

COVID-19 BUSINESS SUPPORTS HUB

HR Planning & Restructuring

For the Off-Season





Fáilte Ireland

National Tourism Development Authority



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Fáilte Ireland

National Tourism Development Authority

POLL 1



Joined today by HR Expert **Caroline McEnery**

Professional Profile

- Owner/Director of the HR Suite (established in 2009)
- HR and Employment Law Expert and a former member of the Low Pay Commission
- Adjudication officer in the Work Place Relations Commission

Qualifications

- Holds a Masters Degree in Human Resources from University of Limerick
- Is CIPD accredited
- Is a trained mediator

Experience

Worked across various areas of HR for over 20 years in Kerry Group and in the retail and hospitality sector, where she was the Operations and HR Director of the Garvey Group



PLEASE NOTE

The information given in this video was correct at time of recording.

Check www.gov.ie for the latest information in relation to deadlines for application for the EWSS, PUP and the deadline in relation to the employee's right to request redundancy.

WEBINAR Part 1

Further
Clarifications



Updates from Revenue



Claim for July/August Employees not on TWSS

Revenue have pushed out the September 4th deadline to claim EWSS for employees not eligible for the TWSS.

The facility for claiming the backdated EWSS payments for July & August (a template that needs to be completed and uploaded to ROS) won't become available until September 15th.



30% Reduction in Turnover Eligibility Criteria

Faillte Ireland have confirmed this with Revenue

"...unfortunately, the test is as set out in the legislation, the 30% reduction in turnover is a requirement of the EWSS to ensure eligibility for the scheme."



Clarification on Proprietary Directors Eligibility for EWSS

Revenue have also issued a press release clarifying the eligibility of certain Proprietary Directors as follows:

- Employer must meet eligibility criteria
- Director is on payroll
- Wages reported to Revenue between 1st July 2019 and 30th June 2020
- If a Proprietary Director of two or more eligible companies:
 - Must elect one company for EWSS claim
 - Election cannot change for term of EWSS scheme
 - No claims for EWSS can be submitted by the other companies



Today's Webinar

Preplanning

- Steps in the Planning Process
- Business Restructuring

Temporary restructuring

- Managing those who cannot/will not attend back to work
- Changing T&C's of employment

Long term restructuring

- Lay Off
- Redundancy
 - Employee activated
 - Required by the business
 - Collective



Checklist

What to do next after our webinar?

PrePlanning - Overview



Paper Trail

- Put your options down on paper to reconsider



Equality

- It is vital to ensure that any changes are implemented equally across the board
- For example, reducing hours of all the team rather than reducing the full-time person to part time hours and all other remaining the same.
- Changes should be in proportion.

What needs to be done?

HR resource planning in line with revised business needs



- What days/times will you open?
- Which skills are required to service revised operating times/revised offering/revised service model?
- What levels of staff cover are required ?
- If you amend operational days of the week - how does this impact staff availability?
- Have you checked if their availability has changed since COVID?

Who Needs to be Involved?

1. Close collaboration with your Human Resource consultants (if applicable) – redundancy or changing terms & conditions equals a significant risk
2. Close collaboration with your Management team on strategy
3. Talk to your staff!!
4. Union (if applicable) after strategy (or revised operating model) has been reviewed
5. Staff representatives (if applicable) after strategy (or revised operating model) has been reviewed



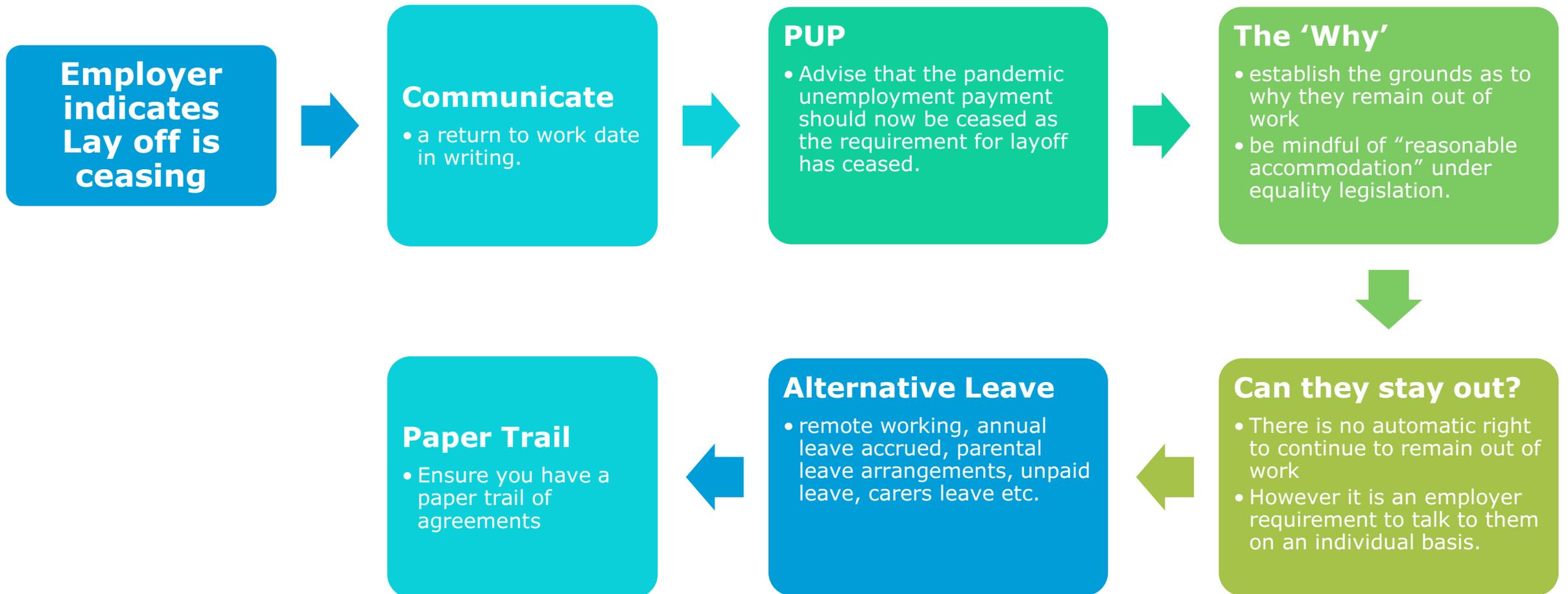


Temporary Restructuring



- Reducing T&C's of employment
- Reducing pay
- Pausing hiring
- Reducing reliance on contractors
- Redeploying or reskilling employees
- Enforcing periods of annual leave
- Offer sabbaticals or unpaid leave

Managing Employees Who Indicate they Cannot Return to Work



When Restructuring Requires Changing Contract Terms



Contractual Entitlements

Employees have a contractual entitlement to a particular salary (for example), that cannot be reduced unilaterally.



Reduced Salary

In the employment setting, that obviously means that an employer cannot unilaterally reduce an employee's salary.



Unilateral Amendments

If two parties to a contract have negotiated certain terms, one party cannot unilaterally amend those terms – to do so would be breach of contract.



Workplace Claims

Employees affected by unilateral amendments can bring a claim in either the Workplace Relations Commission or the courts.

A Variation Clause

Your contract may include a variation clause



Recommended wording as follows:

'The Employer reserves the right to vary the terms of employment contained in this Agreement. The Employer will notify the Employee in writing within one month of such variation.'

Agreement

You should seek agreement or compromise on changing a term and conditions of employment

All changes, permanent or temporary, should be set in writing for confirmation purposes. Is this change

- Permanent for the foreseeable future
or
- For a set time period



Paper Trail

- If permanent changes it is important you have a paper trail
- You should require the employee to sign the letter to confirm they understand and accept the same.
- This should be retained on the employee file for future reference. Duplicate copy to be provided to the employee.

Alternative Staffing Options for Employers

Short-time

- Occurs if you don't have full-time work for staff
- Need to reduce hours to less than half or less than 3 days
- Available to facilitate job-sharing or reduce working hours for employees while still maintaining cover for key areas

Lay-off

- Requires you to have no work available for a specific period of time
- E.g. at the moment you may not have work for the next month and will reassess the situation then

Redundancy

- Occurs when you have no work for the employee for the foreseeable future
- The position no longer exists

Temporary

Long Term

Short-Time Working

“Short time” describes the situation where the employer cuts the wages or hours of the employee to less than 50% of the normal hours or pay.

The employee is supposed to be given notice, although no time period is specified, and the employer must reasonably believe it is only for a temporary period of time.

Choosing employees for lay off or short term should be done fairly and in a way that will not give rise to a claim of discrimination.

- Short-Time Work must be systematic and show a clear repetitive pattern of employment.
- Employees must work at least 1 day in each week.
- Short-Time Work Support is not taxable.
- To qualify for Short-Time Work Support, the employee must be:
 - Temporarily working a standard reduced weekly work pattern
 - Working 3 days or less per week having previously worked full-time
 - Be under 66 years of age
 - Be capable of work and be available for full-time work
 - Have enough paid or credited social insurance (PRSI) contributions at class A, H, S or P

Temporary vs Long Term

No definition in legislation or case law.



Anything from...

- 1 week to a couple of months
- Potentially up to 12 months

Could even be classified as a period during which COVID-19 exists in Ireland.



There is no definitive answer here as it is dependent on different interpretations.



Long-term Restructuring



- Lay Off
- Voluntary redundancy
- Enforced redundancy
- Collective redundancy
- Outsourcing
- Restructuring/redeployment
- Early Retirement

Lay Off



What does a lay-off mean legally? A period of time off work – unpaid

Employer can only place employees on a period of lay-off where:

- There is a contractual provision to do so
- Established custom and practice of laying employees off within your workplace

Other legal factors:

- Must explain the lack of any other option to staff - e.g. due to government direction for pubs and hotels to close due to health and safety.
- If all staff are not being laid off, you must select people for lay-off based on objective grounds



Communicate with staff at all stages of the process

Other Aspects of Lay Off

You should understand the following:



- ▶ No timeframe – legislation says notice as much as reasonably practicable. No minimum, no maximum to start lay off or end lay off. If you feel this is an option, plan early & inform as early as possible to avoid surprises
- ▶ Lay off means no work in any way. It does not apply to employees cut from full time work to part time work
- ▶ There is no mechanism to avoid the employee invoking their right to instigate redundancy. The only counteroffer to stop this is to give them their job back
- ▶ They can invoke redundancy whilst on short time or on lay off if it has continued for 4 weeks or more, or for 6 weeks in the last 13 weeks
- ▶ They cannot invoke redundancy at the start of short time or lay off.

Employees Still on Lay Off /Short-time

How should you handle employees who were placed on lay off or short-time in early stage of COVID-19 and not brought back yet to work/original hours

- Yet to receive confirmation if suspension right is to be extended.
- If not, employees will have the right to claim redundancy due to their ongoing lay off or short-time scenario.
- No mechanism to avoid employees invoking their right to instigate redundancy.
 - Short Time: if there is availability to bring all employees back to original hours - start reviewing.
 - Lay Off: If there is work available you can start to bring employees back, via a fair selection criteria.

Revenue Deadline

***17th Sept
2020***

Since recording this date has been extended until **31st March 2021**

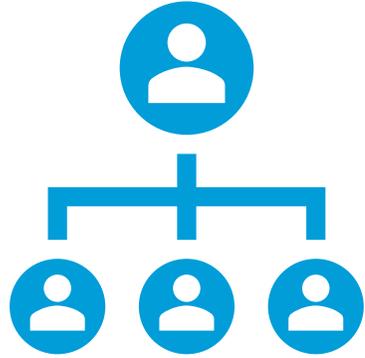
POLL 2



Redundancy

Generic Points for Individual & Collective Redundancy





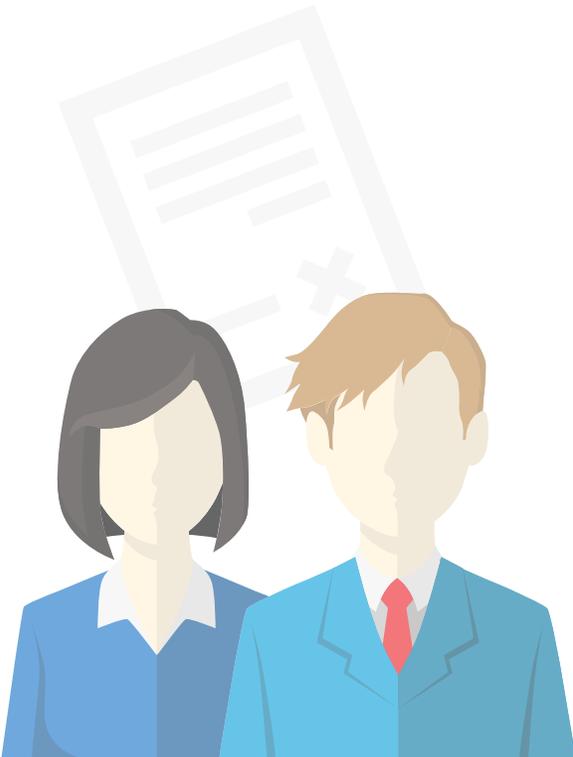
Position vs Person



It is important to remember that it's always the position not the person that is made redundant.

This is why you need a fair selection criteria.

Unfair Selection Criteria



| | | | |
|------------------|-------------------|--|---------------------------------------|
| Dislike | Personality clash | Underperformance (unless addressed formally in writing already) | Gender |
| Civil status | Family status | Age | Disability |
| Religious belief | Race | Sexual orientation | Membership of the Traveller community |

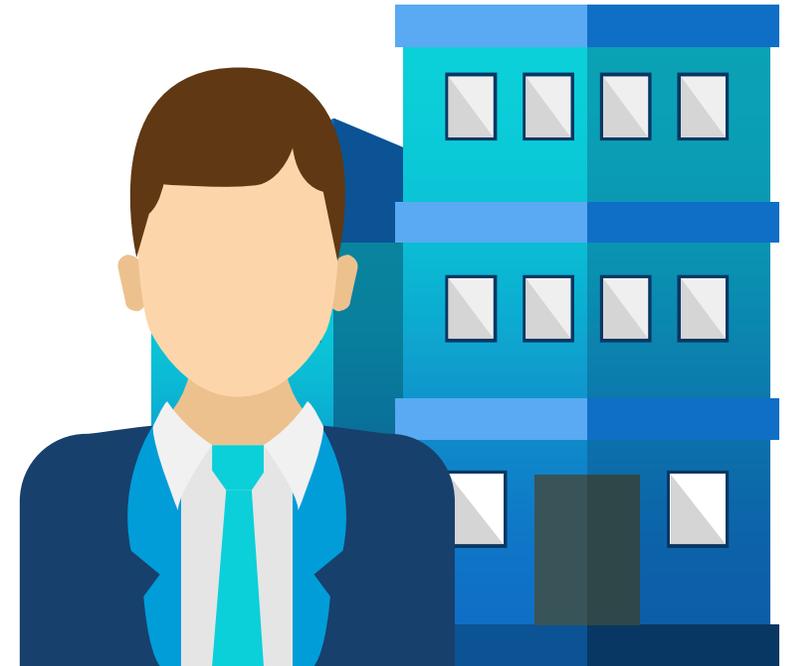
Notice from Employer

Employee is entitled to...

- Minimum of 2 weeks' written notice of redundancy.
- Notice period goes up depending on the period of service.

Notice when on lay-off or short time:

- Contract of employment is temporarily suspended.
- If you then decide to make position redundant, you must give employees their full notice period.
- Employee is entitled to any holidays that are outstanding or payment in lieu of holidays



Must be paid on the date of the termination of employment

If you can't pay the redundancy amount:

- 01 Complete and submit the RP50 form online
- 02 Print a copy of the completed form and get the employer and employee to sign it
- 03 Post the signed form to the Redundancy and Insolvency Section of the DEASP and include:
 - *Letter from accountant / solicitor stating why you are unable to pay redundancy lump sum and accepting liability for 100% of the lump sum owing to the Social Insurance Fund.*
 - *Documentary evidence such as audited accounts*

Redundancy Payment

2 weeks per year of service + bonus week



Eligibility Criteria

- Must be aged 16 or over. (Since 8 May 2007 there is no upper age limit of 66.)
- Must be in employment that is insurable under the Social Welfare Acts.
- Full-time employees under 66 years must be paying Class A PRSI - does not apply to part-time workers.
- Must have worked continuously for at least 104 weeks - the following situations will not break the continuity of your service:
 - Maternity leave / paternity leave / adoptive leave / parental leave / carer's leave
 - Off work through illness, agreed absence, holidays or lay-off



Failure to Meet Legislative Requirements

In addition to the risk of unfair dismissal claims the following applies

Failure to Consult...

- Minister may initiate a prosecution within one year of the date of an alleged offence under the Act.
- Employer who fails to initiate consultations or to provide the information required as set out shall be guilty of an offence and shall be liable on summary convictions to a fine not exceeding €5,000.
- Failure to consult could also result in a complaint to the WRC or potentially an injunction application.



Failure to Meet Legislative Requirements

Issue Redundancy during Consultation:



- Offence for an employer to issue notice of redundancy to any employees during the 30-day period of consultation with employee's representatives provided for in Section 9(3) of the 1977 Act.
- An employer found guilty on indictment of a breach of shall be liable to a maximum fine of €250,000.

Redundancy

Employee Requesting



Current Situation: **Suspension of Right to Request Redundancy**

- If a lay off or short time working pattern has continued for 4 weeks or more, or for 6 weeks in the last 13 weeks an employee has rights under the legislation to request redundancy.
- The suspension of this redundancy provisions was introduced on 13th March 2020 under emergency measures due to COVID19.
- The right to claim redundancy has not been removed but deferred for the emergency period in circumstances of temporary lay-off or short-time employment.

Extended Until

17th Sept
2020

Since recording this date has been extended until **31st March 2021**

How it works?

1 Notice by the employee is to be given in writing

2 Employer offers counteroffer if applicable

3 Timeframe to reply is 7 days

4 If you fail to reply in 7 days, they are entitled to redundancy

5 The offer has to come into effect within 4 weeks of the date of the employee claim for redundancy

6 If employees claim redundancy in this way, they are considered to have left their job voluntarily and therefore lose any right to notice



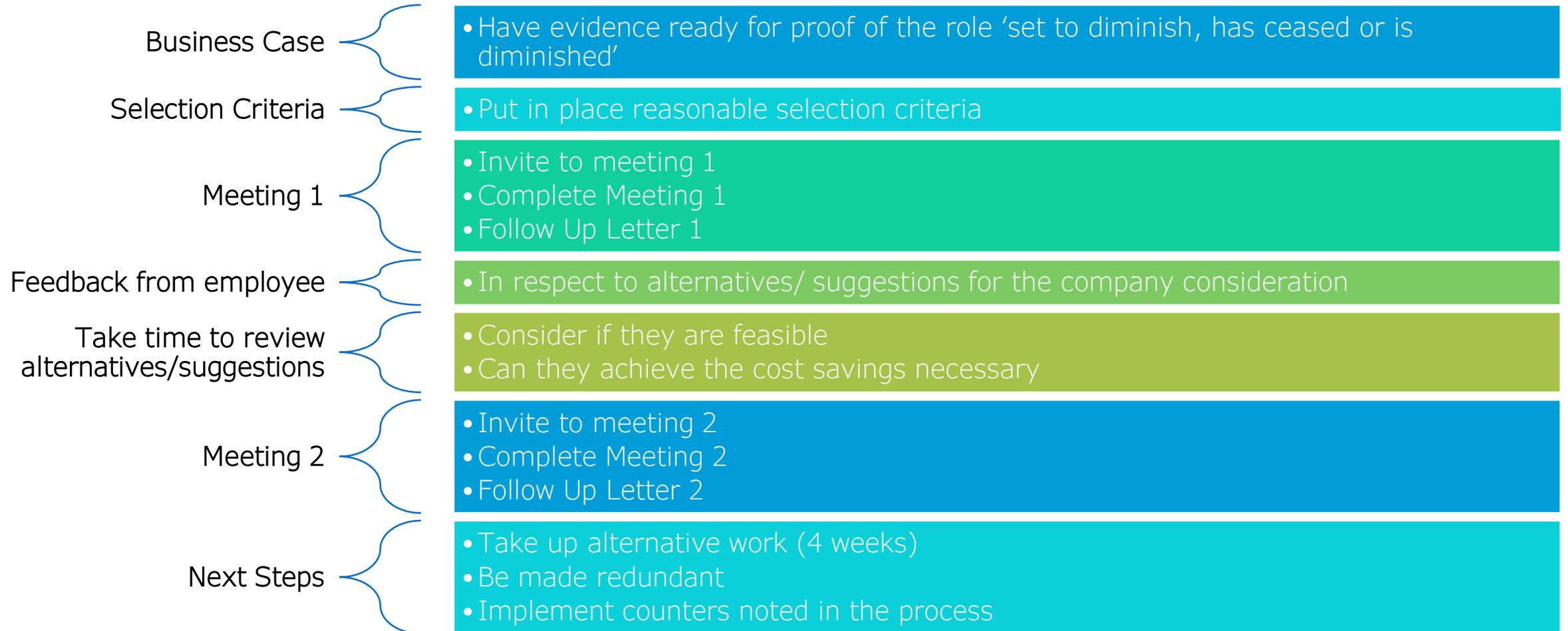
- What is a counteroffer? Their job back with a guarantee of 13 weeks unbroken employment / an alternative comparable role with a guarantee of 13 weeks unbroken employment.
- If counteroffer isn't applicable proceed to confirming redundancy entitlements and end date in writing.

Redundancy

Required by The Business



What Does Redundancy Consultation Look Like



Employee Consultation In Action



Appropriate Timelines

- Has to be fair & reasonable.
- A week between meetings.
- Staff/union may request more time.
- It is perhaps reasonable to accept this and facilitate the same



Counter Proposals

This list is not exhaustive.

- Reduced hours
- Decreased salary
- Change elements of the role
- Job share
- Shorter working week
- Removal of expensive benefits
- Suggestion to making role/business more profitable
- Suggestions on cost decreases to overall business
- An ex gratia payment.

Collective Redundancy



What is collective redundancy?

Arises where, during any period of 30 consecutive days, the employees being made redundant are:

- 5 employees where 21-49 are employed
- 10 employees where 50-99 are employed
- 10% of the employees where 100-299 are employed
- 30 employees where 300 or more are employed

Consultation must occur...

- Employer must enter into consultations with a view to agreement with employee representatives.
- Must take place at the earliest opportunity – at least 30 days before notice of redundancy



*Under the
Protection of Employment Acts 1977-2014*

*Separate from the
Redundancy Payments Acts 1967-2014*

Collective Redundancy - Employer Obligations

Must also provide...

The following information in writing to the representatives:

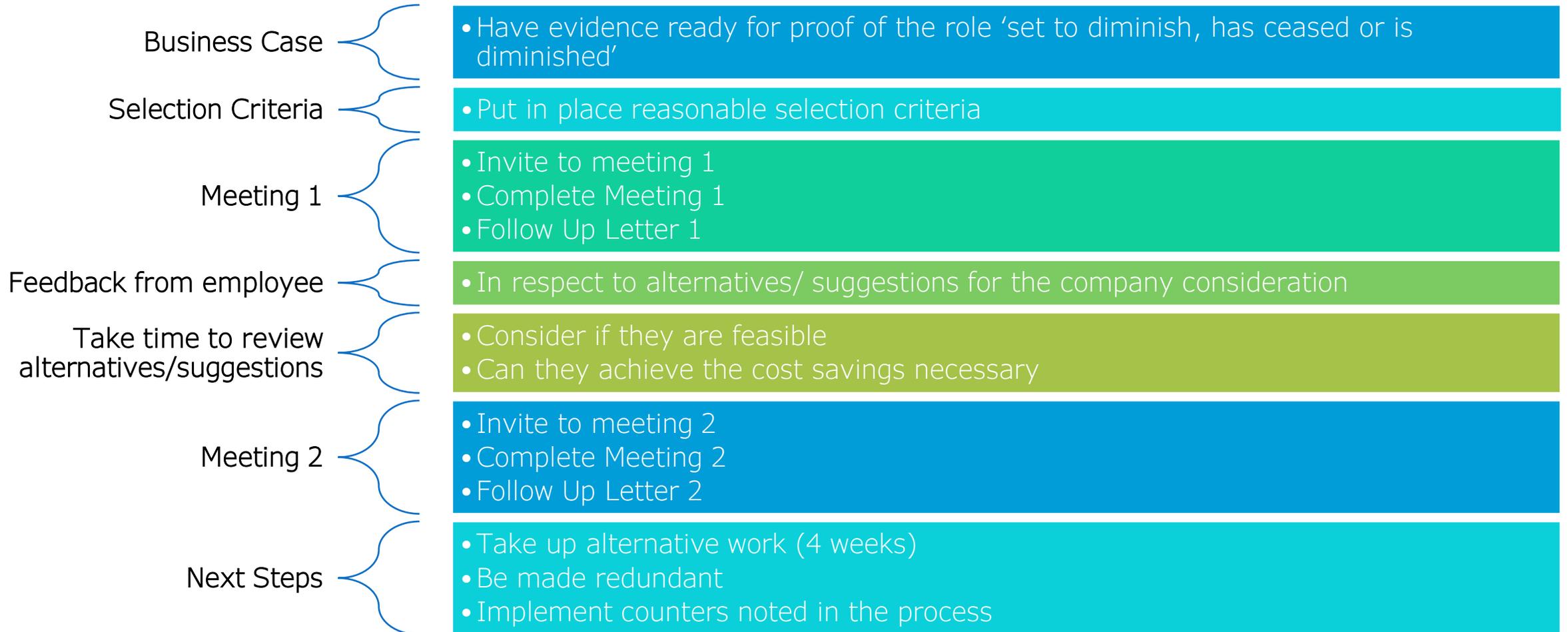
- Reasons for the redundancy
- Number and descriptions of the employees affected
- Number and descriptions of employees normally employed
- Period in which the redundancies will happen
- Criteria for selection of employees for redundancy
- Method of calculating any redundancy payment

Must inform Minister for Employment Affairs and Social Protection in writing of proposed redundancies **at least 30 days before the occurrence of the first redundancy.**

Employees (Provision of Information and Consultation) Act 2006 Requires employers to consult with employees on substantial changes in the workplace, including proposals for collective redundancies. The Act applies to employers of 50 people or more.

See SI 140/1977 for information you must provide to the Minister.

What Does Redundancy Consultation Look Like





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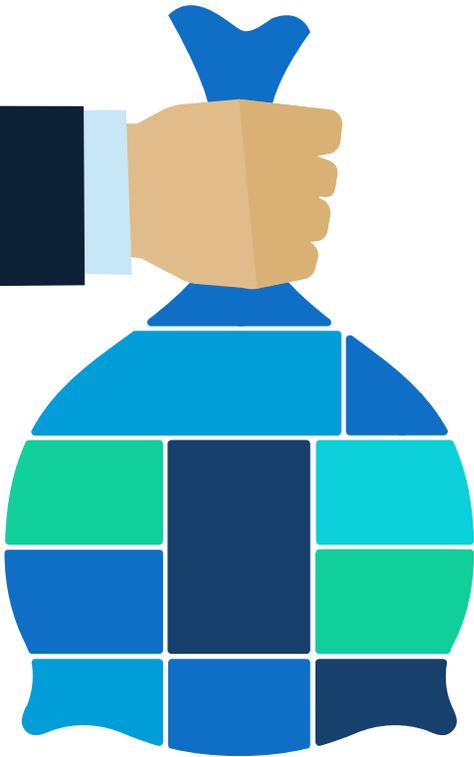
POLL 3



Other Considerations



Ex Gratia - What is a waiver?



A waiver is a legally binding document where the employee voluntarily forfeits a claim against the company in exchange for a sum of money.

- A waiver is only used for any amounts above statutory redundancy.
- An employee cannot sign away their right to their statutory redundancy sum. What does this mean for your business? It means that you cannot expect an employee to sign away their rights if they are only getting their legal entitlement.



POLL 4





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Q & A



To Do Now - Your Checklist

| | ✓ or ✗ |
|--|--------|
| <p>Forecast for Q4 2020</p> <ul style="list-style-type: none"> • Review short term restructuring • Are any feasible/necessary? • If so which ones. | |
| <p>Forecast for Q1 2021</p> <ul style="list-style-type: none"> • Review long term restructuring • Are any feasible/necessary? • If so which ones. | |
| Put in place adequate selection criteria if redundancy is a requirement. | |
| Review criteria for collective redundancy? Are the company meeting these? Put in place a plan of action for timeframes if so in meeting legislative criteria. | |
| Do you want to give an ex gratia payment to sign with a waiver | |
| Are reference templates ready? | |

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For more details visit:

www.failteireland.ie

www.gov.ie

www.revenue.ie



Or email us at:

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