

# Your Brexit strategy – How to deal with redundancy

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The past few months have seen significant upheaval both across the financial markets and politically. The uncertainty has led some businesses to consider relocating to elsewhere in the EU (such as Frankfurt) and many others have ceased hiring as a result of the broader uncertainty in the market.

A role will be redundant if there is: (i) a business closure; (ii) a workplace closure; or (iii) a reduced need for a

particular kind of work. So, if a company is relocating and an employee does not want to move, that individual will potentially be redundant. Redundancies will also arise if a drop off in work means that fewer employees are needed in a business.

If the employment contract contains a reasonable relocation clause however, there may be an obligation for the employee to relocate. Overseas relocations are usually by choice, not compulsion.

Employees with two years' qualifying service are protected from being unfairly dismissed. They can still be dismissed but only if: (i) one of the five statutory fair reasons applies (which includes redundancy); and (ii) their employer follows a fair process.

Redundancy is one of the most 'employer friendly' areas of law. However, there are several things that employees who face redundancy should be alive to:

## **Being a 'good leaver'**

Many employees in financial services receive deferred remuneration such as cash or equity, which will vest over a period of years under LTIPs or other schemes. There is no default position as to what happens to this deferred remuneration when an employee is made redundant; it will be governed by the plans of the relevant scheme. Most plans will have some mechanism for allowing certain individuals (often called 'Good Leavers') to keep their unvested remuneration but who is deemed a 'Good Leaver' will vary. Favourable leaver status may be negotiable and is worth exploring on an exit.

## **Compensation**

At a minimum, anyone being made redundant must be given notice

or paid in lieu of the notice period in their contract. Anyone with two years' service will also qualify for statutory redundancy pay (which is a fairly nominal sum). However, many larger employers may offer enhanced redundancy payments based on 2-4 weeks' pay for each complete year of service (which are usually contingent on signing a settlement agreement).

## **Settlement agreement**

A [settlement agreement](#) is an agreement in which an employee agrees to waive their potential employment claims against their employer. In a redundancy situation, employers will often ask employees to sign a settlement agreement to draw a line under any liability for the company going forward. However, just because an individual is presented with a settlement agreement, it does not necessarily mean they should sign it. The sums on offer may be significantly less than the value of their potential claims (such as unfair dismissal compensation) so legal advice should always be taken beforehand.

## **Immigration status**

If an employee's right to work in the UK/EU is contingent on a continuing employment relationship with a particular employer, a redundancy situation can become even more stressful. However, non UK nationals may be able to apply for residency in the UK. It is generally helpful to think about a contingency plan sooner rather than later (see our article on immigration status for some helpful advice [here](#)).

## **Bonus**

There is no default presumption that redundant employees will be entitled to their bonus. The status of any bonus payment will be governed by the employment contract or another

agreement, most of which will contain provisions limiting bonus payments to employees who are in employment and not under notice at the time of termination (which would exclude redundant employees). However, depending on the drafting of this clause, the employee may be able to argue that they should receive a pro rated bonus or full bonus for the year.

Unfair dismissal is not the only claim that may arise in a redundancy situation and the picture on deferred remuneration and bonuses is just as important. Ultimately, where the financial climate is poor, redundancies can fairly be made and there may be no claim that arises from it. However, it helps to have a clear understanding of the process and to understand if there are any pressure points to maximise any legal leverage.

[Rolleen McDonnell](#)

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