

# 'Back to Basics' Employment Law Guide

## Chapter Five: Restructures



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This chapter is about how to properly propose and implement a restructure to a business.

Restructures come in several shapes and sizes, and can affect one role, or multiple roles. The definition of a restructure is fairly broad, but it generally includes circumstances where an employer is wanting to:

- Sell or transfer all or part of their business
- Create new roles
- Merge two or more existing roles
- Change roles, such as changing reporting lines, position titles or position descriptions
- Disestablish roles that are surplus to requirements
- A mixture of any or all of the above

Therefore, a restructure process can be used to carry out a range of different changes to an organisation, and not only to make employees redundant (as people often presume). However, that can certainly form part of it.

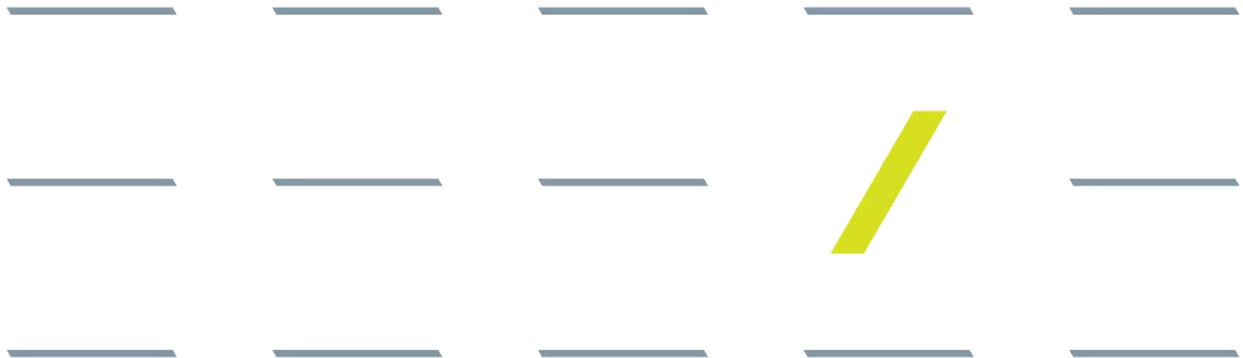


# Business reasons

Restructures can be a challenging task for employers, and stressful for everyone involved. However, they are an important and valuable tool that employers should consider in the right circumstances. **Importantly, any employer considering restructuring their organisation must have genuine business reasons to do so.**

Restructuring is about having the right roles and the best structure. It is not about individual staff members. If you are having performance or behavioural issues with an employee, those issues are better dealt with by using the processes detailed in edition four of this series.

Some examples of genuine business reasons that would justify restructuring an organisation are listed on the following page.





# The process

As with any workplace change, employers must follow a careful process and consult with employees before making any decisions. If employers do not follow the correct process, they are likely to face personal grievances.

We outline the general steps that you will need to take as an employer to restructure your business below. However, we strongly recommend that you seek specific advice tailored to your business before taking any steps. Restructures can be complex depending on what you are wanting to achieve, and it is important to get the process right.

## 1. Proposal

When you decide that there is a genuine business reason to consider restructuring your business, you need to prepare a written proposal document to give to staff. This document should be robust and provide employees with a real understanding of what the proposed changes are and the genuine business reasons behind it. It should also include any supporting documentation that you are relying on and any new or updated job descriptions if you are creating or changing roles.

Best practice to communicate the proposal is to hold a meeting with all affected staff where you speak through the proposal and explain the next steps. It should be made clear to staff that the proposal is just a proposal at this early stage.

In some circumstances, a proposal should also be accompanied by an individual letter to each affected employee detailing the personal impact if the proposal proceeds.

## 2. Feedback

You need to provide employees with reasonable time to consider the proposal document and to provide feedback on it.

You then need to genuinely consider any feedback provided to you. It can be tempting to shortcut this step, however, employees may provide feedback that justifies a change in approach or consideration of other alternatives that had not previously been considered.

If, following feedback, the changes you want to make differ from those originally proposed to staff, you may need to allow for a further consultation period.



### 3. Decision

Lastly, you need to finalise your decision on the structure and communicate it to affected staff.

If, as a result of the decision, some employee's roles are disestablished, you must consider whether there are any potential redeployment opportunities within the business for those employees. If there is an available role that an affected employee could perform, then they should be offered that role. The obligation to consider redeployment opportunities is strict and applies even if some development and training for a role would be required.

Even though this may be the last step of the process, it does not make it any less important and it should be managed with care. It should also be treated with sensitivity. For example, if staff are being made redundant, you should work with them to decide how it will be announced, whether they will work out their notice period, whether they would like a farewell with their colleagues and whether you can offer any additional support (such as time off to apply for jobs). We find that these small gestures go a long way in maintaining a good relationship as an employee's role is coming to an end.

If you are reducing the number of roles that several employees hold, a further step in the process will be required to assess the people in those positions against a selection criteria to determine who will get the reduced number of roles. You will also need to consult with those employees about the selection criteria you are using. This is one of the most litigious aspects of the process, and we recommend that you seek advice if a selection process is required.



# Summary

There are many reasons why a business may choose to undergo a restructure. The key to carrying out a successful restructure process is to ensure that you have genuine business reasons for what you are proposing, and that a robust process (as set out in a flow chart on the next page) is carried out. A failure to get either of these right will give employees grounds to pursue a personal grievance.

As always, the best advice is to seek advice!



# Restructure process



Carefully consider whether there are genuine business reasons to restructure



Prepare a written proposal document



Present proposal document to affected staff



Give employees ample opportunity to give feedback on the proposal



Consider all feedback received



Communicate decision to affected staff



Go through selection process if applicable



Consider how you can support employees affected by the outcome