



Hybrid Solicitors

# Some Frequently Asked Questions in Managing Redundancies



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## SOME FREQUENTLY ASKED QUESTIONS IN MANAGING REDUNDANCIES



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### INTRODUCTION

Redundancy refers to involuntary and permanent loss of employment caused by excess manpower. It occurs when an employer declares and discharges surplus labour. Managing redundancies can be very challenging, especially in unionised companies or organisations. Apart from complying with the relevant legal procedures, redundancies must be implemented in ways which help those affected retain their self confidence and mental health, while also keeping the survivors motivated. This work provides answers to some frequently asked questions in the law and practice of redundancy.

#### 1. What are the common causes of redundancies?

Redundancies may be caused by various factors including but not limited to closure of a business, department or production line, automation of business process, mergers, takeovers, divestments and other forms of corporate restructuring, re-organisation, dwindling business fortune, financial crisis, force majeure, economic meltdown, pandemic, outsourcing, offshoring, internal restructuring such as job or role re-classification, and loss of any facility that provides job.

#### 2. Does a job loss arising from outsourcing qualifies as a redundancy?

This is a controversial issue in employment law. English Courts have held that job losses arising from business process outsourcing qualify as a redundancy, hence Nigerian courts may be persuaded by the English caselaws in this regard. Business process outsourcing involves moving internal business processes to third parties, hence, job loss

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### 3. Do redundancies pose risks to organisations?

Mismanaged redundancies pose legal and reputational risks to organisations. Mismanaged redundancies may lead to successful class actions by those affected at the National Industrial Court, and reputational damage to organisations. There have been instances where news of such wrongful terminations hit the social media, especially where it affects a lot of employees.

### 4. Do job losses arising from transfer of undertakings qualify as redundancies?

Yes, job losses triggered by transfer of undertakings and business combinations such as mergers, takeovers, business divestments etc. qualify as redundancies.

### 5. What are the basic procedures to follow in a redundancy?

The basic procedures to follow in a redundancy are as follows:

- Consultation with workers or workers' trade union (if unionised)
- Selection criteria must be fair and not discriminatory
- Negotiation and/or payment of redundancy pay
- Comply with other steps and requirements stipulated in your internal policy or collective agreement in force.

### 6. What are the factors employers may generally consider in selecting employees for a redundancy?

Employers generally consider several factors in redundancy selection such as employees' performance record, skill and competence, attendance and time keeping record, reliability, experience, and disciplinary records. Individual organisation's Redundancy policy may also specify the relevant factors to be considered.

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### 7. Does a massive layoff automatically qualifies as a redundancy with obligation to make redundancy pay?

A massive layoff raises a presumption of redundancy unless the employer can show or prove otherwise. Most massive discharge of labour often arise from redundancies (caused by, for instance, closure of a business unit, department or a production line, bankruptcy, outsourcing, divestments, mergers e.t.c). It is, however, equally possible to terminate employments of many employees at the same time for reasons not connected with excess manpower, for instance, termination of employment of 25 employees on account of gross misconduct after a disciplinary process.

### 8. Must an employer strictly apply the principle of “Last in, First out” (LIFO) in selecting employees for a redundancy?

No, except the organisation’s redundancy policy or parties’ collective agreement specifically states so without qualifications. Even the Labour Act (Section 20(1)(b)) recognises the fact that the application of LIFO is subject to “all factor of relative merit, including skill, ability and reliability”. The application of LIFO is, therefore, not absolute or sacrosanct, LIFO is just one of the redundancy selection criteria that may be considered by an employer.

### 9. Can an employer lawfully select a trade union leader or officer for a redundancy?

Every employee, including those who are trade union leaders or officers, can be selected for a redundancy. Trade union leaders and officers are, therefore, not immuned or exempted by law from redundancy terminations. However, it is unlawful, and also an unfair labour practice to select a trade union leader or officer for a redundancy simply on account of his/her lawful trade union activities. Where it is shown and proved that an employee is selected for a redundancy simply on account of his/her lawful

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trade union activities, such terminations may be declared unlawful by a Court of law. The usual remedy for this is an order of reinstatement even in ordinary master-servant relationships not spiced with statutory flavour.

### **10. Can a pregnant woman be selected for a redundancy?**

Yes, pregnant women, just like any employee, are not immuned from redundancy terminations. However, by the provisions of Section 54(4) of the Labour Act LFN 2004, it is unlawful to terminate the employment of a pregnant woman while on maternity leave. Thus, the legal protection against employment terminations is for women on maternity leave, not pregnant women generally. It is, however, an unfair labour practice and actionable employment discrimination to select a pregnant woman for a redundancy simply because of her pregnancy.

### **11. Can an employee living with HIV/AIDS be selected for a redundancy?**

Yes, persons living with HIV/AIDS can be selected for redundancies. However, it is unlawful and discriminatory to select an employee for a redundancy simply on account of his/her HIV/AIDS status. It is also an unfair labour practice. Section 3(1) of the HIV and AIDS (Anti-Discrimination) Act, 2014 protects persons living with HIV/AIDS against discrimination including employment discrimination. The Lagos State Protection of Persons Living with HIV and Affected by AIDS Law (2004) has similar provisions.

### **12. Can an employee on probation be selected for a redundancy?**

Yes, employees on probation may be selected for a redundancy. There are also ample judicial authorities to the effect that employees on probation may have their employment terminated in accordance with their contracts of employment.

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### 13. Can I recruit new staff to the same role(s) shortly after a redundancy?

This is a recurrent question in the HR and employment law circles. This depends on the timing and the circumstances. Hiring new staff to the same role(s) shortly after a redundancy raises a presumption that the redundancy was not a genuine one, but a smoke screen to lay off some people. There is a potential risk of wrongful employment termination claims if the ex-staff get to know of this fact and they can prove it. However, it is not impossible for business circumstances to change shortly after a redundancy, necessitating fresh recruitment into the same role(s). For instance, an oil servicing company that declared a redundancy due to dwindling business fortunes may win major contracts weeks after the layoff.

### 14. Are employees still entitled to notice period or payment in lieu when selected for a redundancy?

Yes, redundancy pay is without prejudice to contractual notice period or payment in lieu of notice.

### 15. Can employers disguise a redundancy termination as a regular employment termination to avoid following the relevant redundancy procedures including paying redundancy pay?

No, such terminations may be declared wrongful by the National Industrial Court of Nigeria if the affected employees can demonstrate through credible evidence that the termination was a case of discharge of excess manpower. The claimants may, for instance, give evidence to show that the termination was a fallout of automation, loss of a major client or contract, closure of a department, outsourcing, merger, business divestment or other forms of corporate restructuring etc.

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### 16. Can outsourced workers claim redundancy pay against the user company?

No, as a general rule. Labour outsourcing is a tripartite or triangular employment arrangement where a labour contractor employs workers and deploys them to work for third party companies (end users). Under this arrangement, while there is a contract of employment between the workers and the labour contractor, no such contract of employment exists between the workers and the user company. However, where parties (workers and the user company) have conducted their relationships in ways and manner giving rise to co-employment, workers outsourced to the user companies may validly make employment claims against the user companies including redundancy pay claims in the event of their discharge by the user company due to excess manpower. This risk underscores the need for user companies to manage the outsourced staff in ways that prevent legal inference of co-employment.

### 17. What is consultation, and what are the issues to be discussed during consultation with trade unions and workers' representatives?

Consultation simply refers to formal notification, discussions and engagement with trade unions or workers' representatives on a proposed redundancy. Consultation meetings afford employers and trade unions or workers representatives the opportunity to discuss the reasons and the extent of the anticipated redundancy, and how to cushion the effects on employees. Other matters commonly discussed during consultation meetings include modalities and the period of implementation of the intended redundancy, roles at risk, number of employees that are likely to be affected, selection criteria, and redundancy pay

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**18. In the absence of a trade union or organised workers' representatives, how does an employer comply with the requirement of consultation where the intended redundancy affects just one employee?**

In this case, consultation may take place between the employee in question and his line manager or other nominated management's representative(s). This process should be documented, one way to achieve this is to have the invitation to consultation meeting sent by an email. The email will 'talk' about an impending redundancy in the organisation without any specific reference to the employee, reference may, however, be made to the department(s) or role(s) at risk.

**19. What happens if the consultation produces no agreement with the relevant trade unions? Can an employer still proceed with the redundancy?**

The answer is yes. The legal requirement of consultation does not mean that there must be an agreement. The law does not give the trade union a veto power over redundancies. Consultation is about genuine discussions, not consent. However, unsuccessful consultations or disagreement during consultation meetings may damage industrial relations and may lead to a strike or other industrial actions

**20. Can an employer issue a collective letter of redundancy termination to employees?**

No, individual letters of redundancy termination must be issued, addressed and served on each employee affected by a redundancy. Employment relationship is personal, there is no collective letter of employment, hence, there cannot be a valid collective letter of employment termination.

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### 21. Can a letter of redundancy termination be backdated or given a retroactive effect?

No. Every letter of termination of employment (including redundancy termination) takes effect on the day it is served on the affected employee.

### 22. Is redundancy pay mutually exclusive of retirement gratuity?

This depends largely on the provisions of the individual organisation's redundancy policy, or collective agreement in force. As a general rule, redundancy pay and retirement gratuity are mutually exclusive (that is, both cannot be claimed simultaneously) unless the organisation's redundancy policy or collective agreement in force provides otherwise. This is because redundancy and retirement are different exit pathways from an organisation. However, where the policy or the collective agreement has a mutual exclusivity clause for redundancy pay, and retirement gratuity, and an employee qualifies under both heads, the law is that he gets whichever offers a higher pay.

### 23. Is redundancy pay taxable under the new tax law?

By section 50(1) of the Nigeria Tax Act, 2025, compensation for loss of employment/office (redundancy pay) not exceeding N50 Million is not taxable.

### 24. Apart from severance pay, what are the other ways employers may support employees selected for a redundancy?

Employees selected for a redundancy may be supported in several ways. These supports include redundancy counselling, mental health support services (usually through EAP), financial planning and entrepreneurship training etc.

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### 25. What are the potential alternatives to a forced redundancy?

Employers may consider voluntary redundancy or early retirement scheme as potential alternatives to a redundancy.

***Culled from Bimbo Atilola, The Law and Practice of Redundancy in Nigeria: A Practitioner's Guide (2025)***

#### **About the Author**

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