



REDUNDANCY

Workplace Relations Fact Sheet – November 2016

A genuine redundancy occurs when:

- The person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise; and
- The employer has complied with any obligation in a modern award or enterprise agreement that required them to consult about the redundancy.

An employee's dismissal was not a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within:

- The employer's enterprise; or
- The enterprise of an associated entity of the employer.

Consulting with Employees about Major Workplace Changes

All modern awards and enterprise agreements have a consultation process for when there are major changes to the workplace, such as redundancies.

The consultation process generally requires that an employer:

- discuss the introduction of the changes with the employees affected;
- discuss the effects of the changes;
- discuss measures to avert or mitigate the adverse effects of the change; and
- give prompt consideration to matters raised by the employees.

For the purposes of such discussion, an employer must provide in writing to the employees concerned and their representative (if any), all relevant information about the changes as outlined above.

Amount of Redundancy Pay

The National Employment Standards (**NES**) sets out that an employee receives the following amount of redundancy pay at their base rate of pay for ordinary hours of work:

Period of continuous service	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks



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Note that there are industry-specific redundancy schemes in the construction sector, manufacturing sector, and certain other industries which have a broader application but provide a lesser redundancy entitlement.

Exclusions from Obligation to Pay Redundancy Pay

An employer does not have to pay redundancy pay to an employee if:

- The employee's period of continuous service with the employer is less than 12 months;
- The employer is a small business employer. A small business employer is an employer that employs less than 15 employees;
- The employee is engaged for a specified period of time, task or season;
- Their employment is terminated because of serious misconduct;
- The employee is a casual employee;
- The employee is a trainee engaged for only the length of their training arrangement; and
- The employee is an apprentice.

All of these exclusions are subject to the provisions of any industry-specific redundancy scheme applicable under a modern award.

Variation of Redundancy Pay

An employer can apply to the Fair Work Commission to have the amount of redundancy pay reduced if:

- The employer obtains other acceptable employment for the employee; or
- It cannot pay the amount.

Transfer of Employment

A new employer that isn't an associated entity of the old employer can decide not to recognise an employee's service with the old employer for redundancy entitlements. In that circumstance, the old employer will need to pay redundancy entitlements to the employee upon termination.

However, an employee will not be entitled to redundancy pay if:

- The Employee rejects an offer of employment made by another employer that:
 - Is on terms and conditions substantially similar to the employee's old terms and conditions of employment; and
 - Recognises the employee's service with the old employer for the purposes of redundancy pay; and
- Had the employee accepted the offer, there would have been a transfer of employment.

Transfer to Lower Paid Duties

Most modern awards state that where an employee is transferred to lower paid duties by reason of redundancy, they must receive the same period of notice as if their employment was being terminated. The employer may make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.



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Employee Leaving during Notice Period

Most modern awards provide that an employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the redundancy benefits and payments they would have received had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

Job Search Entitlement

Most modern awards include a provision which states that where an employer has made an employee redundant, the employee must be allowed up to one day's time off without loss of pay during each week of the notice period for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee in consultation with the employer.

Note: This information is provided for convenient reference only on the basis that it is not to be relied upon without reference to the Workplace Relations Advisers of the Canberra Business Chamber, as the circumstances in each matter are different and no one piece of advice will apply to all circumstances. For more information please contact the Workplace Relations Hotline on 1300 277 881 or wradvice@canberrabusiness.com