

Carphone Warehouse

Have you been notified that your role within Carphone Warehouse is “At Risk”?

If so then please contact your Branch Representative so that we can give you assistance.

Also the TUC’s basic guide to the law about redundancy has been placed on the site as a PDF file for you to download. This covers some of the answers to some of the common questions raised about what happens should you lose your job.

The Department for Business, Enterprise & Regulatory Reform has a web site covering the legal position regarding the consultation process that the Company is required to provide, a summary has been provided below for your reference and, **should you have any queries over the process being used to ensure consultation – or simply any concerns over your rights then you should contact the Branch Office on:**

01772 200222.

WHAT IS CONSULTATION ?

Where employees who may be affected by the proposed dismissals, or by measures taken in connection with them, are *not* represented by a trade union the employer must inform and consult other appropriate representatives of those employees. These may be either existing representatives or new ones specially elected for the purpose. It is the employer’s responsibility to ensure that consultation is offered to appropriate representatives. If they are to be existing representatives, their remit and method of election or appointment must give them suitable authority from the employees concerned. For example, where redundancies are to take place among, say, sales staff, it would clearly not be sufficient for the employer to inform and consult a committee of managers set up to consider the operation of a staff canteen; but it would be appropriate to inform and consult representatives elected or appointed as a result of the Information and Consultation of Employees Regulations 2004. It may also be appropriate to inform and consult a committee of employees, such as a works council or staff forum that is regularly informed or consulted more generally about the business’s financial position and/or personnel matters. **If the representatives are to be specially elected ones, certain election conditions must be met. These are described below.**

In non-union cases, where affected employees fail to elect representatives, having had a genuine opportunity to do so, the employers concerned may fulfil their obligations by providing relevant information to those employees directly.

Employees may be affected by the proposed dismissals, or by measures taken in connection with them, even though they themselves are not to be dismissed. In the event of a dispute, whether or not any particular employee or class of employees was affected would be for an employment tribunal to decide.

What are the election rules applying in cases where employee representatives are to be specially elected?

The rules are:

- a. The employer shall make such arrangements as are reasonably practical to ensure that the election is fair.
- b. The employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees, having regard to the number and classes of those employees.
- c. The employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees.
- d. Before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable relevant information to be given and consultations to be completed.
- e. The candidates for election as employee representatives are affected employees on the date of the election.
- f. No affected employee is unreasonably excluded from standing for election.
- g. All affected employees on the date of the election are entitled to vote for employee representatives.
- h. The employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them; or, if there are to be representatives for particular classes of employees, for as many candidates as there are representatives to be elected to represent their particular class of employee.
- i. The election is conducted so as to secure that -
 - o so far as is reasonably practicable, those voting do so in secret, and
 - o the votes given at the election are accurately counted.

Where an employee representative is elected in accordance with these rules but subsequently ceases to act as such and, in consequence, certain employees are no longer represented, another election should be held satisfying the rules set out at (a), (e), (f) and (i) above.

Is there any minimum period for consultation?

The employer must begin the process of consultation in good time **and complete the process before any redundancy notices are issued.**

In addition, consultation must begin at least:

thirty days before the first of the dismissals takes effect (that is, when the employment contract is terminated) in a case where between 20 and 99 redundancy dismissals are proposed at one establishment within a period of ninety days or less;

ninety days before the first of the dismissals takes effect (that is, when the employment contract is terminated) in a case where 100 or more redundancy dismissals are proposed at one establishment within a period of ninety days or less.

In a case where employee representatives are to be specially elected, the employer will need to ensure that the election is completed and the representatives are in place (having had an opportunity for appropriate training if necessary) in time to allow the consultation process to be completed before any redundancy notices are issued.

What does the consultation process mean in practice?

(a) When should consultation begin?

Consultation with employee representatives must begin in good time and at least 30 or 90 days before the redundancy notices take effect i.e. the day on which employees actually leave their posts. Consultation must begin when the employer is 'proposing' the redundancies. **In other words, he should not have come to a definite decision to make employees redundant and the employee representatives should still be able to influence the outcome.** Where the employer is proposing to dismiss between 20 and 99 employees, consultation must begin at least 30 days before the redundancy notices take effect. Where the employer is proposing 100 or more redundancies, the consultation must begin at least 90 days before the redundancy notices take effect. Where there are no employee representatives, the employer should begin the process of electing employee representatives as quickly as possible.

Rights of employees and their representatives

Employees and their representatives have certain rights and protections to enable them to participate fully, effectively and without fear of victimisation in the process of consultation. These are described below.

Protection against unfair dismissal and other detrimental treatment

It is automatically unfair for the employer to dismiss any employees wholly or mainly because of:

- their participation as a candidate in an election;
- their status or activities as representatives;

It is also unlawful for the employer to take other detrimental action, short of dismissal, against any employees on these grounds.

Access and facilities

The employer is required to allow employee representatives reasonable access to their constituent employees and to such accommodation and other facilities.. What is appropriate will vary according to the circumstances but it is important for employers to recognise that communication systems vary from workplace to workplace, and it might be appropriate for an employer to provide the representative with workspace, access to telephone and email etc in order to carry out their consultation duties.

Right to reasonable time off with pay

Employee representatives - whether trade union or not - have a statutory right to reasonable time off with pay during their normal working hours to perform their functions, and also to undergo appropriate training to enable them to do

so. The legislation does not specify the amount of time off that it is reasonable to allow since this will vary according to the circumstances. Payment should be at the appropriate hourly rate for the period of absence from work. This is normally arrived at by dividing the amount of a week's pay by the number of normal working hours in the week.

Redress where rights of employee representatives are infringed

Representatives or candidates who are dismissed or subjected to a detriment as a result of their activities may make a complaint to an employment tribunal. A complaint will not normally be considered unless it is made within three months of the date when the alleged infringement occurred (although in exceptional cases where the tribunal considers that it was not reasonably practicable for a complaint to be made in time it can allow a longer period).

If the tribunal finds that a dismissal was unfair, it may order the employer to reinstate or re-engage the employee or make an appropriate award of compensation. If it finds that other unlawful detrimental treatment occurred, it may order that compensation be paid.

If the tribunal finds that the employer has failed to allow employee representatives reasonable access or appropriate facilities, it shall make a declaration to that effect and may make a 'protective award' of compensation.

If the tribunal finds that a representative was unreasonably refused time off, it shall make a declaration to that effect and award to the representative an amount equal to the pay to which he or she would have been entitled if time off had not been refused. If the tribunal finds that a representative did not receive appropriate pay for time off, it shall order the employer to pay the amount due.

<http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page13852.html>