



Redundancy process and payments

Redundancies can give rise to complex legal problems and risks for employers.

This factsheet contains some basic concepts to ensure that you are best placed to get the redundancy process and payments right.

What is a 'genuine' redundancy?

A redundancy occurs when an employer no longer requires anyone to perform a particular job due to changes in the operational requirements of its business.

The *Fair Work Act 2009* (Cth) provides that a 'genuine' redundancy occurs when:

- the employee is terminated because the employer no longer wants anyone to do the job due to the enterprise's changed operational requirements;
- the employer has complied with any consultation requirements outlined in an applicable modern award or enterprise agreement; and
- it was not reasonable (in all the circumstances) for the employer to redeploy the employee within their own enterprise, or that of an associated entity.

A robust and transparent process in these areas will reduce the prospects for legal claims to be made or, if a claim was to be made, provide you with a solid basis to avoid liability or reach an early resolution.

What are some scenarios that often result in redundancies?

Changes to a business's operational requirements, i.e. through restructuring, downsizing, closing down or outsourcing, can often give rise to redundancies.

For example – the redundant role may be given to another employee or split up between multiple employees.

When a role is made redundant because of downsizing, an employer should ensure that the financial reasons leading to the decision are genuine. In some situations you may need to dismiss an employee for reasons relating to the employee's performance or skill level. This does not mean that their job is not redundant. However, it is important that the criteria for selection of the role/s to be made redundant is lawful i.e., not in breach of any applicable discrimination laws.

Do I need to consult with the employee?

The technical obligation of an employer to consult regarding redundancy only arises when a modern award or an enterprise agreement applies to the employee.

However, it is often advisable to consult regardless, and doing so will assist you in ensuring redeployment was not reasonable, and you will be better protected if the redundancy is legally challenged by the employee.

Consultation should generally involve the following steps:

- **Step 1:** provide affected employees (and their representatives, including union representatives if applicable) with written notification of the changes that are proposed;
- **Step 2:** discuss the operational changes with affected employees; and
- **Step 3:** consider what the affected employees have to say and respond.



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Failure to consult can result in a breach of an applicable award or enterprise agreement (and the *Fair Work Act*) which in turn, can expose an employer to a wide range of remedies in the Federal Court including, compensation and imposition of civil penalties up to \$54,000 in the case of corporate entities, and up to \$10,800 for any individuals “involved in” the contravention. This is additional to and unrelated to any unfair dismissal claim.

Can the employee be redeployed?

Redeployment means offering a redundant employee continued employment in another role as an alternative to dismissal.

It will not be sufficient simply to invite the employee to apply for an alternative role in competition with others. However, there is no obligation to offer an employee a new role if there is not a suitable one available.

Consider the following checklist when deciding if (in all the circumstances) redeployment is not reasonable:

- Is there a position available within your business or within the business of an associated entity?
- Does the employee have the skills, competencies and qualifications required to perform the position (either immediately or with a reasonable period of retraining)?
- Does the location of any alternative position (in relation to the employee’s home), or, the remuneration offered in relation to the position, make redeployment not feasible? Don’t assume an employee will reject an offer of employment in a different location or at lower pay – always ask them if they are interested and let them reject such opportunities if they are not.

Are there any other steps which I need to think about?

If you are making **15** or more positions redundant, the *Fair Work Act* provides that you must notify:

- Centrelink; and
- any relevant union/s, and consult with them on measures to avert or minimise the proposed dismissal and measures to mitigate the adverse effects of the proposed dismissals.

What is redundancy pay?

Redundancy pay is paid as compensation for loss of benefits the affected employees could otherwise accrue as a result of long service.

The following table outlines an employee’s **minimum** redundancy pay entitlement under the National Employment Standards (**NES**):

Period of Service	Redundancy Pay
1-2 years	4 weeks
2-3 years	6 weeks
3-4 years	7 weeks
4-5 years	8 weeks
5-6 years	10 weeks



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Period of Service	Redundancy Pay
6-7 years	11 weeks
7-8 years	13 weeks
8-9 years	14 weeks
9-10 years	16 weeks
10 years	12 weeks

Under the NES, service prior to 1 January 2010 will only count towards the period of service for redundancy pay purposes if the employee's terms and conditions of employment (under an award, agreement or employment contract), immediately before 1 January 2010, provided an entitlement to redundancy pay.

The entitlement to redundancy pay may also be higher depending on the terms of any industrial instruments, contracts of employment or other workplace policies that are applicable.

You *may* not be required to pay redundancy pay in certain redundancy situations e.g., if you redeploy the employee or where an employee voluntarily resigns.

Redundancy pay is in addition to other entitlements such as payments for:

- notice (in lieu of actual notice) either in accordance with their agreement or the NES (whichever is greatest);
- untaken annual leave;
- untaken long service leave (subject to minimum service requirements); and
- any other monies due under their agreement.

Taxation implications

All or part of a redundancy payment made to an employee will be tax-free for the employee provided the various requirements in the tax law are satisfied. From the employer's perspective, there is no obligation to withhold an amount from the tax-free component of a genuine redundancy payment. However, if an employer incorrectly characterises a payment as a genuine redundancy payment and fails to withhold an amount from the payment, the employer may be liable to a penalty equal to that amount. This may occur where, for example, the payment is in fact an 'employment termination payment' under the tax rules.

For further information

If you are not sure what your obligations are with respect to redundancies seek legal advice from a workplace lawyer.

Alternatively, contact HopgoodGanim Lawyers' Industrial and Employment Law team via our [website](#).

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