



An Roinn Fiontar, Trádála agus Nuálaíochta
Department of Enterprise, Trade and Innovation

**GUIDE to the
REDUNDANCY
PAYMENTS SCHEME**

Redundancy Payments Acts 1967 to 2007

Issued May 2010

Note:

This Guide is available free of charge from the National Employment Rights Authority, O'Brien Road, Carlow, Co. Carlow, in The Department of Enterprise, Trade and Innovation and at Social Protection Offices and FÁS Offices. It is also on NERA's Website at www.employmentrights.ie. Forms relating to the Acts are similarly available and also available for download from www.deti.ie

The Department of Enterprise, Trade and Innovation's website at www.deti.ie also contains a Redundancy Calculator which will enable you to calculate your statutory redundancy entitlement. Both employers and employees are strongly advised to use this facility.

The Guide does not purport to give a legal interpretation of the Redundancy Payments Acts 1967 to 2007 or of any other employment legislation.

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1. Summary

Under the Redundancy Payments Scheme all eligible employees are entitled to a statutory redundancy lump sum payment on being made redundant. A redundancy situation arises in general where an employee's job no longer exists and he/she is not replaced. An employee is entitled to **two weeks pay for every year of service, with a bonus week added on, subject to the prevailing maximum ceiling on gross weekly pay (€600 with respect to redundancies notified/declared on or after 1st January, 2005 - €507.90 before that date)**. The Department of Enterprise, Trade and Innovation, which administers the Scheme, will then pay the employer a 60% rebate. Where the employer is unable or fails to pay the lump sum, the Department steps in and pays the amount from the Social Insurance Fund (SIF).

2. Employees covered - What are the requirements for being entitled to a redundancy lump sum?

- (1) _You must have at least two years continuous service (104 weeks).
- (2) _You must be in employment, which is insurable under the Social Welfare Acts. If you are a full-time employee you must be in employment, which is fully insurable for all benefits under the Social Welfare Acts; this does not apply if you are a part-time employee. [See paragraph 12(a)]. The question of insurability is decided by the Department of Social Protection in accordance with the rules and appeals procedures provided for in the Social Welfare Acts. An employee who wishes to appeal such a decision is advised to contact Scope Section of that Department. For their address and telephone number, see Appendix 11.
- (3) _You must be over the age of 16.

- (4) _You must have been made redundant as a result of a genuine redundancy situation – in general this means that the job no longer exists and the person is not replaced. The emphasis is on the job and not the person, in contrast, for example, to a situation where a person is dismissed for alleged misconduct or where a person voluntarily resigns.

3. How much statutory redundancy is an employee entitled to?

Under the Redundancy Payments Act 2003 an eligible employee is entitled to **two weeks statutory redundancy payment for every year of service, plus a bonus week**. All statutory redundancy payments are **tax-free**. For redundancy purposes, a week's payment is subject to a maximum ceiling called a statutory ceiling which is adjusted upwards every few years. The ceiling currently stands at €600 in respect of all redundancies notified/declared from 1st January, 2005 (€507.90 prior to that date). For example, a gross weekly wage of €610 is treated as €600 per week for statutory redundancy calculation purposes, while a gross weekly wage of €590 is still calculated as €590, as it is below the ceiling.

If the total amount of reckonable service is not an exact number of years, the **“excess” days are credited as a proportion of a year** in respect of redundancies notified/declared on or after 10th April, 2005, being the date of commencement of Section 11 of the Redundancy Payments Act 2003. This simplified the method of calculating the number of “excess” days for redundancy entitlement purposes.

For example, 91 days, which almost amounts to a quarter of a year (24.93% to be exact) will therefore give the employee an extra 24.93% of a years service, on top of whatever number of full years they have worked for. Thus, the simple formula used for calculating the proportion of a year to be credited to the employee is $91 \text{ divided by } 365 = .2493$, or in percentage terms = 24.93%. Please note that 365 days is now used for redundancy calculation

purposes rather than the figure of 364 days which was previously used.

For details of employment service, which is **non-reckonable** for redundancy calculation purposes, see **Section 13(c)** and **Appendix 5**.

PLEASE NOTE THAT non-reckonable service applies only to the **final 3 years ending with the date of termination of employment** in respect of redundancies notified/declared on or after 10th April, 2005 i.e. the date of the coming into operation of Section 12 of the Redundancy Payments Act, 2003. There is no question of non-reckonable service in respect of redundancies notified/declared **prior to this 3 year period**.

The Weekly Pay used for redundancy purposes is calculated by adding together Gross Weekly Wage, Average Regular Overtime and Benefits-in-Kind.

4. Redundancy Calculation Facility on the Website of the Department of Enterprise, Trade and Innovation

You are strongly advised to avail of the Department's Statutory Redundancy calculation facility on the Department's Website. To make such a calculation, you can simply double click on the Redundancy Calculator on the Department's Website at www.deti.ie

(A) Redundancies notified on or after 10th April, 2005

Please note **that in respect of redundancies notified on or after 10th April, 2005**, the calculator will not differentiate between service under and over 41, showing total service, with two weeks statutory redundancy pay per year of service plus a bonus week being shown in the output field.

(B) Redundancies notified between 25th May, 2003 and 9th April, 2005

With respect to redundancies notified/declared between 25th May, 2003 and 9th April, 2005, the redundancy calculator functions as follows – It shows service under and over 41. **However**, the calculator aggregates all service and **two weeks** statutory redundancy pay per year of service **plus a bonus week** is shown in the output field. So in effect, unlike the old (pre 25th May, 2003) system, the 25th May 2003 – 9th April, 2005 system amounts to **two weeks** redundancy pay for every year of service, plus the bonus week.

(C) Redundancies notified prior to 25th May, 2003 – but see time-limits below at 16 (a) and 16 (b) for making claims for statutory redundancy employer rebates or employee lump sums

Under the redundancy rates applicable to the old system prior to the enactment of the Redundancy Payments Act 2003, employees who were made redundant prior to 25th May, 2003 were entitled to half a weeks pay for every year of service under

41 and one weeks pay for every year of service over 41, together with a bonus week. The redundancy calculator functioned accordingly.

5. What exactly is a redundancy? Definitions of Redundancy

As a general rule, a redundancy situation exists where an employer requires fewer employees to do work of a particular kind, where a company goes into liquidation/receivership, where it is decided to rationalise/reorganise a company or, of course, where a company simply closes down. Other examples would include partial closing down of a company, a decrease in an employer's requirements for workers of a particular kind and skills/qualifications or an employer's requirements for fewer employees due to an economic recession. The full text of the relevant provisions in the Redundancy Payments Acts 1967 to 2007, dealing with grounds for redundancy is given in Appendix 2 at the back of this booklet.

Section 5 of the Redundancy Payments Act 2003 emphasises the objective nature of redundancy as being work related by using the phrase redundancy "for one or more reasons not related to the employee concerned". Thus, an employee who is dismissed for any reason other than redundancy (e.g. misconduct, inefficiency etc.) is not entitled to a redundancy payment. He or she may, of course, have a claim for unfair dismissal under the Unfair Dismissals Acts 1977 to 2001.

This non-entitlement to a statutory redundancy payment also applies to a situation where an employee is **directly replaced in the same job by another employee** except where he/she is replaced by one of the **employer's immediate family**.

It is up to the employer concerned in the first instance to determine whether or not there is in fact a redundancy situation. Disputes in this regard can be referred to the Employment Appeals Tribunal (EAT) for adjudication – see paragraph 24 of this booklet.

6. What is the situation regarding “Voluntary Redundancy”?

Voluntary redundancy occurs when an employer, faced with a situation where he requires a smaller work force, asks for volunteers for redundancy. The people who then volunteer for redundancy are, if they fulfil the normal conditions, eligible for statutory redundancy. Of course, there must be a genuine redundancy situation in the first place.

7. How offers or acceptance of other work affect a redundancy lump-sum entitlement

Offers of other work or of re-engagement by the employer who declares him/her redundant **may affect an employee’s position in regard to a redundancy lump-sum payment.** The provisions of the Scheme which apply to the circumstances in which this may happen are as follows:

(a) An employee will **not** be taken to have been dismissed or to be eligible for a redundancy lump-sum payment if his employer renews his contract or re-engages him under a new contract, both with immediate effect, if the provisions of the renewed or new contract **do not differ from those of the previous contract** and if **the employee accepts;**

(b) an employer may give an offer in writing to an employee to have his contract renewed or to be re-engaged under a new contract on terms which differ from those of the previous contract. If the new or renewed contract **takes effect within four weeks** from the ending of the previous contract **and the employee accepts it,** he will not in these circumstances be taken to have been dismissed or be eligible for redundancy payment;

(c) if an employer gives an offer to an employee to have his contract renewed or to be re-engaged under a new contract on terms which **do not differ from those of the previous contract** and if the renewal or re-engagement would take effect on the date

of dismissal and the employee **unreasonably refuses the offer**, he will not be entitled to a redundancy payment;

(d) if an employer gives an offer in writing to an employee to renew his contract or to re-engage him under a new contract and the terms of the contract as renewed or of the new contract **differ wholly or in part from those of the previous contract**; if the employer's offer constitutes an offer of **suitable employment** in relation to the employee and the new or renewed contract takes effect not later than four weeks after the date of dismissal and the employee **unreasonably refuses** the offer, he will **not** be entitled to a redundancy payment;

(e) if an employee whose job is no longer available and who is offered **alternative work** by his employer takes this work for a **trial period** of not more than four weeks and then refuses the offer, his temporary acceptance shall not prejudice any plea by him that his refusal of the offer was reasonable;

(f) if an employee **temporarily accepts a substantial reduction in his remuneration or his hours of work** and such reduction is **not** less than half his normal working hours or remuneration e.g. a 3 day week, or a 4 day week, such temporary acceptance for a period **not exceeding 52 weeks** shall not be taken to be an acceptance by him of an offer of suitable employment.

8. Lay-off

This occurs where the services of an employee are not required because of lack of work carried out by that employee, provided of course that the employer gives notice to the employee beforehand that the break in employment is of a temporary nature. Redundancy Form RP9 may be used for this purpose. Where an employer fails to give notice of lay-off, he leaves himself open to claims for statutory redundancy payments.

9. Short-time

This exists where there is a reduction in the amount of work available, leading to a reduction in weekly earnings to less than half the normal weekly earnings or a reduction in the hours worked to less than half the normal weekly working hours. Again the employer must give notice that the short-time is of a temporary nature, with failure to do so leaving him open to claims for redundancy payment.

10. Employee's Right to a Redundancy Lump-Sum Payment by reason of Lay-off or Short-time (Form RP9)

This can arise where an employee has been **laid off** or kept on **short-time** or a **mixture** of both either for **four consecutive weeks** or for a **broken series of six weeks** where all six weeks occur within a **13 week** period. The employee, if he then wishes to claim redundancy payment must serve a written notice (Form RP9 is available for this purpose) stating that he intends to claim because of lay-off or short-time, or give his employer notice in writing terminating his contract of employment (Form RP9 may be used for this purpose). The employee does not have to serve either of these notices as soon as he has been laid off or kept on short-time for either of the periods mentioned above. He can wait longer, if he chooses, but if the short-time or lay-off stops and if he does decide to claim, he must serve a notice not later than four weeks after the lay-off or short-time ceases. After that, he is debarred from claiming a payment in respect of that particular period of lay-off or short-time.

An employee who claims and receives redundancy payment due to lay off or short time is deemed to have voluntarily left his or her employment and therefore not entitled to notice under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Employer's Right to give Counter Notice

In all these situations, the employer also has seven days from the service of notice to give a counter notice to the employee concerned by offering that employee **not less than thirteen weeks unbroken employment** starting within 4 weeks of the employee serving notice and therefore indicating that he will contest any claim for a redundancy payment. Again, Redundancy Form RP9 may be used for this purpose. This counter notice must be given within seven days of receipt of the employee's notice. If however, an unsatisfactory situation from the employee's point of view persists **after** the employer has given counter notice, with **four more** consecutive weeks of short-time or lay-off from his/her date of notice to claim redundancy, then that employee becomes eligible for redundancy.

11. Employees wishing to leave their employment before their notice of proposed dismissal expires (Form RP6)

Where an employee wants to leave before his/her notice expires, he should give his employer notice in writing of his wish to terminate his contract of employment on an earlier date than that specified in the Notice of Dismissal (included in comprehensive Redundancy Form RP50). Form RP6 may be used for this purpose (Part 1 of Form). It is open to the employer to give the employee a counter-notice requesting him/her to withdraw their notice of desire to leave and to continue in employment until the original date of notice expires. Again, Form RP6 may be used by the employer for this purpose (Part 2 of Form). If the employee unreasonably refuses to comply with this counter-notice, the employer can then contest liability to pay a redundancy payment. Disputes in this regard can be dealt with by the Employment Appeals Tribunal.

If the employer does in fact agree to the employee's request to leave early, he can indicate his consent by using Part 3 of Form RP6. This involves the employer giving the employee consent to alter his proposed date of termination of employment so as to bring that new date within what is referred to as "the obligatory period of notice" (Section 10 of the Redundancy Payments Act

1967 and Section 9 of the Redundancy Payments Act 1979). The date of dismissal then becomes the date on which the employee's notice expires.

The term "obligatory period of notice" means either the **statutory minimum notice** (at least two weeks and, depending on service, up to eight weeks) **or** the period of notice specified in **the contract of employment**, whichever is the **longer**. In this situation, the employer therefore agrees in writing (usually by means of Part 3 of Form RP6) for an alteration of the original termination date so as to bring that date within the obligatory period of notice as above and thereby facilitate the employee's request to leave early. This clears the way for payment of statutory redundancy based on service up to the new date of departure.

12. Important legal changes in the Redundancy Payments Scheme made in the Redundancy Payments Act 2003, regarding redundancies notified/declared from 25th May, 2003 onwards

12(a) Part-Time Workers

The Redundancy Payments Act 2003 has secured the rights of part-time workers to a statutory redundancy payment through amending insurability requirements for redundancy to bring them into line with the Social Welfare Acts and the Protection of Employees (Part-Time Work) Act 2001. This is in line with the provision of the 2001 Act that part-time employees cannot be treated in a less favorable manner than comparable full-time employees in relation to conditions of employment. In particular, there is recognition for the rights of workers to statutory redundancy in –

"casual employment" – see Paragraph 2 of Part 2 of the First Schedule to the Social Welfare (Consolidation) Act 1993.

"subsidiary employment" - where a person depends on another employment for his/her livelihood – see Paragraph 4 of Part 2 of

the First Schedule to the Social Welfare (Consolidation) Act 1993.

“**employment of inconsiderable extent**” i.e. very low wage – see Paragraph 5 of Part 2 of the First Schedule of the Social Welfare (Consolidation) Act 1993.

EXTRA NOTE FOR INFORMATION – CALCULATION OF WAGES OF PART-TIME WORKERS FOR REDUNDANCY ENTITLEMENT PURPOSES

(1) Treatment of Short-time Wages (i.e. working for less than half a week or earning less than half a week’s wages e.g. a 2 day week) for Redundancy calculation purposes

It has long been the view of the Employment Appeals Tribunal, even before the enactment of the Redundancy Payments Act, 2003, that when a person is put on **short-time** i.e. working less than half the number of hours they are normally expected to work in any week or earning less than half their normal weekly earnings, e.g. a 2 day week, the gross wage for the calculation of a redundancy lump sum is based on a **full week’s pay**.

(2) Treatment of Job Sharers

Where a person decides to go job-sharing, their job-sharing pay rather than their previous full-time pay is used for redundancy calculation purposes.

(3) Treatment of employees on reduced working hours

When a person is put on **reduced working hours** by their employer e.g. a three day week or a 4 day week, (as opposed to a 2 day week as per (1) above – short-time) the redundancy entitlement is calculated on the basis of a full week, provided the employee was put on reduced hours **within one year (52 weeks) before being made redundant**. If they were made redundant **after the first year** of reduced working hours and if it is clear that the employee **fully accepted** the reduced working hours as being

his/her normal working week, never requesting a return to a full time week, then the employee is deemed to have accepted the reduced hours as his normal week. In this situation the gross pay for redundancy purposes **is based on the reduced working hours.**

On the other hand, if the employee never accepted the reduced working hours as his “normal” hours and was constantly seeking to be put back on full time working, he could then be deemed not to have accepted his reduced hours as normal. In these circumstances his redundancy entitlement should be calculated at his full-time rate of pay.

Where an employee himself makes a request to be placed on reduced working hours, for his own reasons, and the employer agrees, then the redundancy entitlement is based on the reduced hours.

12(b) Workers on Fixed-Purpose Contracts

The Redundancy Payments Act 2003 safeguards the right to redundancy of a worker employed under a “fixed-purpose” contract, where the exact duration of the contract was incapable of being determined at the beginning. If the contract is not renewed following the fulfilling of the purpose, i.e. the fixed purpose contract ceases, a redundancy situation can arise.

12(c) Employment Agencies

Under the Redundancy Payments Act 2003, employees employed through Employment Agencies are covered for redundancy. Where the Employment Agency pays the wages of the employee, it is responsible for making the statutory redundancy payment.

12(d) Employees commencing work abroad

Under the Redundancy Payments Act 2003 employees who start work in a company abroad, work there for some time and are then transferred to the company or an associated company in the

Republic of Ireland and work here for at least two years before being made redundant, will have *all* of their service counted in calculating their statutory redundancy entitlements. This extends to workers who commence their employment abroad and are then posted to this country **the same redundancy entitlements** which have always been enjoyed by employees **in the reverse situation** i.e. employees who start work here, are posted abroad, return to Ireland and are subsequently made redundant, with full credit being given for all their service for redundancy purposes.

12(e) Minimum Wage

The minimum rates of pay laid down in the National Minimum Wage Act 2000 as updated, should always be taken into account when calculating a statutory redundancy lump sum. The Department of Enterprise, Trade and Innovation insists on evidence of payment of the full statutory redundancy entitlement to the employee, in accordance with the prevailing minimum rates of pay, before paying the 60% employer rebate. Thus, the Redundancy Payments Act 2003 ensures that the rate of pay used for redundancy calculation purposes will always be at least as high as the current National Minimum Wage.

12(f) Maternity Leave and Additional Maternity Leave for redundancy calculation purposes

An employee cannot be given Notice of Redundancy while on maternity leave or additional maternity leave. Under the Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004, the date of an employee's notice in a redundancy situation under the Redundancy Payments Acts 1967 to 2007 is deemed to be the date of her expected return to work as notified to her employer (or his/her successor) under the maternity protection legislation above. **Maternity leave, which at present is 26 weeks (from the 1st March 2007), has always been fully reckonable for redundancy calculation purposes.**

Additional maternity leave of 16 weeks (from the 1st March 2007), protective leave or natal care absence within the meaning of the

Maternity Protection Act 1994 and the Maternity Protection (Amendment) 2004 are all reckonable for redundancy calculation purposes in respect of redundancies notified/declared since 10th April, 2005, being the date of the coming into operation of Section 12 of the Redundancy Payments Act 2003.

Regarding employees declared redundant on or after 10th April, 2005, there is no question of any maternity leave or additional maternity leave being non-reckonable in the period **prior to the last 3 years** of service, ending on the date of termination of employment. Thus, **all periods of absence** due to maternity or additional maternity leave arising before the last 3 years of employment are fully reckonable for such employees.

12(g) Parental Leave for redundancy calculation purposes

For statutory redundancy calculation purposes, parental leave, which at present is 14 weeks per child, is already fully reckonable under the Parental Leave Act 1998. This has been reinforced under Section 12 of the Redundancy Payments Act 2003 in respect of redundancies notified/declared since 10th April, 2005, with specific provision being made whereby parental leave and *force majeure* leave within the meaning of the Parental Leave Act 1998 are fully reckonable for statutory redundancy purposes.

For Further Information On Maternity Leave and Parental Leave etc.

Detailed enquiries concerning Maternity Leave, Parental Leave or other Equality issues can be made to the Equality Authority at 2 Clonmel Street, Dublin 2. Their telephone number is (01) 4173333, Lo-Call 1890 245545. All their publications and information on the equality legislation can be accessed at their website at www.equality.ie

13 Important further legal changes made in the Redundancy Payments Scheme with respect to redundancies notified/declared on or after 10th April, 2005.

13(a) Giving Notice of Redundancy (Section 7 of the Redundancy Payments Act, 2003) regarding redundancies notified/declared on or after 10th April, 2005

The employer must still give the employee notice of dismissal for redundancy. He/she can do so by giving **Part A (Notification of Redundancy) of Form RP50** to the employee. **The employer does not have to notify the Minister for Enterprise, Trade and Innovation in advance of the date of termination of employment**, as was hitherto the case prior to 10th April, 2005. However, when claiming the rebate, the employer must complete and submit the **new Form RP50**, which incorporates the old redundancy notice form RP1, as well as the old RP2, RP3 and RP14 forms.

13(b) Calculating “excess days” (Section 11 of the Redundancy Payments Act, 2003) in respect of redundancies notified/declared as and from 10th April, 2005

As mentioned in paragraph 3, “How much statutory redundancy is an employee entitled to?” **all such** “excess” days are credited as a proportion of a year. For example, 91 days give the employee an extra 24.93% of a year’s service, on top of whatever number of full years they have worked for. The simple formula to be used in this situation for calculating the proportion of a year to be credited to the employee is $91 \text{ divided by } 365 = .2493$, or in percentage terms = 24.93%. It might be noted that 365 days is now used for redundancy calculation purposes rather than the figure of 364 days which was previously used.

13(c) Non-Reckonable Service (Section 12 of the Redundancy Payments Act, 2003) applicable to all redundancies notified/declared on or after 10th April, 2005.

This is the biggest single legal change in 2005, and **greatly simplifies** the method/rules for calculating statutory redundancy entitlements. The whole idea of non-reckonable service for redundancy calculation purposes in respect of all redundancies from 10th April, 2005 now applies only to the last 3 years of service. Before that, there is no such thing as non-reckonable service. The exact words used in Section 12 could not be clearer on this point – “During, and only during, the 3 year period ending with the date of termination of employment, none of the following absences shall be allowable as reckonable service -

Regarding redundancies declared from 10th April, 2005 onwards, there is no need to record any non-reckonable service outside of the 3 year period ending on the date of termination of employment. So if a person has been employed, for example, for 20 years, there will be no non-reckonable service in respect of the first 17 years – **any non-reckonable service will only be factored in/included in respect of the last 3 years.**

13(d) Adoptive Leave and Additional Adoptive Leave for redundancy calculation purposes

Since 1st March, 2007, **24 weeks** of absence due to Adoptive Leave has been fully reckonable for redundancy calculation purposes, up from 20 weeks since 1st March 2006. Additional adoptive leave of 16 weeks from 1st March 2007, up from 12 weeks is also fully reckonable for redundancy purposes. Of course, with respect to redundancies notified on or after 10th April, 2005, any adoptive leave taken **before the last 3 years** of employment will be **fully reckonable** – the 3 year rule therefore applies.

13(e) Carer’s Leave for redundancy calculation purposes

Under the Carer’s Leave Act, 2001, there is a maximum period of reckonable service of 104 weeks from the 24th March 2006 in respect of any one care-recipient. Again, regarding all redundancies notified since 10th April 2005, the 3 year rule of confining any non-reckonable service to the 3 years ending on the

date of termination also applies to Carer's Leave. Before that 3 year period, all Carer's Leave is fully reckonable.

13(f) Career Break type of leave

Under Section 12 (b) of the Redundancy Payments Act, 2003, any absences outside of the usual type of absences due to maternity leave, additional maternity leave, adoptive leave, parental leave, carer's leave etc "but authorised by the employer" is always fully reckonable, even during the last 3 years of employment. The most common form of this type of leave would be a career break. Regarding such absences occurring before 10th April, 2005, the position was that the first 13 weeks in any 52 week period were reckonable.

13(g) Strengthening of Continuity of Employment (Section 12 of the Redundancy Payments Act, 2003), as applied to redundancies notified/declared on or after 10th April, 2005

Under Schedule 3 to the Redundancy Payments Act, 1967 and Section 10(a) of the Redundancy Payments Act 1971, there has always been what is sometimes referred to a "presumption of continuity of employment". This has been greatly strengthened by Section 12 of the Redundancy Payments Act 2003 in respect of redundancies notified/declared on or after 10th April, 2005. Section 12 (a) refers to a whole range of interruptions to an employee's service due to the following - sickness, lay-off, holidays, service in the Reserve Defence Force, leave authorised by the employer, adoptive leave, additional maternity leave (maternity leave is already covered under existing maternity protection legislation), parental leave, adoptive leave, carer's leave, and lock out by an employer or participation in a strike by an employee. Section 12 (a) goes on to state that continuity of employment is not broken by the matters referred to in this list of interruptions in employment. No reference is made to any time limit on periods of sick leave absence or absence due to lay-off for continuity of employment purposes, or indeed any other absences.

14. How to actually make an application to the Department of Enterprise, Trade and Innovation (Redundancy Payments Section) for an Employer's Rebate

To make a claim to the Department for a 60% rebate following payment of a statutory redundancy lump sum, an employer should, within six months of such payment, submit the comprehensive redundancy form **RP50**, incorporating Redundancy Notification (old Form RP1), Redundancy Certificate (old Form RP2), as in Paragraph 15 below in respect of each employee, and finally **Employer's Application for a Rebate** – (old Form RP3), now Part B of Form RP50. From 30th May, 2005, this form can be submitted electronically at the Department's website at: www.deti.ie and is downloadable at that address. Although a signed hardcopy version of Form RP50 must also be submitted for verification purposes before it becomes a valid claim, it is still the case that an electronic application is by its very nature capable of being processed faster than a hardcopy-only application since an electronic application means that the required data is instantaneously transmitted onto the Department's database, with any errors being immediately returned for electronic correction.

PLEASE NOTE: For the reasons given above, **on-line applications are definitely recommended.** Form RP50 is also available in hardcopy from NERA Information Services, the National Employment Rights Authority - tel. 059 917 8990 Lo-call 1890 80 80 90

Where Form RP50 indicates that the employee received less than the full statutory redundancy lump sum, the Department then requests the employer to pay the shortfall before processing the rebate form. **This delays payment of the rebate**, so an avoidance of underpayments to employees in the first instance facilitates **the more rapid paying of the rebate by the Department.** It is also **strongly recommended** that the **website calculator** on the Department's Website at www.deti.ie be used to **calculate statutory redundancy entitlements.**

Note to Employers re Notification of redundancy – Where an employer intends making an employee with at least two years service redundant, he must give him or her notice in writing at least two weeks before the date of termination. **Form RP50 (Part A)** may be used for this purpose. Failure to comply with these requirements leaves an employer open to a fine of up to €5,000.

Where an employee accepts payment in lieu of notice, the date of termination is deemed to be the date on which notice, if it had been given, would have expired, and this date should be inserted as the termination date on RP50 (Part B).

For information on the notice requirements of the Minimum Notice and Terms of Employment Acts 1973 to 2001 and the Protection of Employment Act 1977 (as amended) see Appendices 6 and 7.

Note for employers and employees re Redundancy Certificate (incorporated in comprehensive Form RP50 – Part B)

An employer who makes an employee redundant must supply that employee with a redundancy certificate on the prescribed Form RP50 (Part B) not later than the date of termination of employment. An employee entitled to a statutory redundancy payment by reason of lay-off or short-time should also receive a Redundancy Certificate in this prescribed Form.

Form RP50 **confirms the employee's right to the correct statutory redundancy payment**, giving the necessary data e.g. gross weekly pay and length of service used in calculating that amount and containing the signatures of both employer and employee certifying that the correct statutory redundancy payment was made by the employer and received by the employee. The employee **should not sign this receipt until he or she actually receives payment**, except in the situation outlined in paragraph 15 below where the employer is unable to pay the amount due to the employee and payment is sought from

the Social Insurance Fund instead, in which case the employee signs “nil” for the amount received, and the employer signs “nil” for the amount paid.

Time-off to look for work

An employee is entitled, during the two weeks of redundancy notice period, to reasonable, paid time-off to look for new employment or to make arrangements for training for future employment. The employer may request the employee to furnish him with evidence of arrangements made for these purposes and the employee must furnish such evidence provided it is not prejudicial to the employee’s interest.

15. How to actually make an application to the Department of Enterprise, Trade and Innovation (Redundancy Payments Section) for a redundancy lump sum in situations where the employer is unable or fails to pay the amount due to the employee

In this situation, the Department steps in and pays the money from the Social Insurance Fund. The right of the employee to the payment must first be established either by a completed Redundancy Certificate (RP50 – Part B) or, in the absence of that, a Decision of the Employment Appeals Tribunal (EAT) following an appeal from the employee. The following comprehensive all-in-one form must be submitted to the Department, either by the Liquidator/Receiver on behalf of the employees in a liquidation/receivership situation or otherwise by the employees themselves, if all the necessary documentation is not received the form will be returned to the sender.

RP50, incorporating –

- **Notification of Redundancy (Part A)** – this should be submitted if available.
- **Redundancy Certificate (Part B)** - with both employer (or liquidator/receiver in a liquidation/receivership situation) and employee giving written confirmation that **no** redundancy was

paid, although it was owed to the employee; or, failing this, copy of an EAT Decision in the employee's favour. See **Note on Form RP77** below.

- Employee Lump Sum Claim from the Social Insurance Fund (also in Part B)

As mentioned in Paragraph 14 above (How to make an application to the Department for an Employer's Rebate), from 30th May, 2005, Form RP50 can be submitted electronically at the Department's website at: www.deti.ie and is downloadable at that address.

PLEASE NOTE: Although, as with the case of an employer rebate, a signed hardcopy version of Form RP50 must also be submitted for verification purposes before it becomes a valid claim, it remains the case that an electronic application is capable of being processed faster than a hard-copy only version and is accordingly recommended to anybody making an application.

Form RP50 can also be downloaded from the Department's Website at: www.deti.ie. It is also available in hardcopy from the NERA Information Services, the National Employment Rights Authority, O'Brien Road, Carlow, Co Carlow, tel - 059 917 8990 Lo-call 1890 80 80 90. They can also answer general queries on redundancy matters which people may have.

Note on Form RP77: Before formally applying for a statutory redundancy lump sum, an employee should first have taken all reasonable steps short of actual legal proceedings to secure payment from the employer. This includes a written application to the employer – **Form RP77** can be used for this purpose.

This form can be accessed from NERA's website at www.employmentrights.ie and can also be downloaded from the Department's Website at: www.deti.ie.

In the event of a dispute between the employer and the employee concerning the employee's right to a lump sum, the employee

may decide to bring the matter to the Employment Appeals Tribunal (EAT) for adjudication. The Tribunal, with its headquarters at Davitt House, Adelaide Road, Dublin 2 holds sittings in various locations throughout the country and is an informal, inexpensive and efficient avenue for adjudicating on disputes regarding statutory redundancy entitlements.

If the Tribunal rules in favour of an employee, and if the employer continues to refuse to pay the amount due, the employee should then send a copy of the EAT Decision, together with the RP50 form to the Department for payment of the lump sum from the Social Insurance Fund.

16. Time Limit for the making of claims for Employer Rebates or for statutory redundancy Lump Sums

16(a) Employer's Rebate

The time limit for making an employer's rebate claim to the Department of Enterprise, Trade and Innovation is six months from the date of payment of the redundancy lump sum by the employer to the employee.

16(b) Lump Sums

The time limit for making such claims is 52 weeks after the date of termination of employment. Thus there are 52 weeks for a redundancy payment to be agreed on and paid **or** for the employee to give a written claim for redundancy to his employer **or** for a referral to the Employment Appeals Tribunal

of the question of the right of the employee to a redundancy payment.

The Tribunal has discretion **to extend the 52 week time-limit to 104 weeks**, provided that it receives the necessary claim within 104 weeks of the date of dismissal and is satisfied that the delay by the employee in making his claim arose through reasonable cause. It should be stressed, however, that the period of 52 weeks is the period which will normally apply.

In very rare circumstances the following situation may apply. Where an employee is transferred from one employer to another **without realising that the transfer involves his dismissal by one employer and his re-engagement by the other**, and is subsequently made redundant, he has of course the usual period for applying for his redundancy entitlement in respect of the period spent working for the employer who made him redundant, and in respect of his pre-transfer employment. However, the Employment Appeals Tribunal may fix the date from which the time limit shall run for applying for redundancy to his previous employer, where his failure to apply was due to his **not having received from such previous employer notice of dismissal or a redundancy certificate**.

17. Seasonal workers

In the case of workers who are laid off for an average period of more than twelve weeks per year prior to redundancy, the provisions relating to lay-off in the Scheme will not apply until the end of that average period. In the case of a seasonal worker, therefore, **there will normally be no question of redundancy until the usual commencement time of his seasonal work**. If he is not then re-employed, the question of redundancy arises, but not until then.

18. Effects of change of ownership of a business on a Redundancy Lump-Sum Payment

The provisions regarding redundancy payments in circumstances arising from a change in the ownership of a business are as follows:

(i) where there is a change in the ownership but the employee by arrangement **continues to work for the new owner with no break in employment**, the employee is not entitled to redundancy payment at the time of change of ownership but his continuity of employment is preserved for the purpose of redundancy payments in the event of his dismissal on redundancy by the new employer at any future date;

(ii) the employee is not entitled to redundancy payment if he **unreasonably refuses** an offer of employment from the new owner as follows:

(a) on the same terms as before without a break in employment,

or

(b) on different terms which would rank as **suitable employment** in relation to the employee either with or without a break, provided the break does not exceed four weeks.

The fact of change of ownership of the business will not, in itself, be regarded as a good and sufficient reason for the refusal by the employee of an offer of employment from the new owner.

(iii) if the new owner merely buys the property on which the employee was employed, this will not constitute a change of ownership of the business and the former employer will be liable to pay any redundancy lump sum which might be due to the employee for loss of his job;

(iv) where there is a transfer of an agency, franchise, tenancy, etc., if an employee of the transferor accepts before, on or within four weeks after the transfer, an offer by the transferee of employment in the same place and on terms which are either the same as or are not materially less advantageous to him than his existing terms of employment, the employee is not entitled to a redundancy payment but his continuity of employment is preserved.

19. Death of an employer

The effects as far as redundancy lump-sum payments are concerned in various circumstances which might arise on the death of an employer are as follows:

(i) if an employee's contract is terminated by reason of his employer's death, he will **not** be regarded as having been dismissed **if his contract is renewed or if he is re-engaged** by the personal representative of the deceased employer within eight

weeks after the death of the employer;

(ii) an employee will not be entitled to a redundancy lump-sum payment if he unreasonably refuses written offers of employment from the deceased employer's personal representative either

(a) **on the same terms** as before without a break in employment,
or

(b) on different terms which would rank as **suitable employment** in relation to the employee, either with or without a break, provided the break does not exceed eight weeks

(iii) if an employee has been laid off or kept on short-time immediately before his employer's death and if he is again laid off or put on short-time when re-engaged by the deceased employer's personal representative, he can count all the weeks together including any interval before the re-engagement for the purpose of claiming a payment;

(iv) if an employee has served notice of intention to claim a redundancy payment because of lay-off or short-time (Form RP9 as above) and his employer dies within four weeks after the notice is served, the employee will be entitled to claim a payment if he is laid off or kept on short-time or not re-engaged by the employer's personal representative during the four consecutive weeks following the service of notice;

(v) if an employee, who has been laid off or kept on short-time for one or more weeks during the four weeks after the service of notice of intention to claim, has his contract renewed or is re-engaged under a new contract within these four weeks by the deceased employer's personal representative and is laid off or kept on short-time for the week or for the next two or more weeks following the renewal or re-engagement, all the weeks of lay-off or short-time will be regarded as consecutive weeks for the purpose of entitlement to redundancy payment.

Any disputes which may arise in connection with these provisions will be decided by the Employment Appeals Tribunal.

20. Death of a redundant employee

Where an employee dies **before the expiration date of his dismissal notice** and before receiving a redundancy payment which is due to him **the payment will still be due** and will be based on his service up to the time of his death. Should an employee die **without** having either accepted or refused an offer of renewal or re-engagement by his employer made before the termination of his contract of employment and that offer has not been withdrawn before the employee's death, **no redundancy entitlement arises**. Neither will there be any entitlement to redundancy if an employee who has given to his employer notice of intention to claim by reason of lay-off and/or short-time (RP9 Form) dies within 7 days of giving such notice.

Any dispute concerning the liability of an employer to pay a redundancy payment to the personal representative of a deceased employee will be decided by the Employment Appeals Tribunal.

21. Apprentices - What are the rights of an apprentice to a redundancy payment?

Redundancy Payments will **not** be payable in any case where an employee is dismissed **within one month after the end of his/her apprenticeship**. If, however, an employer retains the services of an employee for more than a month after the completion of his/her apprenticeship, the period of apprenticeship will count in calculating any redundancy payments in respect of that employee in the future.

An apprentice whose employment terminates by reason of redundancy **during the period of his/her apprenticeship will qualify** for a redundancy lump sum payment if he or she meets the usual requirements for entitlement i.e. be over 16 and have at least two years service etc.

22. How are statutory redundancy lump sums and employer's rebates financed?

The Social Insurance Fund (SIF)

In the first instance it is up to the employer to pay the statutory redundancy lump sum to all eligible employees. The Social Insurance Fund (SIF) finances the 60% redundancy rebate payment to employers who pay their eligible employees their full statutory redundancy entitlements. However, where the employer is unable to pay or refuses or fails to pay, the Department steps in and makes a payment from the (SIF).

23. Recovery of sums paid from the Social Insurance Fund for statutory redundancy purposes.

Sections 42 and 43 of the Redundancy Payments Act 1967 and Section 14 of the Redundancy Payments Act 1971 and Section 14 of the Redundancy Payments Act 1979 contain specific terms of reference for the Minister for Enterprise, Trade & Innovation in dealing with redundancies arising from liquidations, bankruptcies etc.

Section 14(7) of the 1971 Act defines insolvency. Where a liquidator or receiver has been appointed and the question of insolvency does not arise, the Minister will reasonably expect a liquidator or receiver to discharge lump sum payments.

In a situation where a business concern provides the Minister with concrete evidence of its inability to pay its employees their statutory redundancy entitlements e.g. audited accounts/bank statements, the Minister will make the payment from the Social Insurance Fund and will subsequently seek repayment of the amount concerned, less the 60% rebate which the company would have been entitled to if it had been in a position to make the payment in the first place. If the business does not provide the necessary evidence then the employee will have to take a case to the Employment Appeals Tribunal and get a favorable

determination before the Minister will pay out.

In the case of an employer failing to pay a redundancy lump sum, the Minister will have the payment made from the Fund and will then endeavour to recover the full amount from the employer. Under Section 43 of the Redundancy Payments Act 1967 such amounts owing to the Fund are recoverable as debts due to the State and, without prejudice to any other remedy, may be recovered by the Minister as a debt under statute in any court of competent jurisdiction.

In a **Liquidation, Receivership, Examinership or Bankruptcy** situation, the Minister is obliged to pay the correct lump sum to all eligible employees. The Minister then seeks to recover the amount from the employer concerned, less any rebate which would have been payable had the employer originally made the payment. Amounts which are recovered are then paid back into the Social Insurance Fund. For this purpose, the Minister's claim has preferential status under Section 42 of the Redundancy Payments Act 1967, which has been amended by Section 14 of the Redundancy Payments Act 1979. Under the 1979 Act, a redundancy lump sum (or part thereof) is made a priority debt under Section 285 of the Companies Act 1963, in cases of winding up, and a priority debt under Section 4 of the Preferential Payments in Bankruptcy Ireland Act 1889, in cases of a bankrupt or arranging debtor.

24. The Employment Appeals Tribunal (EAT)

The Tribunal is an independent body bound to act judicially and was set up to provide a speedy, fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights. The Tribunal was originally set up in 1968 under Section 39 of the Redundancy Payments Act 1967 for the purpose of resolving disputes relating to redundancy matters and has since expanded to cover many other areas of employment rights legislation including unfair dismissals, minimum notice etc.

The Tribunal consists of a legally qualified Chairman, a number of

vice-Chairmen and ordinary members. The ordinary members as well as the Chairman and vice-Chairmen are appointed by the Minister for Enterprise Trade & Innovation - half of the ordinary members being persons nominated by the organisation representative of trade unions and half being from among persons nominated by bodies representative of employers. The Chairman may direct that the Tribunal act by division. A division consists of either the Chairman or a Vice-Chairman and two ordinary members (of whom one shall be a trade union representative and one an employer's representative). The Tribunal may require persons to attend before it and to give evidence. It has the power to take evidence on oath. The decision of the Tribunal on any dispute is final and conclusive except that a person dissatisfied with its decision may appeal to the High Court on a question of law. Employers and employees who wish to appeal to the Tribunal should ask the Department of Enterprise, Trade & Innovation, the nearest Social Protection Office or the local FÁS Office for the necessary form (Form T1A). The following are among the redundancy matters on which disputes are referable to the Employment Appeals Tribunal:

- (a) lump-sum payments to workers and rebates to employers;
- (b) decisions given by Deciding Officers
- (c) what constitutes continuous employment, whether dismissals were due to redundancy, or whether offers of alternative employment were reasonable;
- (d) compliance with notices required under the Act;
- (e) matters arising from the deaths of either employees or employers.

Disputes concerning the insurability of employees

Questions relating to the insurability of employees under the Social Welfare Acts are **not** referable to the Employment Appeals Tribunal. Such questions must be decided in accordance with the decisions and appeals procedures provided for in the **Social Welfare Acts, as administered by the Department of Social**

Protection. Where an employee is dissatisfied with a decision as to his insurability under these Acts he or she may **appeal this decision to the Social Protection Appeals Board.**

The Employment Appeals Tribunal also deals with disputes relating to the Minimum Notice and Terms of Employment Acts 1973 to 2001, the Unfair Dismissals Acts 1977 to 2001, the Maternity Protection Acts 1994 to 2004, the Protection of Employees (Employers' Insolvency) Acts 1984 to 2004, the Protection of Employees (Part-Time Work) Act 2001, the Payment of Wages Act 1991, the Terms of Employment (Information) Act 1994, the Adoptive Leave Act 1995 (as amended), the Protection of Young Persons (Employment) Act 1996, the Organisation of Working Time Act 1997 (in certain circumstances), the Parental Leave Act 1998, the Protection for Persons Reporting Child Abuse Act 1998, the Carer's Leave Act 2001 and the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

A separate explanatory leaflet on the Employment Appeals Tribunal is available from the Department. A general "Guide to Labour Law" covering the above range of labour legislation is also available from the Department and can be accessed on our website address at

25. Offences

Under Section 13 of the Redundancy Payments Act 2003 (amended by The Protection of Employment (Exceptional Collective Redundancies & Related Matters) Act 2007) it is an offence punishable by a fine of up to €5,000 to furnish false information on Form RP50 (incorporating Notification of Redundancy, Redundancy Certificate and Employer's Claim for a Rebate from the Social Insurance Fund).

26. Inspection of records

The Minister for Enterprise, Trade & Innovation has power conferred on him/her by the Redundancy (Inspection of Records) Regulations 1968 (S.I. No. 12 of 1968) to enter premises, inspect

records and procure information for the purpose of ensuring the effective operation of the Redundancy Payments Acts.

APPENDIX 1

Guide to Completing the Redundancy Form RP50

Fields marked with * are mandatory fields and must be completed before submitting to the Department.

When do I complete Part A?

When you wish to notify an employee of your intention to terminate their employment for reasons as stated in the Redundancy Payments Acts.

When do I complete Part B?

When the employee is leaving and receiving their lump sum payment from you.

Why should I apply on-line?

Online applications are a speedier method of applying for Rebate or Lump sum payments and are processed quicker.

IMPORTANT NOTE: To establish a right to a Redundancy Payment, it may be necessary to refer to information from the Revenue Commissioners or other Government Departments. By signing this form, consent is given to the disclosure of such information for Redundancy purposes only. By signing, it is also certified that no other claim has been made in respect of the said employment details and that the claim is not awaiting a Decision from the Employment Appeals Tribunal.

OPERATION OF THE REDUNDANCY PAYMENTS

SCHEME & ENTITLEMENTS

What is Statutory Redundancy?

Statutory Redundancy is the minimum Lump Sum payment which an employer is obliged by law to pay all eligible redundant employees under the Redundancy Payments Acts 1967 to 2007.

What are the allowable Reasons for Redundancy?

Closure or relocation of Business, Rationalisation, (Fewer people required to do the work etc.), Re-organisation of business, (Fewer people required due to reduced product demand, Technological changes) Liquidation, Receivership, Bankruptcy, Death of Employer, Insolvency, End of Contract, Sale of Business. See our website at www.deti.ie for complete list of reasons.

Who is eligible for Statutory Redundancy?

All employees must be over the age of 16 with at least two years (104 weeks) continuous service. If full time must be in fully insurable employment. A genuine redundancy situation must exist.

What Notice is required?

A minimum of two weeks notice is required. For service of between 2 and five years – two weeks notice, 5 and 10 years – 4 weeks notice, 10 and 15 years – 6 weeks notice, over 15 years – 8 weeks notice.

How are Statutory Redundancy Entitlements calculated?

Two weeks pay for every year of service, together with a bonus week. Weekly pay is subject to a ceiling which is €600. The on-line redundancy calculator can be found at: www.deti.ie

Who can claim a Rebate ?

Any employer who pays the correct Statutory Redundancy Lump Sum Entitlement to an eligible employee.

What steps are required to claim a Rebate?

The composite redundancy form RP50 must be fully completed, signed by the Employer and Employee, and submitted. It should cover Notice of Redundancy, Confirmation of Receipt of Statutory Redundancy Payment and Application for Employers Rebate and submitted within 6 months of the employee receiving their Lump Sum.

Rebate Claims can be submitted on-line at www.deti.ie

Who can claim a Lump Sum?

All eligible employees as above, where the employer fails to pay.

What steps are required to claim a Lump Sum?

The composite Redundancy Form RP50 must be completed, signed by the Employer, Employee, and where appropriate, the Administrator and submitted within one year of the Redundancy. If the Employer fails to pay, a case may be taken to the Employment Appeals Tribunal to establish entitlement to Statutory Redundancy.

Lump Sum Claims can be submitted on-line at www.deti.ie

Where can I get more information?

From NERA Information Services,
National Employment Rights Authority,
O'Brien Road, Carlow, Co. Carlow.
Tel - 059 917 8990 Lo-call 1890 80 80 90
or our website at www.employmentrights.ie

Redundancy Payments Section, Davitt House, or the Department of Enterprise, Trade & Innovation's website at www.deti.ie for queries relating to claims that have been submitted to the Department.

APPENDIX 2

Definition of Redundancy

Extract from Section 7 of the Redundancy Payments Act 1967, as amended by Section 4 of the Redundancy Payments Act 1971 and Section 5 of the

Redundancy Payments Act 2003

“.....an employee who is dismissed shall be taken to be dismissed by reason of redundancy if for one or more reasons not related to the employee concerned the dismissal is attributable wholly or mainly to:

- (a) _the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or
- (b) _the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish, or
- (c) _the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or
- (d) _the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done in a different manner for which the employee is not sufficiently qualified or trained, or

(e) _the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained”.

APPENDIX 3

How do you calculate a week's pay for redundancy purposes?

The basic formula is as follows –

Gross Weekly Wage **plus** Average Regular Overtime **plus** Benefits-in Kind.

The total figure is then taken to be the weekly pay for redundancy calculation purposes. There are two basic patterns of work involved i.e. **time workers** whose pay does not vary in relation to the amount of work they do and **piece workers** whose pay does depend on the amount of work they do e.g. sales persons on commissions.

(1) How is the weekly pay of a time- worker (fixed wage or salary) calculated?

This is the work pattern in most cases i.e. a fixed wage or salary. In this case, the employee's wages do not vary in relation to the amount of work he or she does e.g. if he/she is paid by an hourly time rate or by a fixed wage or salary. A week's pay means his earnings for his normal weekly working hours **at the date he was declared redundant** i.e. the date on which notice of proposed dismissal was given. This figure includes any **regular** bonus or allowance which does not vary in relation to the amount of work done. In calculating the amount of a week's pay for redundancy purposes, any benefits-in-kind normally received by the employee e.g. free accommodation, free meals etc., must be taken into account. The exact value of these "fringe-benefits" should be agreed between the employer and employee.

Where redundancy is claimed on the basis of lay-off or short-time (Form RP9), the date of termination of employment is taken to be the date that the employee applies for redundancy.

If a worker receives overtime pay for working more than a fixed number of hours, the fixed number of hours will be taken to be his normal working hours but if his contract requires him to work for more than that fixed number of hours, the higher number of hours required by the contract will be taken as his normal weekly working hours.

In the case of an employee who is normally expected to work overtime, his/her **average weekly overtime earnings** will be taken into account in determining his week's pay for redundancy purposes. The formula for calculating this amount is simply to establish the total amount of overtime earnings in the period of 26 weeks ending 13 weeks before the date he was declared redundant and dividing that amount by 26.

(2) How is the weekly pay of a piece-worker calculated?

A piece worker is defined as an employee whose pay depends on the amount of work he/she carries out i.e. he is paid wholly or partly by piece rates, bonuses or commissions etc related to his output. There is a special formula for calculating this amount, based on his normal weekly working hours, as follows –

- (a) _The total number of hours worked by the employee in the **26-week period ending 13 weeks before the date of being declared redundant** is calculated first. Weeks worked with different employers will be taken into account if the change of employer did not affect the continuity of employment. Any week or weeks during the 26-week period, in which the employee did not work will not be taken into account and the most recent week or weeks counting backwards, before the 26 week period, will be taken into account instead.

- (b) _You then add up all the pay earned in this 26-week period and adjust it to take into account **any late changes in rates of pay** which came into operation in the **13 weeks** before the employee was declared redundant.
- (c) _The employee's **average hourly rate of pay** is then calculated by simply dividing the total pay as at (b) above by the total number of hours as at (a) above. You then finally establish **the weekly pay by multiplying this average hourly rate by the number of normal weekly working hours** of the employee at the date on which he was declared redundant (i.e. date of being given notice of redundancy).

(3) Employees with no normal working hours

In a case where an employee has no normal working hours his average weekly pay will be taken to be his average weekly pay including any bonus, pay allowance or commission over the period of 52 weeks during which he was working before the date on which he was declared redundant.

(4) Shift workers

An employee who is employed on **shift-work** and whose pay varies according to the shift on which he works will be taken to be an employee who is paid wholly or partly **by piece-rates**. This also applies in the case of an employee whose pay varies in relation to the day of the week or time of the day at which he works.

NOTE (A) -

When calculating a week's pay regard should be had to the **ceiling for the time being in force** on normal weekly remuneration. Regarding redundancies **notified/declared** from **1st January, 2005**, the ceiling is **€600** per week or €31,200 per annum (€507.90 per week or €26,411 per annum prior to that date).

Account must not be taken of any sums paid to an employee by way of recoupment of expenses necessarily incurred by him in the proper discharge of the duties of his employment.

NOTE (B) -

Treatment of *Short-time Wages, Job-sharing Wages and Reduced Working Hours* for Redundancy calculation purposes

(1) Treatment of *Short-time Wages, (working for less than half a week, or earning less than half a week's wages)* for Redundancy calculation purposes

It has been the view of the Employment Appeals Tribunal (EAT) that when a person is put on **short-time** i.e. working less than half the number of hours they are normally expected to work in any week, or earning less than half their normal weekly earnings, e.g. a 2 day week, the gross wage for the calculation of a redundancy lump sum is based on a **full week's pay**.

(2) Treatment of *Job Sharers*

Where a person himself/herself decides to go job-sharing, their job-sharing pay rather than their previous full-time pay is used for redundancy calculation purposes. The decision to go job-sharing in this case was taken by the employee, rather than being an employer decision in the context of, for example, a temporary reduction in work for the employee concerned.

(3) Treatment of employees on *reduced working hours*

When a person is put on **reduced working hours** by their employer e.g. a three day week, the redundancy entitlement is calculated on the basis of a full week, provided the employee was put on reduced hours **within one year (52 weeks) before being made redundant**. If they were made redundant **after the first year** of reduced working hours and if it is clear that the employee **fully accepted** the reduced working hours as being his/her

normal working week, never requesting a return to a full time week, then the employee is deemed to have accepted the reduced hours as his normal week. In this situation the gross pay for redundancy purposes **is based on the reduced working hours.**

On the other hand, if the employee never accepted the reduced working hours as his “normal” hours and was constantly seeking to be put back on full time working, he could then be deemed not to have accepted his reduced hours as normal. In these circumstances his redundancy entitlement should be calculated at his full-time rate of pay.

Where an employee himself makes a request to be placed on reduced working hours, for his own reasons, and the employer agrees, then the redundancy entitlement is based on the reduced hours.

APPENDIX 4

How do you decide whether or not employment is continuous?

As a general rule employment will be regarded as continuous unless it has been terminated by dismissal or the employee leaves his or her employment voluntarily. The Employment Appeals Tribunal normally presumes that a person's employment was continuous unless the contrary is proved.

Where a redundant employee **receives a redundancy lump sum payment, his/her continuity of employment is broken.**

Regarding redundancies notified/declared on or after 10th April, 2005, **this presumption of continuity of employment has been further strengthened, save in obvious situations like dismissal or resignation.** It is explicitly stated that continuity of employment is preserved in all periods of

- (1) sickness,
- (2) lay-off,
- (3) holidays,
- (4) service in the Reserve Defence Forces of the State,
- (5) leave (not voluntary leaving of the employment by the employee) and not mentioned in (1) to (4) above, **but authorised by the employer (e.g. career break),**
- (6) Leave under the Adoptive Leave legislation
- (7) leave under Maternity Protection legislation,
- (8) Parental leave,

- (9) force majeure leave,
- (10) Carer's Leave,
- (11) Absence from work because of a lock-out by the employer or because of participation by the employee in a strike.

The presumption of continuity of employment is safeguarded as per the following rules for calculating continuous employment

(i) Employment will be taken to be continuous unless it has been terminated by dismissal or the employee leaves his employment voluntarily.

(ii) The Employment Appeals Tribunal, in any case which comes before it, shall presume that a person's employment was continuous unless the contrary is proved.

(iii) When a redundant employee receives a redundancy lump-sum payment, his continuity of employment is broken, except in the case referred to at (viii).

(iv) If an employee is dismissed for redundancy before attaining 104 weeks' continuous service and resumes employment with the same employer within 26 weeks, his employment will be treated as continuous.

(v) Continuity of employment will not be broken through an employee being involved in a strike or lock-out.

(vi) Where an employee is re-engaged by a company which is an associated company of the company that formerly employed him, continuity of employment will not be broken if the re-engagement takes place within four weeks of his dismissal. For the purpose of this provision, two companies shall be taken to be associated companies if one is a subsidiary of the other or both are subsidiaries of a third.

(vii) Where an employee voluntarily transfers from one employer to another and both employers and the employee agree that all the employee's service will be regarded as continuous employment with the second employer, the transfer will not break continuity. In a case of this kind, the first employer will not be liable for redundancy payment.

(viii) Continuity of service is preserved (whether or not a redundancy lump sum has been paid), where redress by way of re-instatement or re-engagement is obtained under the Unfair Dismissals Acts 1977 to 2001.

APPENDIX 5

Reckonable and Non-Reckonable Service

During, and only during the 3 year period ending with the date of termination of employment, the following are all **non-reckonable** for redundancy calculation purposes in respect of redundancies notified/declared on or after 10th April, 2005 –

NON-RECKONABLE ABSENCES WITHIN THE LAST 3 YEARS OF EMPLOYMENT (POST 10th April, 2005)

- (a) absence **in excess of 52 consecutive weeks** by reason of an occupational accident or disease within the meaning of the Social Welfare (Consolidation) Act 1993 – the first 52 weeks are therefore fully reckonable,
- (b) absence **in excess of 26 consecutive weeks** by reason of any illness not referred to in subparagraph (a) – the first 26 weeks are therefore fully reckonable,
- (c) absence by reason of lay-off by the employer,
- (d) absence from work by reason of a strike in the business or industry in which the employee concerned is employed.

PLEASE NOTE: Non-reckonable service in respect of redundancies notified/declared on or after 10th April, 2005 is applicable **only to the final 3 years of service**, ending on the date of termination of employment. Thus, if an employee was working in a company for a total of 20 years, the non-reckonable service referred to in (a) to (d) above **only applies to the last 3**

years – all such absences referred to are fully reckonable in respect of the first 17 years of employment.

This 3-year rule does not apply to redundancies notified **before the above date of 10th April, 2005**. In the case of such previous redundancies therefore, such non-reckonable periods of employment as above (a) to (d) are applicable to the entire employment history of the employee.

The following **allowable absences** are specifically referred to in Section 12 of the Redundancy Payments Act, 2003, which came into operation on 10th April 2005 with respect to redundancies notified/declared as and from that date (Maternity Leave, Adoptive Leave, Parental leave and Carer's Leave were, of course, already reckonable before that date) -

- (a) (i) absence from work while on adoptive leave under the Adoptive Leave Act 1995 (as amended) – increased to 24 weeks from 1st March, 2007.
- (ii) absence from work while on additional adoptive leave under the the Adoptive Leave Act 1995 (as amended) – increased to 16 weeks from 1st March, 2007.
- (b) absence from work while on **additional** maternity leave for **16** weeks from 1st March 2007 (**maternity leave of 26 weeks from 1st March 2007 under the Maternity Protection Act 1994 was itself already allowable in the pre-10th April, 2005 period and, of course, continues to be allowable**), protective leave or natal care absence within the meaning of the Maternity Protection Act 1994 (since amended by the Maternity Protection (Amendment) Act 2004),
- (c) absence from work while on parental leave (14 weeks) or force majeure leave within the meaning of the Parental Leave Act 1998,

- (d) absence from work while on carer's leave (subject to a minimum of 13 weeks and a maximum of 104 weeks as amended by section (7) of the Social Welfare Law Reform and Pensions Act 2006.
- (e) any absences not mentioned under (a) to (d) above but authorised by the employer e.g. a career break. In respect of redundancies notified/declared **before 10th April, 2005**, there was a **13 weeks limit** within a period of **52 weeks** in respect of such absences.

NOTE – While **lay-off** within the 3 year period referred to above (ending on the date of termination of employment), is non-reckonable, absence due to **short-time** working is **fully reckonable**. Short-time working can be defined as a situation where due to a reduced demand for work an employee's earnings are **less than half his/her normal weekly earnings or his/her hours worked are less than half his/her normal weekly working hours**.

More detailed guidelines on arrangements for reckonable and non-reckonable service

The following is always regarded as reckonable service

- (i) A week falling within a period of continuous employment during any part of which an employee is actually at work or
- (ii) absence from work due to sickness, holidays or with his employer's permission (subject to the 52 weeks and 26 weeks rule re "excess" sick leave at the start of this Appendix above) or
- (iii) absence from work because of a lock-out or
- (iv) periods of service where continuity is preserved in any case of redress by way of re-instatement or re-engagement under the Unfair Dismissals Acts 1977 to 2001.

APPENDIX 6

The Minimum Notice and Terms of Employment Acts 1973 to 2001.

The period of notice prescribed under this legislation varies **according to the length of service** as follows:

Length of Service	Minimum Notice
Thirteen weeks to two years	One week
Two years to five years	Two weeks
Five years to ten years	Four weeks
Ten years to fifteen years	Six weeks
More than fifteen years	Eight weeks

Notice under this Act need not be in writing.

A separate leaflet is available giving more exact details of the terms of the Acts.

Provisions regarding the actual giving of notice:

- (i) Where an employer is giving notice to an employee, the notice must be given to the employee or left for him at his last-known place of residence or posted to him at that address.
- (ii) Where an employee is giving notice to an employer the notice must be given to the employer by the employee himself or by a person authorised by him or left for the employer or a person designated by the employer, at the employee's place of employment or posted to the employer at that address.

- (iii) Where a notice is left for a person at a particular place, it will be presumed to have been received by him on the day on which it was left there unless the contrary can be proved.

APPENDIX 7

Protection of Employment Act 1977 (as amended)

When an employer proposes to create collective redundancies he must, under the Protection of Employment Act 1977 (as amended), give the Minister for Enterprise, Trade & Innovation written notice of his proposals at the earliest opportunity and at least 30 days before the first dismissal takes effect.

The Act also provides that an employer contemplating collective redundancies must, with a view to reaching an agreement, similarly consult the representatives of the employees affected.

A collective redundancy means the dismissal for redundancy reasons over any period of 30 consecutive days of at least:

- (a) five persons in an establishment normally employing more than 20 and less than 50 employees.
- (b) ten persons in an establishment normally employing at least 50 but less than 100 employees.
- (c) ten per cent of the number of employees in an establishment normally employing at least 100 but less than 300 employees.
- (d) thirty persons in an establishment normally employing 300 or more employees.

The Act was amended by the European Communities (Protection of Employment) Regulations 2000, providing for matters such as the following - consultation with employees in the absence of a trade union, staff association etc., right of complaint to a Rights Commissioner where an employer fails to consult employees.

A separate comprehensive, up to date booklet is available giving further details of the provisions of the Act. This booklet is available on the Department's website at www.deti.ie

APPENDIX 8

Sample Redundancy Calculations

How are fractions of a year calculated for redundancy purposes?
e.g. 10 years and 50 days or 20 years and 200 days

REDUNDANCY CALCULATOR

An easy-to-use calculation facility is available on the Home Page of the Department's Website at www.deti.ie **BOTH EMPLOYERS AND EMPLOYEES ARE STRONGLY ADVISED TO USE THIS FACILITY, IN PARTICULAR TO ENSURE ACCURACY AND EASE OF CALCULATION.**

ALSO, ON-LINE CLAIMS ARE PROCESSED QUICKER AS THEY ARE AUTOMATICALLY RECORDED ON OUR SYSTEM

For the purpose of calculating a lump sum, 365 days count as one year. An extra day is given in each Leap Year (366 days).

Regarding all redundancies **notified/declared on or after 10th April, 2005** with the coming into operation of Section 11 of the Redundancy Payments Act, 2003 on that date, the following should be noted when calculating the statutory redundancy lump sum entitlement -

If the total amount of reckonable service is not an exact number of years, the "excess" days shall be credited as a proportion of a year.

For example, 91 days, which almost amount to a quarter of a year (24.93% to be exact) will therefore give the employee an extra 24.93% of a years service, on top of whatever number of full years they have worked for. Thus, the simple formula used for calculating the proportion of a year to be credited to the employee is $91 \text{ divided by } 365 = .2493$, or in percentage terms = 24.93%.

Please note that the figure of 365 days is now used for redundancy calculation purposes rather than the figure of 364 days, which was previously used.

SAMPLE CALCULATION USING THE CURRENT RULES
(REDUNDANCIES NOTIFIED/DECLARED ON OR AFTER 10th
April, 2005)

Employment Details

Date of Birth	18/01/1956
Date of Commencement of Employment	01/02/1998
Date of Notice of Redundancy	06/07/2005
Date of Termination of Employment	31/08/2005
Period of Lay Off	06/06/2005 to 10/06/2005
Gross Weekly Pay	€800
Wage ceiling prevailing at the time	€600

Calculation of Service

Years 7

Days 207

Weeks 15.14

Break in Start Date: 06/06/2005 End Date: 10/06/2005
Service 1 Reason: LAY OFF Days Reckonable: 0 Days Non
Reckonable: 5

Plus Bonus 1
Week

Total 16.14
Weeks

Redundancy Entitlements

Lump Sum due to Employee $16.14 \times \text{€}600.00 = \text{€}9,684.00$

Rebate due to Employer $\text{€}9,684.00 \times 60.0\% = \text{€}5,810.40$

APPENDIX 9

Development of the Social Insurance Fund (SIF) in modern times

The redundancy payments referred to above were originally made from the Redundancy and Employers' Insolvency Fund, which was financed by redundancy contributions from employers. These contributions were pay related and were collected by the Revenue Commissioners together with PAYE by reference to the same definition of earnings and subject to the same earnings ceiling as social insurance contributions.

With effect from 1st May, 1990 the Redundancy and Employers' Insolvency Fund was amalgamated with the Occupational Injuries Fund and the Social Insurance Fund to form **an enlarged Social Insurance Fund**. With effect from 6th April, 1991 the employer's redundancy contribution was amalgamated with the employer's occupational injuries contribution and the employer's social insurance contribution to form **one overall employer's social insurance contribution**.

With effect from 25th May, 2003, there is now legislative provision under Section 2 of the Redundancy Payments Act 2003 whereby the Social Insurance Fund may cover some or all of the administration costs of the Redundancy Payments and Insolvency Payments Schemes.

APPENDIX 10

Time Table for Employers and Employees for dealing with Redundancies

When action is needed	Action to be taken by employer	Relevant Paragraph of this guide
At least 14 days before the date of dismissal	Give notice in writing of the proposed dismissal to the employee.	14
Before date of dismissal	Calculate amount of lump-sum due to each employee or Offer in writing of re-engagement on the same, or different terms. (But not less favorable)	3, 4, 7
On date of dismissal	Make lump-sum payments to employees concerned and give them Redundancy Certificate (part of Form RP50 must be used for this purpose).	13
Within 6 months after date of dismissal/payment of lump sum	Send claim for rebate, (Form RP50 is also used for this purpose) with the Redundancy Certificate (part of form RP50) bearing original signatures to the Department of Enterprise, Trade and Innovation, Davitt House, 65A Adelaide Road, Dublin 2.	14, 16
When employer fails to pay lump-sum	Make a claim, in writing, to the employer for redundancy lump-sum payment (Form RP77).	15

If still unpaid after a reasonable time	(a) If the employee has got a Redundancy Certificate from his employer - see paragraph 15, complete form of application for payment of the lump-sum from the Social Insurance Fund (Form RP50 is also used for this purpose) and submit with Redundancy Certificate to the Department of Enterprise, Trade and Innovation, Davit House, 65A Adelaide Road, Dublin 2.	15
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When action is needed	Action to be taken by employer	Relevant Paragraph of this guide
	(b) If the employee has not got a Redundancy Certificate, submit an appeal to the Employment Appeals Tribunal (Form T1-A) to establish entitlement to a redundancy payment. All appeals to the Employment Appeals Tribunal should be sent to the Secretary of the Tribunal, Davitt House, 65A Adelaide Road, Dublin 2.	24

*Attention is drawn to the time limits referred to in paragraphs 16(a) and 16(b) of this Guide.

Appendix 11

Useful Addresses, Telephone Numbers and Website Addresses

NERA Information Services – for all general enquiries on entitlements to statutory redundancy lump sum and rebate payments, as well as other aspects of employment rights legislation

NERA Information Services,
National Employment Rights Authority,
O'Brien Road,
Carlow,
Co. Carlow.
Tel: 059 917 8990
Lo-Call: 1890 80 80 90
E-MailAddress: from www.employmentrights.ie
Website Address : www.employmentrights.ie

Redundancy Payments Section – for enquiries concerning ***specific*** redundancy payment lump sum or rebate applications

Department of Enterprise, Trade and Innovation,
Davitt House,
65A Adelaide Road,
Dublin 2.
Tel: (01) 6312121 Lo-Call: 1890 220 222
Fax Number: (01) 6313217
Website Address: www.deti.ie/employment/redundancy

Insolvency Section

Department of Enterprise, Trade and Innovation,
Davitt House,
65A Adelaide Road,
Dublin 2.

Tel: (01) 6312121 Lo-Call 1890 220 222

WebsiteAddress: www.deti.ie/employment/insolvency/index.htm

Employment Appeals Tribunal,

Davitt House,
65A Adelaide Road,
Dublin 2.

Tel: (01) 6313006 – (01) 6313009 – (01) 6313013

Lo-Call 1890 220 222

Website Address: www.eatribunal.ie

Scope Section

Department of Social Protection
Floor 3,
Oisín House,
Pearse Street,
Dublin 2.

Tel: (01) 6732585/6732558

Revenue Commissioners

Central Telephone Enquiry Office

(for telephone enquiries on taxation implications of extra statutory/ex-gratia redundancy payments – statutory redundancy payments themselves being tax-free)

-1890 60 50 90

Labour Court

Tom Johnson House,
Haddington Road,
Dublin 4.
Tel: (01) 6136666
Lo-Call: 1890 220 228
Website Address: www.labourcourt.ie

Labour Relations Commission

Tom Johnson House,
Haddington Road,
Dublin 4.
Tel: (01) 6136700
Lo-Call: 1890 220 227
Website Address: www.lrc.ie

Rights Commissioners

Tom Johnson House,
Haddington Road,
Dublin 4.
Tel: (01) 6136700
Lo-Call: 1890 220 227
Website Address: www.lrc.ie

Equality Authority

2 Clonmel Street, Dublin 2.
Tel (01) 4173333
Lo-Call 1890 24 55 45
Website Address: www.equality.ie

Appendix 12

Glossary of redundancy terms/definitions

Reckonable Service

Service to be taken into account in calculating statutory redundancy entitlement

Non-Reckonable Service

Service to be excluded in calculating statutory redundancy entitlement

Note – in respect of redundancies notified/declared on or after 10th April, 2005, non-reckonable service applies only to the last 3 years of employment. Any service before that 3 year period is fully reckonable.

Lay-off

A temporary absence from employment where the services of an employee are not required because of lack of work

Short-time

A temporary reduction in weekly earnings to less than half the normal weekly earnings or a reduction in the hours worked to less than half the normal weekly working hours e.g. a 2 day week

Reduced Working Hours

A temporary reduction in working hours to at least half the working week e.g. a 3 day week or a 4 day week.

***Employee
Lump Sum***

The statutory redundancy lump sum owed to an employee – where the employer fails to pay, the Department pays it from the Social Insurance Fund and endeavors to recover the amount from the employer

***Employer
Rebate***

The 60% rebate due to the employer who pays the employee their correct statutory redundancy lump sum

***Continuity of
Employment***

Employment must be continuous for redundancy entitlement purposes e.g. if an employee himself/herself resigns from the job, they are breaking their own service.

***Ex-Gratia
Payment***

Also known as extra-statutory redundancy. This is payment above and beyond the minimum statutory redundancy lump sum entitlement. The employer is not legally bound to pay this extra-statutory amount under the Redundancy Payments Acts, 1967 to 2007.

Time-Worker

A worker on a fixed wage or salary. This is the work pattern in most cases.

Piece-Worker A worker whose pay depends on the amount of work he or she carries out i.e. paid wholly or partly by piece rates, bonuses or commissions related to his/her output. See formula in Appendix 3 (2) (a) – (c) above for calculating the weekly wage of a piece worker for redundancy purposes.

Shift-Worker A worker who is employed on shift work and whose pay varies according to the shift on which he works will be taken to be an employee who is paid wholly or partly by piece-rates – See Piece-Worker above.

Employees with no normal working hours Basically, employees other than the normal working hours three categories above. Where such an employee has no normal working hours, his average weekly pay will be this pay including any bonus, pay allowance or commission over the period of 52 weeks during which he/she was working before the date of declaration of redundancy.

Overtime

Where an employee is normally expected to work overtime, his average weekly overtime earnings will be taken into account in determining his normal weeks pay. The formula for calculating this amount is simply to establish the total amount of overtime earnings in the period of 26 weeks ending 13 weeks before the date he was declared redundant and dividing that amount by 26.

“Ceiling” on wages

The upper limit on earnings, which are taken into account for redundancy calculation purposes. The ceiling has been set at €600 per week for redundancies notified/declared on or after 1st January, 2005 (€507.90 per week before that date).

Employment Appeals Tribunal (EAT)

An independent body set up in 1968 to provide a speedy fair, inexpensive means for resolving disputes relating to redundancy matters. It has since expanded to cover many other areas of employment rights such as unfair dismissals, minimum notice etc.