

CLAIMING REDUNDANCY WHILST LAID OFF OR ON SHORT TIME

This fact sheet explains the procedure an employee needs to follow when claiming a redundancy whilst laid off or on short time working. There are strict time limits, which need to be followed. *This fact sheet does not deal with any potential claim for unlawful deduction from wages or constructive unfair dismissal which an employee may have as a result of being laid off or put on short time working.*

N.B. All references to a contract of employment refer to a written *or* verbal contract.

The statutory provisions relating to claiming a redundancy following a lay off are contained in s.147 - s.154 of the Employment Rights Act 1996.

What is a lay off?

An employee is laid off if:

- (i) his/her contract of employment is such that his/her wages depend on him/her being given work to do, *and*
- (ii) in the week in question they get no work and therefore no pay.

What is short time?

"Short time working" is where an employee receives less than half a normal week's pay because an employer does not provide them with enough work.

Do I qualify to claim?

You must have 2 years' continuous employment with your employer to be able to claim a redundancy payment. You must have been laid off or on short time (LOST) or a mixture of both either:-

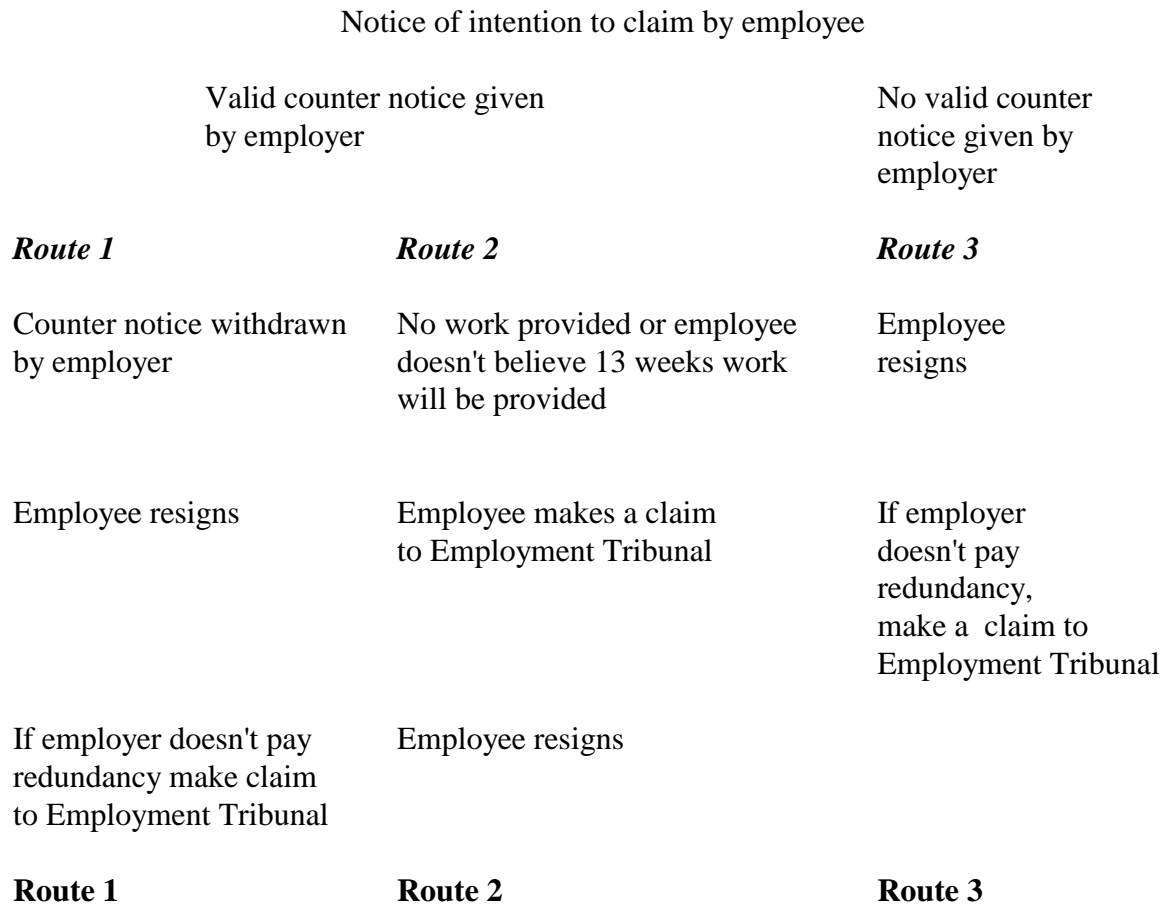
- four, or more, consecutive whole weeks
- six whole weeks, where no more than three weeks are consecutive, in any thirteen-week period.

If you receive any contractual (as opposed to statutory) guarantee payments for the time LOST you will not be able to treat this as a week of time LOST for the purpose of claiming a redundancy payment. When calculating the number of weeks LOST, only whole weeks from Monday to Saturday count.

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The special procedure

There are three possible routes a claim for redundancy may take as the diagram below shows:-



Note

When using the procedure, put all notices/resignations in writing; don't forget to date them and keep a photocopy of them.

Notice of Intention to Claim (NIC)

This is simply a letter to your employer stating, " I am writing to give you notice that I intend to claim a redundancy payment from you."

The written notice must be given within four weeks of *either*

- the end of a continuous period of lay off or short time working (or a mixture) which has lasted for four or more weeks, *or*
- the end of a period of six weeks' layoff or short time (or a mixture) out of 13 weeks, where no more than three weeks of lay off / short time working were consecutive.

For example, if you have been laid off for ten weeks you could have given notice any time after the fourth week. If, however, the time LOST ends, i.e. you go back to work, then you have four weeks from the last day of time LOST to give your NIC.

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Route 1

a) Valid counter notice given

If the employer reasonably expects to provide you with work for 13 weeks without any time LOST and this work is expected to start within 4 weeks of your NIC the employer can serve a counter notice.

To be valid, the counter notice must

- state the employer will contest liability for the claim for a redundancy payment; *and*
- be given to the employee within 7 days of the date the employee's NIC was posted or given to the employer; *and*
- be in writing

b) Counter notice withdrawn

If the employer withdraws the counter notice **in writing** this will have the same effect as the employer not giving a valid counter notice in the first place. Counter notice cannot be withdrawn verbally.

c) Notice of resignation

Your notice of resignation must be given to the employer within three weeks of the date your employer's counter notice was withdrawn. You should give written notice. You should ask for your redundancy payment to be paid. You should date your letter of resignation and keep a copy of it.

The amount of notice of resignation you must give is the statutory minimum of one full week unless you are contractually required to give longer notice, in which case you must give this longer notice.

d) Claiming your redundancy

If your employer doesn't pay your redundancy pay when your notice expires you must make a claim for redundancy to the employment tribunal using form ET1, available from jobcentres or online at www.employmenttribunals.gov.uk

The time limit for making the claim to the employment tribunal is 6 months from the expiry of your notice of resignation. (If for some reason you miss this time limit you should seek advice as there may be an extension of three months to this time limit because of the fact that you have put in a written claim for redundancy pay to the employer.)

Route 2

a) Valid counter notice given

This is the same as Route 1.

b) No work provided, or employee doesn't believe 13 weeks work will be provided

If you have remained on layoff or short time in the four weeks following your NIC or if you have started work but don't think it will last for 13 weeks you can make a claim to the employment tribunal.

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c) What the employment tribunal will decide

If normal working was not provided in the four weeks following your NIC, the employment tribunal will award a redundancy payment. Otherwise, the tribunal will consider whether, **at the date of the employer's counter-notice**, it was reasonably likely that normal working under the same contract of employment would be resumed within four weeks and would continue for at least 13 weeks thereafter. If they decide this was not reasonably likely, they will award the redundancy.

d) Notice of resignation

To be entitled to a redundancy payment you must resign within three weeks of the tribunal notifying you of their decision that you are entitled to a redundancy payment.

The notice of resignation must be the same as in Route 1 (c)

Route 3

This is the most straightforward route. If no valid counter notice is served, you must give your resignation within four weeks of your NIC.

The notice of resignation must be the same as in Route 1 (c).

If your employer doesn't pay, you must apply to the employment tribunal within six months of the expiry of your resignation.

What happens if a tribunal makes an award of redundancy but the employer doesn't pay?

As soon as you get the written decision of the tribunal you should write to the employer requesting them to make payment.

N.B. If you give the statutory minimum notice of one week when you resign, and you are not paid your normal week's wage, this amounts to an unlawful deduction from wages. You must write a letter asking for this money you are owed. If you are owed any holiday pay you should include something about this in your letter. You should put a date on the letter and keep a copy of it. You should add any claim for unpaid wages or holiday pay to your application to the tribunal when you make it. The time limit for this claim is three months to send your letter and six months to put in your tribunal application. If your claim is based on Route 2, you would have to put in a separate application form to the tribunal because you will have resigned after the tribunal has given its decision on redundancy.

If you've not had a reply within a week or the employer won't pay telephone the Redundancy Payments Help line on 08457474747 and ask them to send you a claim form. You can use this form to make your claim for redundancy direct from them.

Law Centre Opening Times

You can contact the Law Centre for help by phoning 0114 273 1888

Between 10:00 a.m. and 4:00p.m. any weekday.

When you phone, have any documents with you relating to your case.