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Redundancy Payments for Managers and Professionals

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Redundancy basics

Redundancies may be necessary in the case of an organisational restructure, because a business is downsizing or withdrawing from a particular market segment, or when a business is sold or goes into bankruptcy or liquidation.

Redundancy occurs where the employer no longer requires that a worker's job be done by anyone, or the employer becomes bankrupt or insolvent.

If you are made redundant you should be paid severance pay, as well as the relevant notice period and any accrued leave you have, paid out, unless your employer employed fewer than 15 workers in permanent or ongoing regular work at the time of being made redundant.

Redundancies must be genuine. The job that you were doing must genuinely no longer be required to be done by anyone. Where a redundancy is genuine you can't claim for unfair dismissal or unlawful termination. If the duties you performed in the role are redistributed to remaining staff in addition to their existing duties this is considered a genuine redundancy.

Managers and redundancy

Traditionally managers and professionals did not have access to redundancy entitlements unless they were expressly provided for in a contract of employment or a workplace policy. With the introduction of the Fair Work Act in 2010, however, all employees were granted a minimum entitlement to redundancy. But with every bit of give there is some take - with this new entitlement to redundancy came a greater obligation on managers to consult with employees before enacting any major change, including instituting redundancies.

Entitlement to redundancy pay

The Fair Work Act 2009 sets out the minimum entitlement to redundancy available to all full-time and part-time employees.

Employee's period of continuous service with the employer on termination		Redundancy pay period
At least	but less than	
1 year	2 years	4 weeks
2 years	3 years	6 weeks
3 years	4 years	7 weeks
4 years	5 years	8 weeks
5 years	6 years	10 weeks
6 years	7 years	11 weeks
7 years	8 years	13 weeks
8 years	9 years	14 weeks
9 years	10 years	16 weeks
10 years	-	12 weeks

Note: Long service leave entitlements provide the rationale for reducing the redundancy pay entitlement for employees who have a period of 10 years' continuous service or greater.

The above table sets out the minimum entitlements available to all employees. Employees may be entitled to a higher rate of redundancy if this is provided for in their employment contract, workplace policy, Collective Agreement or Modern Award.

The entitlement to redundancy arises when the employer makes a definitive decision that the job being done by the employee is no longer to be done by anyone, except where this is the result of the ordinary and customary turnover of labour. Redundancy is not ordinarily payable to casual employees, fixed term employees or employees terminated for serious misconduct.

Obligation to consult

Major change in any workplace is difficult. It doesn't take long for rumors to start and for staff to feel insecure. Being upfront, direct and communicating clearly with staff is therefore always advisable, not to mention mandatory for Award covered employees.

All Modern Awards contain provisions that employers are to consult with employees about major change, including redundancy. What is meant by 'consultation' is not always easy to answer, although there are some simple rules to follow:

- You need to provide details of proposed major change in writing clearly setting out the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees.
- Consultation is more than a mere exchange of information, it is the opportunity for employees to contribute effectively to proposals and for their views to be actively considered by the employer. Don't deliver change as a "take it or leave it" option.
- Use the consultation process as an opportunity to present scenarios to the employee. Schedule a follow up meeting on the following week to hear any responses the employee has before making a definitive decision on any major changes.

The single biggest mistake employers make in consultation is reaching a definite decision before the consultation process has begun. By not consulting with an employee the employer is effectively denying the employee a chance to suggest an approach that would allow for continued employment (by going part-time, job sharing or accepting a lower position). It is the denial of opportunity that is compensatable as evidenced in the case note below:

In *Georg Thomas v InfoTrak Pty Ltd T/A InfoTrak* [2013] FWC 1134 (21 February 2013) an IT company was ordered to pay \$10,000 for failing to consult an employee before making his position redundant.

Fair Work Australia found that "there were sound, defensible and well-founded reasons for the dismissal, being that [InfoTrak] no longer required the [manager's] job to be performed by anyone because of changes in the operational requirements of its enterprise". However, if the required consultation had taken place, an alternative to redundancy might have been found.

"It is possible that the redundancy might have been avoided because the parties agreed upon a productive way for the job to continue without the need for the redundancy. It is also possible that other redeployment options might have emerged", Fair Work Australia found.

Preparing to consult

Where a number of redundancies are anticipated as part of major change, it is recommended that a consultation plan be prepared. A consultation plan should cover the following:

1. Review the current position and identify the areas that need change.
2. Prepare a consultation paper and distribute to staff.
3. Invite feedback from staff and their union or unions through scheduled meetings.
4. Provide a revised proposal based on any feedback and communicate your decision to staff.
5. Identify the anticipated impact on staff and discuss options with staff to mitigate any impact.
6. Set a timetable for the above and decide on a communication strategy.

About the Author

Joseph Kelly is the Principal of Kelly Workplace Lawyers. He specialises in commercial litigation and workplace law having advised industry bodies, unions, employers and government on broadranging employment-related matters. He also runs a range of training and information seminars for legal practitioners.

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