

Redundancy

With more and more parents having no choice but to mind their own children it may be necessary for some crèches to offer voluntary redundancy or even select certain employees for redundancy.

It is very important that in any redundancy, the employer can show that an employee's position ceases to exist and the employee is not replaced. If this cannot be properly proven some employers may be accused of unfair dismissal.

As any redundancy will impact the whole organisation it should at all times be communicated properly. Employers should, as much as is possible, support any employees which have been made redundant. Support services which employers should consider would typically include assisting any employees who have been made redundant with cv preparation and career counselling.

It is also very important that any employees who are made redundant be made aware of their financial entitlements and if any tax is payable on the lump sum which they receive.

Any employee aged 16 or over with 104 weeks' continuous service is entitled to a statutory redundancy payment. The statutory redundancy is not taxable.

Calculation of Redundancy Payment

The statutory redundancy lump sum which a qualified redundant employee is entitled to receive from their employer is calculated as follows:

Two week's pay for each year of continuous employment

Plus

The equivalent of one weeks normal pay.

For the purpose of calculating statutory redundancy, a weeks pay is limited to a maximum of €600.

All redundancies notified after 10 April 2005 take account of absences from work only over the last 3 years of service. Any absences outside of the three-year period ending on the date of termination of employment are disregarded.

When reckoning or calculating the actual length of your service for redundancy payment purposes, the following periods over the last 3 years of service only should be taken into account, (the absences listed here are called reckonable absences):

- The period employee was actually in work
- Any period of absence from work due to holidays
- Any period of absence from work due to illness (see below for non-reckonable periods of illness)
- Any period where employee was absent from work by agreement with employer (typically career break)
- Any period of basic and additional maternity leave allowed under the legislation

- Any period of basic adoptive/parental/carer's leave
- Any period of lock-out from employment
- Any period where the continuity of employment is preserved under the Unfair Dismissals Acts.

However, in making the calculation of the length of your service, the following periods over the last 3 years will not be taken into account as service, (these are called non-reckonable absences):

- Any period over 52 consecutive weeks where employee was off work due to an injury at work
- Any period over 26 consecutive weeks where employee was off work due to illness
- Any period on strike
- Any period of lay off from work.

Reduced hours and short-time work

If the employee was made redundant within a year of being put on reduced hours or pay, the redundancy payment would be based on their earnings for a full week. If they are made redundant after working reduced hours for more than a year, how their payment will be calculated depends on whether they accepted being on reduced hours or not. If they fully accepted the reduced working hours as their normal week and never asked to return to full-time work, then their redundancy payment will be based on their gross pay for the reduced working hours. If, on the other hand, they never accepted the reduced working hours as their normal hours and continually asked to be put back on full-time working, their payment would be based on their normal weekly earnings.

Employer's insolvency

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 of Enterprise, Trade and Employment steps in and makes a payment from the SIF.

Where the employment has been terminated due to the insolvency of the employer legislation provides for the payment of certain outstanding entitlements in relation to pay. Under the Insolvency Payments Scheme these may be paid by the Department out of the Social Insurance Fund.

How to apply

On the date of the termination of employment the employer must pay the redundancy lump sum due to the employee and give the employee a "Redundancy Certificate" - section B of form RP50.

If the employer has not paid the redundancy lump sum, the employee can apply to the Department of Enterprise, Trade and Employment for direct payment from the Social Insurance Fund using form [RP50](#).

Additional Redundancy Payments

Lump sum payments on a redundancy or a retirement qualify for special tax treatment - they may be exempt from tax or may qualify for some relief from tax. A lump sum paid under the terms of a contract of employment is taxable in full and does not qualify for exemption or relief.

On your first redundancy or retirement payment, the higher of the following will be exempt from tax:

- Basic Exemption
- Increased Exemption
- Standard Capital Superannuation Benefit (SCSB).

(1)Basic Exemption: The basic exemption is €10,160 plus €765 for each full year of service with the employer making the redundancy payment. Service before and after a career break may be added together for the purposes of determining a 'full year of service'. For persons who job-share, there is no apportionment to take account of the part-time nature of the employment - that is they are credited with years service as if they worked full-time.

(2)Increased Exemption: If you are not a member of an occupational pension (Superannuation) scheme or if you irrevocably give up your right to receive a lump sum from the pension scheme, the basic exemption as outlined above can be increased by €10,000. The increased exemption can only be claimed if you have not made any claims in respect of a lump sum received in the previous 10 tax years. If you are in an occupational pension scheme, this increased exemption of €10,000 is reduced by the amount of:

- Any tax-free lump sum from the pension scheme to which you may be immediately entitled or
- The present day value at the date of leaving employment of any tax-free lump sum which may be receivable from the pension scheme in the future.

(3)SCSB (Standard Capital Superannuation Benefit): This relief generally benefits those with high earnings and long service. It is a relief given for each year of service equal to 1/15th of the average annual pay for the last 3 years of service (36 months) to date of leaving less any tax-free lump sum entitlement from the pension scheme.

The formula for calculating the SCSB is:

$A \times B / 15 - C$ where:

A is the average annual remuneration* for the last 36 months service to date of termination

B is the number of complete years of service

C is the value of any tax free lump sum received/receivable under an approved pension scheme.

*If an employee has less than 3 years paid service with an employer prior to the date of leaving, the pay of the last 36 months of paid service is taken into account in arriving at the average for one year.

Top Slicing Relief

Top Slicing relief relates to the tax payable and ensures that your lump sum is not taxed at a rate higher than your average rate of tax for the 3 years prior to redundancy or retirement.

The formula for calculating this relief is:

Taxable lump sum X (tax rate applied to lump sum - average tax rate for previous 3 years)

Top Slicing Relief may be claimed, by contacting Revenue after the end of the tax year.