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Important Case Law Update

New Precedent for Fair Redundancy Consultations

We all know how dynamic employment law is because much of it is based on case law. Case decisions at the Employment Appeal Tribunals or higher courts set precedent which change the way we have to do things going forward.

We have always said we ensure we are on top of changes to ensure that you receive the best, most up to date and compliant advice, this is a case in point.

One such case, with important ramifications for redundancy consultation, [Joseph de Bank Haycocks v ADP RPO UK Limited](#), was reported last week.



The issue being considered was whether a redundancy process can be considered fair when an employer assesses and scores the employee(s) in question before the consultation process begins.

It has long been accepted practice to identify the pool of workers who may be affected by redundancy and to then conduct a fair and balanced assessment of those workers to identify those to be put at risk (a closed assessment); consultation, including sharing and allowing challenge to, the employee's individual assessment follows.

In the Haycocks case, the EAT decision is that the failure to consult at a formative stage meant that the dismissal was unfair.

The EAT has set out guiding principals, against which Employment Tribunals and higher courts will assess future claims of unfair dismissal in redundancy situations, which include employers normally warning and consulting with either employees affected, or their representative(s), when proposals are at a formative stage, providing adequate information and ensuring adequate time to consider and respond.

This means that having identified the proposed changes to the workforce, employers will now have to inform all potentially affected employees (or their representatives) that redundancies are being considered, what the pool of affected employees is and why, as well as the proposed selection process and criteria. Employees, or their representatives, will be able to ask questions, challenge and make suggestions relating to the selection process. Employers will have to give due to consideration to this, and be able to justify why, if not accepted, that is the case.

So, going forward, our advice will reflect this precedent and be to begin consultation with employees at the early stages of consideration for changes in the workforce where redundancies are being considered.



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Book a free, confidential discovery call today. We'll help you work out exactly what kind of support you need - and how we can help you get there.



07967 221595 (Alison)



marketing@enlightenhr.com



07432 203979 (Holly)



enlightenhr.com