, etc, cannot be used due to accidents, flooding or other unforeseen circumstances. The shortened period of notice can only be called upon by an employee. The contractual period of notice can be requested if the employee wishes.

Lay-off pay and employer's obligation to pay salary

Social Security Act § 4-7

During lay-off, an employee will receive unemployment benefit. This is called lay-off pay.

Permitteringslønnsloven (Eng: Lay-off Pay Act) § 3

In the event of at least a 40 per cent lay-off, an employer will pay normal salary for the first ten days of the lay-off (the employer period). In the event of less than a 40 per cent lay-off, an employer will pay normal salary in the first fifteen days of the lay-off. After that, a three-day waiting period commences before it is possible to receive unemployment benefit from NAV. That is to say that a person will only receive lay-off pay on the fourth working day.

Social Security Act § 4-9

Social Security Act § 4-7 (2)

The lay-off period without pay is limited to 26 weeks within a period of 18 months. In this period, an employee may be entitled to unemployment benefit.

Employees ought to notify NAV on the very day the lay-off takes effect, such that the people concerned have entitlement to unemployment benefit three days after the cessation of the employer period.

Lay-off as "hidden redundancy"

Experience shows that certain employers choose to lay people off rather than move to redundancies. This is done even if the people laid off will not, in reality, be returning to work. An employer often speculates on an employee getting a new job before the end of the lay-off pay period. An employer will thus avoid paying wages during the period of notice which the person employed would have been entitled to in the case of redundancy. This is often called a "hidden redundancy".

If an employee believes that redundancy ought to have been given and not lay-off, the person concerned could request a negotiation meeting, see chapter 7.2. If the parties do not reach agreement, legal proceedings must be evaluated. If the lay-off is, in reality, a redundancy and does not fulfil the requirements for a fair redundancy, the redundancy could be found invalid by the court, and an employee could be reinstated to his or her job. In connection with that, an employee could also be granted compensation.

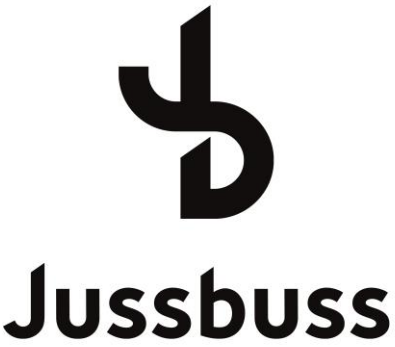
12 LEGAL REFERENCES

Working Environment Act: ***Lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (Eng: Act relating to working environment, working hours and employment protection) dated 17 June 2005 no. 62. (abbreviated to WEA)***

Social Security Act ***Lov om folketrygd (Eng: Social Security Act) of 28 February 1997 no. 19***

Lay-off Pay Act: ***Lov om lønnsplikt under permittering (Eng: Act relating to the obligation to pay wages during lay-offs) dated 06 May 1988 no. 22 (the Lay-off Pay Act)***
These Acts are available in most libraries and bookshops. They are also available at www.lovdata.no.

Preferential rights in the event of a suitable new post	WEA § 14-2
Discussion meetings	WEA § 15-1
Period of notice	WEA § 15-3
Formal requirements for redundancy notices from employers	WEA § 15-4
Requirements for justified redundancy	WEA § 15- 4 (3)
Requirement concerning fairness of redundancy	WEA § 15-7
Protection against redundancy in the event of sickness	WEA § 15-8
Entitlement to remain in post	WEA § 15-11
Entitlement to neutral testimonial	WEA § 15-15
Entitlement to request negotiations	WEA § 17-3
Unemployment benefit for people laid off Waiting time for unemployment benefit Extended waiting time for unemployment benefit	Social Security Act § 4-7 Social Security Act § 4-9 Social Security Act § 4-10
Pay during lay-offs	Lay-off Pay Act § 3



Jussbuss

Juss-Buss
Skippergata 23, 0154 Oslo

Case reception:

You can contact us by telephone or visit
us in person at our premises during our
case reception hours:
Monday 10 am-3 pm and Thursday 5 pm-8 pm

Telephone: +47 22 84 29 00 - Fax +47 22 84 29 01
www.jussbuss.no