

Guidance on continuous service in relation to redundancy pay

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The Redundancy Payments (Continuity of Employment in Local Government, etc. (Modification) Order 1999

This piece of legislation impacts on employees who are entitled to a redundancy payment in a redundancy situation. An employee must have at least two years' continuous service to qualify for a redundancy payment, and the Modification Order means that any continuous service with bodies listed in the Order will also count towards continuous employment.

Why is it important that I am aware of the Modification Order?

If you are making redundancies it is important that you calculate continuous service from the correct date to ensure that you pay the correct amount in redundancy pay. Failure to do so could result in an Employment Tribunal claim.

Which organisations are covered by the Order?

The Order includes all local authorities and almost every other organisation that was previously under local authority control including further education colleges, new universities (former polytechnics) and various other organisations. The organisations covered are listed in the Order. Academies are also covered by the Order as a result of the Academies Act 2010. The Order does not cover central government bodies, old universities or private schools and colleges.

How does the Order work in practice?

Where an employee is under notice of redundancy and they receive and accept a job offer, before leaving, from an organisation that is included within the Modification Order, there will be no entitlement to redundancy where the new employment starts within four weeks of the end date of their previous employment. For example, where an employee is under notice of redundancy and their employment is due to end on 31 August, if they are offered and accept a job in an organisation covered by the Order which is due to start before 28 September, they will not be entitled to a redundancy payment.

What can I do to make sure I comply with the Order?

When appointing new employees, ensure that their employment contract includes the start date of their employment with you, along with the start date of continuous service with other organisations covered by the Order. It is important that the continuous service start date is verified so that if they are made redundant in the future, their redundancy pay is calculated correctly. This can be done via employment references, or by contacting previous employers to confirm employment dates.

Also ensure that when you are calculating redundancy payments, you use the correct continuous service date. Statutory redundancy calculations are based on a cap of 20 years' service.

When is continuous service broken?

It should be noted that continuous service is broken if:

- the employee has previously received a redundancy payment from one of the organisations listed in the Order;
- there was a break between jobs of over seven days (running from Sunday to Saturday) which was not as a result of redundancy;
- that due to redundancy, the employee had a break of over four weeks between jobs with organisations listed in the Order (even if they were not eligible for a redundancy payment).

A break in service will also mean that an employee loses certain employment rights which will take two further years' service to regain (for example, the right to make an unfair dismissal claim, although there are exceptions to this). In addition, they may lose their entitlement to other terms and conditions which have length of service requirements attached to them.

Can an employee circumvent the Order so that they receive a redundancy payment despite starting work for another employer covered by the Order?

There are many examples of individuals, unions and employers attempting to find loopholes to enable employees to receive a redundancy payment and take up employment with another organisation listed in the Order. These include:

- engaging the individual via an agency for four weeks and appointing them as an employee after that period. Agencies are not covered by the Order;
- engaging the individual as a volunteer for four weeks, then employing them and paying them an additional payment labelled as something other than salary;
- allowing the individual to work for no pay for four weeks;
- negotiating an earlier termination date, for example 31 July, so that the individual can take up a role with another organisation covered by the Order from 1 September. This would result in a break in service. However, termination dates for teachers employed under School Teachers' Pay and Conditions should be at the end of a term. It may also cause complications for holiday pay for term-time-only staff;
- asking the new employer to sign a waiver in case of future redundancy to confirm that the individual does not have continuous service. This is highly unlikely to be enforceable.

One of the intentions behind the legislation is to protect public money. If you make a redundancy payment whilst allowing an employee to retain their continuous service, in the event they are made redundant in the future they will effectively receive redundancy pay twice for the same period of service. This would not be a good use of public money which could otherwise be spent on pupils' education. The ESFA is likely to take an unfavourable view of organisations which attempt to circumvent the legislation.

It is advisable to take [HR or legal advice](#) if you are uncertain about the legislation or how to comply with it.

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