



REDUNDANCY PROCESS CHECKLIST

Making an employee redundant, like any other termination of employment, is always a risky business. Another matter to consider is some employees (but not all!) are also entitled to redundancy pay, calculated by their length of service. This checklist will help guide you through the legal maze of redundancies and help protect your business from the risk of claims.

STEP 1

Make sure this is a redundancy situation (not something else!)

A redundancy arises where an employer no longer requires an employee's job to be performed by anyone. As a rule of thumb: if you're going to replace the employee – it's not a redundancy! Does your situation at work fit into one of these scenarios:

- Abolishing a particular job (“We are no longer going to employ a receptionist”); or
- Reducing headcount (“We have ten sales staff, we’re going to reduce that number to five”); or
- Outsourcing (“We currently employ an internal IT support person, but we’re going to use an external agency going forward”); or
- Redistribution of duties (“We’re going to redistribute all the duties of an employee to other employees, and they will then have no duties left.”)

Top tip: Keep a written record of the decision-making process that led you to consider redundancies – this will be helpful if it is later alleged that the redundancies were not genuine.

STEP 2

Write to employees and: (1) tell them that you're considering making redundancies and that they may be affected (2) invite each employee to an individual consultation meeting.

Need help drafting this letter? – [Employment Innovations](#) has templates you can use.

STEP 3

Hold the consultation meeting

It is a requirement under modern awards and enterprise agreements to consult with employees where there are changes in the workplace that will affect them. The Fair Work Act 2009 (Cth) ('the Fair Work Act') contains an absolute defence to a claim of unfair dismissal in redundancy situations – but only where the employer has first followed its obligations to consult!

It is best practice to consult with all employees that may be affected by redundancy, even if they are not covered by an award / enterprise agreement. There are also obligations under the Fair Work Act to consult with any employees on parental leave if there are any significant changes to their pre-parental leave position.

Use the consultation meeting to discuss:

- (1) Any suggestions the employee might have to avoid redundancies;
- (2) Any redeployment opportunities.

Notes:

- Let the employee have a support person with them at the meeting if they wish.
- Do not make a final decision during the consultation meeting! You should advise the employee that you will take their responses into consideration and advise them of a decision at a later date – this will demonstrate that you are engaging in a genuine consultation process.

More about redeployment: Employers should offer employees facing redundancy any suitable job vacancies in the company or any of the company's associated entities. Offering any suitable redeployment opportunities is another requirement to establish a "genuine redundancy" – if you don't do it, you run the risk of an unfair dismissal claim!

STEP 4

Consider any points raised by the employee in the consultation meeting

If anything unexpected came up in the meeting, contact **Employment Innovations** for advice. If there is nothing that the employee has suggested that changes your view on redundancy, and there are no redeployment opportunities, then you're ready for Step 5.

We would always recommend that you contact **Employment Innovations** before making a decision to terminate employment.

STEP 5

Invite the employee to a final meeting

At the meeting explain to the employee that you have reached a final decision that their position will be made redundant. Hand the employee a termination of employment letter setting out their termination of employment entitlements including any entitlement to redundancy pay (need a template letter? **Employment Innovations** can help).

Note: Allow the employee to bring a support person if they wish.

REDUNDANCY SITUATIONS INVOLVING MULTIPLE EMPLOYEES

Sometimes you will be dealing with a redundancy situation involving multiple employees – such as where you have 10 people in a particular role and you need to reduce that number to 5. In that sort of situation, it is advisable to come up with selection criteria that you will apply to each employee to decide which employees will be made redundant.

Employers should therefore generally not take into account matters such as:

- Age
- Health or health related absences
- Parental responsibilities etc.

Factors which might be used include:

- Experience
- Length of service
- Qualifications
- Performance
- Cost of the employee

Top tip: It is important that the selection criteria is fair and does not expose the employer to risks of discrimination or other claims.

REDUNDANCY PAY

Some employees are entitled to redundancy pay when they lose their job to redundancy under section 119 of the Fair Work Act.

There are, however, a number of exemptions employers may be able to rely on. The most common is the “small business employer” exemption which states that those employers with less than 15 employees (including in associated entities) do not have to pay redundancy pay – but this can be affected by a modern award or enterprise agreement.

Awards that have different rules regarding the small business employer exemption include:

- The Joinery and Building Trades Award 2010
- The Manufacturing and Associated Industries and Occupations Award 2010
- The Mannequins and Models Award 2010
- The Textile, Clothing, Footwear and Associated Industries 2010
- The Timber Industry Award 2010

Other awards provide for different redundancy pay entitlements than the Fair Work Act.

These include:

- the Black Coal Mining Industry Award 2010;
- the Building and Construction General On-Site Award 2010;
- the Dredging Industry Award 2010;
- the Mobile Crane Hiring Award 2010 and
- the Plumbing and Fire Sprinklers Award 2010

Need to check which award applies to your employees or what it says about redundancy pay?

Contact Employment Innovations

Top tip: You should always check employees’ contracts of employment too – this could contain different redundancy pay entitlements (although these cannot be less generous than the Fair Work Act / award / enterprise agreement).

The redundancy pay scale set out in the Fair Work Act is as follows:

EMPLOYEE'S PERIOD OF CONTINUOUS SERVICE WITH THE EMPLOYER ON TERMINATION		REDUNDANCY PAY PERIOD
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks

Remember: terminating employment because of redundancy is like any other termination of employment – employees are still entitled to notice (or payment in lieu of notice) in the usual way! Need help in working out an employee's entitlement on termination of employment? Contact **Employment Innovations**.

ABOUT EMPLOYMENT INNOVATIONS

Employment Innovations provides workplace advice and documents, outsourced payroll software and processing, HR software and migration / visa services. We can also provide you with a dedicated HR Partner to work within your business to help with all your HR needs. Should you need the services of an employment lawyer, our partner firm EI Legal offers employment law advice and representation.