

REDUNDANCY PROCESS AND TAXATION GUIDE

Payroll Guide: 2020/21



This payroll guide assists you through the redundancy process & tax implications for the 2020/21 financial year.

REDUNDANCY PROCESS

Redundancy occurs when the work performed by an employee is no longer necessary because of an economic downturn affecting the business, technological change, company merger, restructuring, and changes to operational methods.

Redundancy does not result from any factors arising from the employee's conduct or performance.

Despite having a substantive reason for making an employee redundant, the termination may be considered unfair if the procedures associated with redundancy are not properly applied or unlawful if based on discriminatory grounds.

We suggest that before notifying employees you complete a redundancy process checklist.

Download our [redundancy process checklist](#) to follow the correct procedures when making an employee redundant

Notice Period

Under the Fair Work Act, an employer has to give the following minimum notice periods when dismissing an employee:

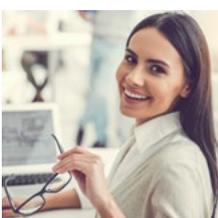
Period of continuous service	Minimum notice period
1 year or less	1 week
More than 1 year to 3 years	2 weeks
More than 3 years to 5 years	3 weeks
More than 5 years	4 weeks

However, where an employee is over 45 years of age and has worked for the employer for at least 2 years, they are entitled to one additional week of notice.

The employer may choose to make a payment in lieu of notice. If the employer pays out the notice, the amount paid to the employee must equal the full amount the employee would have been paid if they worked until the end of the notice period. This includes:

- Incentive-based payments and bonuses;
- Penalty rates, overtime and loadings; and
- Allowances.

If the employer pays out the notice, the employee does not accrue any annual leave for the notice period with their termination date being the last day worked.



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Redundancy Pay

An employee may receive redundancy pay based on their continuous period of service with their employer. This amount is paid at the employee's base pay rate for ordinary hours worked.

An employee's base rate of pay (other than a pieceworker) is the pay rate they receive for working their ordinary hours, but does not include the following:

- Incentive-based payments and bonuses;
- Penalty rates, overtime and loadings; and
- Allowances.

Period of continuous service	Redundancy Pay
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*

* There is a reduction in redundancy pay from 16 weeks to 12 weeks for employees with at least 10 years continuous service. This is consistent with the 2004 Redundancy Case decision made by the Australian Industrial Relations Commission.

Under the Fair Work Act, the following employees do not get redundancy pay:

- Those with less than 12 months service;
- Engaged on a casual basis;
- Engaged for a fixed term (so long as the termination is at the end of the fixed term);
- Trainees and apprentices (so long as the termination is at the end of the training agreement); or
- Working for a small business (i.e. one that employs fewer than 15 employees, including regular and systematic casual employees, at the time of the termination).

Award Requirements

Despite the exclusions set out in the Fair Work Act above, some awards (or agreements) may set out additional obligations on employers when making an employee or group of employees redundant.

Common Award provisions include consultation about major workplace change that may result in [redundancies](#), notice periods (in addition to the above), job search entitlement (allowing a terminated employee to take time off without loss of pay to seek other employment during their notice period), redundancy pay, the timing of termination payments and in regards to withholding pay on termination.

Contract Terms & Conditions

An employer and employee must also consider relevant clauses set out in the employee's contract of employment to determine if any additional obligations may apply to the termination procedures or employee entitlements.

Particularly in the case of senior and executive employees, contracts may refer to additional notice period requirements (for either party) and include reasonable restraints post-employment.

An employer should always seek [advice](#) before considering the redundancy process for an employee.

Employee Entitlements

When an employee accepts redundancy as part of a negotiated agreement they are entitled to a lump sum termination payment. This type of payment is generally made up of the following:

- Leave payments, including:
 - annual leave
 - annual leave loading (if applicable)
 - long service leave (if applicable, refer to state legislation for Long Service Leave)
 - Unused personal leave (some modern awards)
- A redundancy payment, including:
 - any payment in lieu of notice
 - redundancy pay
 - rostered days off or time in lieu (if applicable)

The various parts of lump sum termination payments receive different tax treatments.

1. Leave payments

Leave payments received upon a genuine redundancy attract special tax treatment (as opposed to payments received upon a voluntary resignation or retirement). You must deduct tax at the rate of 30% (plus the Medicare levy) from leave payment amounts.

Table 1

Accrued annual leave payments	
Cause	Tax rate
Resignation/retirement	Marginal tax rate
Genuine redundancy	Maximum 30%*

* plus medicare levy

Table 2

Accrued long service leave payments	
Cause	Tax rate
Resignation/retirement to 14 August 1978	5% of total at marginal tax rate
from 16 August 1978 to 17 August 1993	30%*
from 18 August 1993	Marginal tax rate
Genuine redundancy to 16 August 1978	5% of total at marginal tax rate
from 16 August 1978	30%*

* plus medicare levy

If an employees' marginal tax rate (see table 3) is less than 30%, any excess tax the employee has paid will be refunded back to the employee when they complete their next tax return. However, if the employees' marginal tax rate is above 30%, tax on the leave payment will need to be capped at 30%.

The employees' marginal tax rate is the highest tax rate payable according to their taxable income.

Table 3

Income tax table 2020/21		
Taxable income	Marginal tax rate*	Tax payable
\$0 - \$18,200	0%	Nil
\$18,201 - \$37,000	19%	19c for each \$1 over \$18,200
\$37,001 - \$90,000	32.5%	\$5,092 + 32.5c for each \$1 over \$45,000
\$90,001 - \$180,000	37%	\$29,467 + 37c for each \$1 over \$120,000
\$180,001 +	45%	\$51,667 + 45c for each \$1 over \$180,000

* plus medicare levy

2. Redundancy Payments

A genuine redundancy payment is a lump sum payment made up of the following as they apply to the individual employees.

- payments in lieu of notice
- severance payments based on years of service
- extra lump sum payments
- payments for unused sick leave and rostered days off.

A genuine redundancy payment is tax-free up to a certain limit, based on the number of whole years of service the employee has completed (see Table 4).

For the 2020/21 financial year, the limit is \$10,989 plus \$5,496 p.a. for each complete year of service. Unlike severance payments, the tax-free limit on genuine redundancy payments isn't calculated on a pro-rata basis for years of service.



Table 4

Completed years of service 19-20	Tax free limit
0	\$10,989
1	\$16,485
2	\$21,981
3	\$27,477
4	\$32,973
5	\$38,469
6	\$43,965
7	\$49,461
8	\$54,957
9	\$60,453
10	\$65,949
11	\$71,445
12	\$76,941
13	\$82,437
14	\$87,933
15	\$93,429
16	\$98,925
17	\$104,421
18	\$109,917
19	\$115,413
20	\$120,909

If the employee is over 65, they do not qualify for the tax-free component of the redundancy payment. Instead, the total amount is considered an employee termination payment and is taken as outlined in table 5.

3. Employee termination payments

You are required to provide your employee with a termination payment (ETP) pre-payment statement detailing the various components of their ETP and redundancy payment. Where the total amount of their redundancy payment exceeds the tax-free limits (outlined in Table 4), any amount they receive above that limit is taxed as an ETP. This is detailed in Table 5.

Table 5

Income tax table 2020/21		
Age	Component	Tax rate
Under preservation age	Tax-free	Tax-free (as per Table 4)
	Taxable	- First \$215,000# at 30%* - Excess at 45%*
Preservation age to 64	Tax-free	Tax-free (as per Table 4)
	Taxable	- First \$215,000# at 15%* - Excess at 45%*
65 or over	Taxable	- First \$215,000# at 15%* - Excess at 45%*

For the 2020/21 financial year. This amount is indexed annually.
*Plus the Medicare Levy.

WHOLE-OF-INCOME CAP

The following payments are subject to the whole-of-income cap test.

- non-genuine redundancy payments
- severance pay
- payments in lieu of notice period
- payment of unused sick leave and unused rostered days off

The whole-of-income cap is \$180,000 less any of the above payments and any taxable income your employee received in the relevant financial year. If the whole-of-income cap applies to their ETP, the cap will be the lesser of either the ETP cap or the amount calculated under the whole-of-income cap. Tax will be applied on that basis.

The Whole of Income cap is applied most often. The ETP cap (\$215,000 for 2020-21) will only need to be considered in the calculation if there are 'excluded ETPs' for the respective employee in the same financial year. Excluded ETPs include payments relating to:

- early retirement scheme (over tax-free limit)
- genuine redundancy (over tax-free limit), and
- Invalidity



WORKED EXAMPLES

Genuine Redundancy with Gratuity and Entitlements

Chris Hemsworth was made redundant after 9 years from a Victorian business. His termination included a 'gratuity' payment of \$40,000. Award uses NES standards.

Relevant information

- DOB: 02/02/1965 (over the preservation age)
- Start date : 01/07/2011
- End Date : 31/03/2021.
- LSL balance at the date of termination : 7 weeks
- Annual leave balance at the date of termination: 4 weeks.
- Annual Salary \$150,000
- Salary YTD \$112,000

Redundancy pay: \$46,153.84 (16 weeks in line with period of continuous service);

Notice: \$14,423.08 (5 weeks in line with continuous service and over 45); and

Tax free limit = \$10,989 plus (\$5,496 * 9 years) = \$60,453.

Since Chris is over the preservation age any ETPs amounts below the whole of income cap (WOI) will be taxed at 15%

Payment Type	Amount	Description	Rate of Tax	Medicare levy
Redundancy	\$46,153.84	Lump Sum D	0%	0%
Notice Tax Free	\$14,299.16	Lump Sum D	0%	0%
Notice over Tax free portion	\$123.92	ETP	15%	2%
Annual Leave	\$11,539.04	Lump Sum A	30%	2%
LSL	\$20,193.32	Lump Sum A	30%	2%
Gratuity under WOI Cap	\$36,143.72	ETP	15%	2%
Gratuity over WOI Cap	\$3,856.28	ETP	45%	2%

Gratuity Tax Calculation using WOI Cap (\$180k)

Earnings YTD	\$143,856.28 (incl AL, LSL & ETP notice)
Difference between WOI (\$180k)	\$36,143.72
Gratuity @ 17%	\$36,143.72
Gratuity @ 47%	\$3,856.28

Final Pay

Gross	\$132,309.28
PAYG	\$18,132.00
Net Pay incl Medicare levy	\$114,176.28

ACCESSING GOVERNMENT SUPPORT PAYMENTS

If an employee has been made redundant they should immediately register for JobSeeker regardless of any lump sum payment they may receive. While they might quickly find alternative employment and not require an income support payment, various waiting periods and asset tests apply when they have received a redundancy payment before they are considered eligible to receive benefit payments.

In particular, they'll need to disclose any details of the redundancy payment and any other liquid assets they own.

A Health care card is issued to people who are accessing income



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