



A CWW Toolkit To

Managing Redundancies

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The definition of redundancy

Redundancy is the involuntary loss of employment for an employee at the instigation of an employer at no fault of the employee.

Therefore, redundancies can only be initiated by an employer in strict compliance with the rules and regulations contained in the labour laws of Kenya.

An employee involved in a redundancy process has rights in connection with communication and compensation. An employer has the responsibility, therefore, to communicate to and compensate an employee according to the provisions in the law.



THE INGREDIENTS THAT MAKE A REDUNDANCY LAWFUL

a) Redundancy is to the role

It is important to note that redundancy happens to a role. This distinction is important to make, as redundancy processes can only be activated for positions that have been declared redundant. It is unlawful to subject an employee whose position has not been declared redundant to a redundancy procedure.

b) Rationale (Reason)

For a redundancy to be considered lawful, it must, among other things, have a rationale recognized by law. The following are common reasons to declare a redundancy;

- An economic downturn causing an employer to lose significant revenue.
- Strategic business redirection that causes work to diminish or roles to cease to exist.
- Commercial judgment for the business especially in situations of mergers and acquisitions where some roles consequently cease to exist or discontinuation of some product lines among others.

An employer has a responsibility to not only substantially prove the reason behind a redundancy, but they must explain the same to the employees in a manner that they can easily understand.

An employer is further tasked, albeit having a rationale recognized in law for a redundancy, to actively consider ways and mechanisms that can reduce the effect of the redundancy to the employees.

An employer can; in the effort to reduce the effects of a redundancy, consider doing the following where circumstances permit or where reasonably possible;

- Voluntary Early Retirement, VER. An employer can offer VER for staff that were willing to retire before the normal age of retirement for the organization. An employer should be careful to not be seen as coercing staff of a certain age to retire early. This offer must be voluntary.
- An employer may, in consultation with and consent of employees, consider working hours strategies like flexi-time or limiting of overtime, salary reductions, and or benefits restructures as a way of reducing overheads which in turn may reduce the effects of redundancy.
- An employer can, in situations where redundancies have affected part but not the whole business, consider potentially redundant employees for open vacancies in the other parts of the organization.

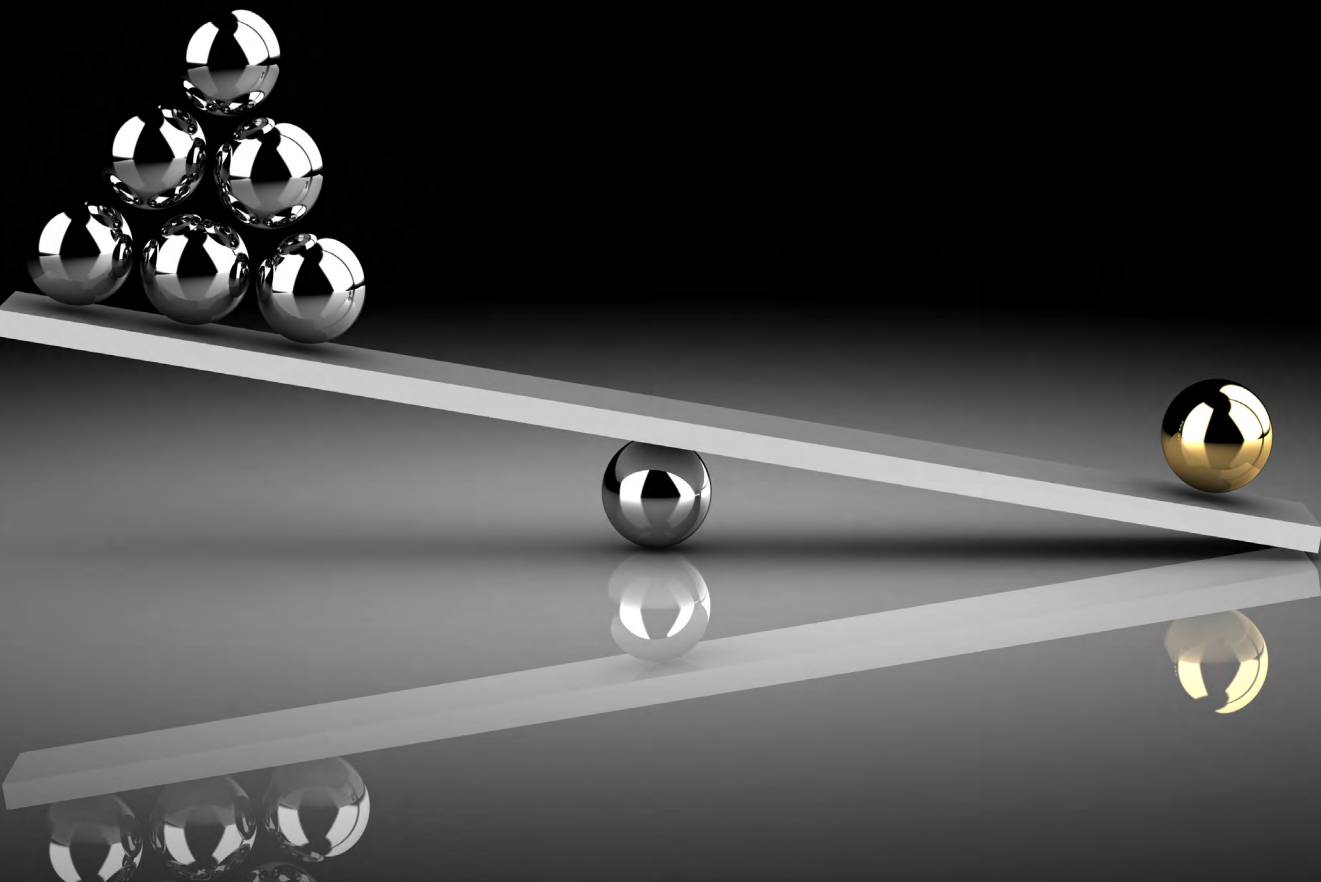
c) **Steps to follow**

An employer should comply with the following steps in the process of declaring a redundancy;

- A notice of intention to declare a redundancy should be sent to the labour office in the area the organization is located.
- A copy of this notice of intention to declare redundancy should be sent individually to employees, or placed in an area where all employees are reasonably expected to see it like on a common notice board.
- A copy of this notice of intention to declare redundancy should be shared with any recognized labour union within an organization. In the event that there are no recognized labour unions in an organization, sharing this notice with the labour office and staff is sufficient.
- A notice of intention to declare a redundancy should run for a minimum of 30 calendar days.
- A notice of intention to declare a redundancy cannot be paid off. This means that during the 30-day period, potentially affected employees must stay at work.
- A sample of a notice of intention to declare redundancy is available within this tool kit for ease of reference
- Consultation meetings should be held within the notice period specified in the letter referred to above.
- It is highly advisable that an employer documents the meetings in which consultative discussions were held with potentially redundant employees for purposes of reducing

the effects of redundancy.

- Following the expiry of the notice of intention to declare redundancy, an employer should send to the labour office, affected employees and where applicable a labour union recognized by an organization, a notice of termination of employment on account of redundancy.
- The notice of termination on account of redundancy should run for a minimum of 30 days.
- This notice can be served or paid in lieu.
- A sample of this notice is available within this tool kit for ease of reference.
- An employer should then calculate and pay all dues owed to an employee that has been declared redundant.
- Reference should be made; when calculating redundancy pay, to internal procedures, active Collective Bargaining Agreements, and the law applicable and in force.



THE CONSULTATIVE PROCESS IN A REDUNDANCY

a) **Consultation before substantively declaring a redundancy**

When a redundancy situation arises, an employer must communicate and consult with potentially redundant employees as soon as possible.

Consultation involves both individual and collective consultation. However, a collective consultation does not mean that an employer will avoid an individual discussion with each employee.

It is advisable that at least one meeting with the employee should be set up before a final decision of redundancy is made. Below is a guide to what can be included as talk points in a consultation meeting with a potentially redundant employee:

- The reason for the potential redundancy.
- Reasons an employee may be at risk of the potential redundancy.
- The meaning, impact and process involved.
- Avenues that the organization is considering to minimize the effect of the redundancy.
- An opportunity to address current and future concerns of employees through a question and answer session.

The labour laws in Kenya do not prescribe the extent of explanations required to be given to the potentially redundant employees at this stage. However, the communication to potentially redundant employees must be as detailed as possible and within fair labor practices.

The potentially redundant employees should be encouraged to question the process and provide their thoughts on the potential redundancy. They should be encouraged to provide ideas that should be taken seriously by employers on ways to minimize the effects of the potential redundancy.

b) Consultations after substantively declaring a redundancy

Once it is confirmed that redundancy will be declared, an employer should not stop the communication to employees that will be affected by the redundancy.

It is of paramount importance for clear and human-centric conversations to be held with employees that have been declared redundant especially on the following matters;

- The process adopted in the selection of which positions will be declared redundant.
- Clear explanation on what it means for a position holder whose position has been declared redundant.
- Clear explanation of the benefits that will accrue to a position holder owing to their positions being redundant.
- Interventions that the organization has put in place as redundant employees deal with and come to terms with the redundancy (this may include psychosocial support).
- Availability or otherwise of the organization to assist redundant employees in their job-seeking endeavors e.g., outplacement training, authorship of recommendation letters, proposing their candidatures to other organizations, allowing time off during notice period to job seek among other interventions.

It is highly advisable that organizations that declare their employees redundant conduct outplacement training for the affected employees.



THE SELECTION OF THE PERSONS TO BE DECLARED REDUNDANT

It is paramount to remember that redundancy is to a role and that the role holder losing employment is a subsequent consequence of redundancy. In situations where a role that has more than one holder has been declared partly redundant; that is where there remains a need within the business for reduced role holders, then selection criteria of which role holder will be declared redundant becomes critical.

For example, where a company has automated its telephony services with a new PBX system, the roles of Call Center Agents may become partly redundant owing to the efficiencies brought by the PBX system. This does not however mean that the organization will not need Call Center Agents, but they may need fewer Call Center Agents in number. It is in such situations that a selection criterion is required in the event the role is declared partly redundant.

The criteria should be fair, transparent, and objective. The labour laws in Kenya further require it to have due regard to seniority in time and to the skill, ability, and reliability of each employee of the particular class of employees affected by the redundancy.

It is advisable for an organization to document its selection criteria. It is an added advantage to further document how all the employees in the class affected by the redundancy scored against the criteria hence arrival at the employees selected for redundancy.

THE CALCULATION OF BENEFITS

Pay, once a redundancy is declared, is highly regulated according to the labour laws in Kenya. Before calculating terminal benefits arising from redundancy, it is important for an employer to be clear on the following;

- The legal requirement for redundancy pay.
- The provisions in internal regulations with regards to redundancy pay.
- The existence of any collective bargaining agreements if any and their provisions with regards to redundancy pay.

The point to always keep in mind is that one cannot make payments below the legal minimums. However, if there exists within internal regulations and or Collective Bargaining Agreements provision that is better and or are an enhancement from the legal minimums, an employer is then obligated to make payments using the enhanced provisions.

Below are the legal minimums for the pay items required when calculating redundancy pay;

- All accrued and unused leave days due and owing to an employee declared redundant.
- One months' notice or one months' wages in lieu of notice.
- Severance pay at the rate of fifteen (15) days' pay for each year of service.

Employers need to remain aware of the following;

- Most of the payments above are based on a daily rate of pay. Should the organization already have a set way to calculate daily pay, that rate should be used to ensure consistency.
- Employers are encouraged to prorate amounts for leave and severance pay.
- Redundancy pay is not exempted from statutory deductions. These should be made as if the redundancy pay is normal monthly pay.
- A statement of pay (payslip) should be issued for redundancy pay.

THE LEGAL BASIS FOR REDUNDANCY

The legal guidance for redundancy in Kenya is found in the [Employment Act](#) No. 11 of 2007 specifically section 40. Employers are advised to seek further clarification from experts to become familiar with other legislation that contributes to the framework under which redundancies are managed.

Several decided cases are important in the management of redundancies.

The list below has some decisions that are important to always keep in mind. Be advised however that this list is not exhaustive;

1. *The conditions set out in section 40 of the Employment Act No. 11 of 2007 are mandatory and are to be strictly complied with. Failure to do so will result in the termination to be considered unfair as noted in the [case](#) of Hesbon Ngaruiya Waigi vs. Equitorial Commercial Bank Limited and the [case](#) of Francis Maina Kamau vs. Lee Construction.*
2. *Redundancy should not be based on the performance or conduct of an employee. This was noted in the [case](#) of Caroline Wanjiru Luzz vs. Nestle Equatorial African Region Limited. This case also, among other matters, affirms that a redundancy notice must be in writing and adhere to the set timelines as per the provisions in the law.*
3. *The [case](#) of Thomas De La Rue (K) Limited vs. David Opondo Omutelema saw clarity being given on the number of notices to be issued in the case of redundancy. The court held that they should be two. This case further states that for unionized employees the notice of intention to declare redundancy should be issued to the union only and not the unionized employee.*
4. *The [case](#) of Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others makes it mandatory for consultations to be held before and during a redundancy. While the case of Barclays Bank of Kenya Ltd & Another vs GM & 20 others requires the consultations to be meaningful and not a charade.*

5. Selection criteria is dealt with extensively in the [case](#) of Kenya Plantation and Agricultural Workers' Union v Harvest Limited. The principle of last in, first out, skill, ability, and reliability definitions are clarified in this case.



APPENDIX I

Address of Labour Office

Date

Salutations,

RE: NOTICE OF INTENDED REDUNDANCIES

Company introduction, e.g. Conversations With Wendy is a company registered in Kenya to provide services to SMEs and other players with the labour ecosystems concerning people management.

Statement on the redundancy rationale, e.g. Conversations With Wendy has recently reviewed its business strategy and has; to improve internal efficiencies and its competitiveness in the wider market, opted to end its HR consultancy business line.

Statement on the effect of the redundancy rationale, e.g. Given the above, the services of the employees working on this product line may be rendered superfluous, thereby necessitating the termination of their employment on grounds of redundancy.

Statement on minimization of the effects of the potential redundancy, e.g. Please note that the final decision regarding this proposed redundancy has not been made, pending consultation with the affected employees on the matter. The Company shall hold various consultation meetings with each of them over the next month and affected employees shall be invited to provide their proposals on the matter.

Statement on awareness and readiness to comply with the laws e.g., Whilst exploring other avenues, and in accordance with the provisions of Section 40 of the Employment Act, No. 11 of 2007, the Company hereby notifies you that we have duly issued the affected employees with one (1) months' notice of the intended redundancy.

Yours faithfully,

Name

Signature

APPENDIX II

Name and address of staff

Date

Salutations,

RE: Termination of employment on account of redundancy

Statement on the cohesion of the process e.g., We write further to our notice of intention to declare redundant positions within the CWW HR Consultancy dated (insert date), a business product managed by Conversations With Wandy Kenya Limited, owing to the discontinuation of the services line. We regret to advise that as a result, your position has unfortunately been declared redundant.

Statement on direct effect on staff contract e.g., This will necessarily result in the termination of your employment on account of redundancy. This is effective (insert date). Your last working day as per your contractual notice period shall be (insert date).

Statement on benefit calculation as per law and internal policy e.g., In line with its current HR Policies, your current contract, and the Labour Laws of Kenya, Conversations With Wandy Kenya Limited shall however, pay you one (1) month's salary in lieu of notice, making your last working day (insert date). The Company shall also pay a severance pay at the rate of 15 (fifteen) days' pay for each year of service. Further, you will be paid your salary for the period up to and including the date of termination and all accruing benefits, including any leave days earned but not taken.

Statement breaking down items of pay e.g., We advise that your final dues have been calculated as follows:

Item of pay	Amount
One-month notice pay (Insert Month)	xxx
Fifteen (15) days' pay for every year of service	xxx
Outstanding Leave (xx days)	xxx
Total	xxx

Statement on full final dues and their processing e.g., The due amount of **XXXX** less statutory and any other deductible deductions will be transferred to your bank account currently registered with Conversations With Wandy Kenya Limited as your salary account. This will be the full and final amount

due and payable to you upon receipt and acknowledgment of this letter.

Statement on the issuance of a certificate of service e.g., Attached, please find a copy of your certificate of service.

Statement on the handling of company property e.g., You shall be expected to return your Company issued ID for access, laptop, keys, and any other materials given to you in the exercise of your duty by Conversations With Wandy Kenya Limited.

Statement of goodwill and posterity e.g., On behalf of Conversations With Wandy Kenya Limited, we take this opportunity to thank you for your service and wish you all the best in your future endeavors.

Yours Sincerely

Name

Signature

Acknowledgement by staff e.g., I
acknowledge receipt of this letter dated XXXX. I hereby confirm and authorize Conversations With Wandy Kenya Limited to transfer my final total dues, save for statutory and other agreed deductibles of Kshs to my listed salary account. I do hereby also confirm that I have no further claim against Conversations With Wandy Kenya Limited.

Signature

Date



Conversations
with *Wandy*