

Scotland's Business Representative
Organisations
By email

Wednesday 27 January 2021

Dear colleagues,

Legal responsibilities when making redundancies: helping your members comply with the law

I know that your sector is facing an incredibly difficult time at the moment, especially in light of the changes the second lockdown has brought. I'm aware that your members will be making tough decisions on redundancies, so wanted to reach out to you to make sure you have what you need in supporting them to do this in a lawful way.

Whilst I appreciate that these decisions are incredibly difficult and won't be being made lightly, I write to remind you that all employers are still subject to Equality Act legislation, which includes ensuring that redundancy processes are non-discriminatory. Whilst we appreciate that your members will be making quick decisions in an uncertain landscape, it is essential for organisations to act lawfully to ensure that biases are not creeping in to decision making.

We have published simple guidance for all employers on what they must consider when making redundancies to ensure they comply with equality law. This is freely available on our website: <https://www.equalityhumanrights.com/en/advice-and-guidance/coronavirus-covid-19-guidance-employers>

We want to give employers clarity on which criteria for redundancy decision-making need to be carefully considered before they are used, so as to avoid indirect discrimination. This includes thinking carefully about using the following criteria:

T: 0141 228 5910

E: scotland@equalityhumanrights.com

[equalityhumanrights.com](https://www.equalityhumanrights.com)

- Unpaid leave days taken
- Productivity or output during the pandemic
- Sick leave taken during the pandemic
- Who has previously been furloughed
- Who is working part time

These could indirectly discriminate against specific groups who may have taken time off of work due to coronavirus (COVID-19), for example women who have disproportionately taken on caring responsibilities or disabled employees who had to shield.

Employers should consider whether to adjust the criteria, for example by considering productivity in the period prior to coronavirus.

Employers should also review decisions before informing staff to check protected groups have not been disproportionately selected and if they have, take action to correct it.

We are asking for the support of all leading sector representative bodies to share this guidance with your members through newsletters, correspondence and through your social media channels, as they look to you for support in making redundancies. If you think it would be useful for your members to hear directly from one of our experts, we may also be able to arrange a speaker for events, capacity allowing.

If you have any suggestions on anyone else you think might benefit from this guidance to ensure your sector has the support they need to comply with equality law, then please do let me know.

With best wishes



Lynn Welsh
Head of Legal for Scotland

T: 0141 228 5910
E: scotland@equalityhumanrights.com

equalityhumanrights.com