

INFORMATION REGARDING REDUNDANCY

What Is Redundancy?

A redundancy occurs when the decision is made by an employer that a job their employee has been employed to carry out is no longer required. The employer's decision must be based on circumstances that are not part of the ordinary turnover of labour.

Possible reasons why a position could be made redundant by an employer include:

- technological changes that affect the business;
- restructuring of the business;
- an employer's inability to pay their employees; and
- the sale or purchase of a business where the new owners decide not to keep the previous employees.

Redundancy Guidelines

Employers and employees need to be aware of which guidelines apply to them. Reference should be made to your employment contract in the first instance. This document may outline the procedures your employer will follow when making a position redundant. Your employment contract may refer to another document, such as an industrial award, where the procedures and the entitlements of your redundancy can be found.

On 1 September 2005 the *Industrial Relations Act 1999* was amended to provide that an employee covered by an award or agreement (State or Federal) made after that date will have an entitlement to redundancy payments identical to those contained in the Statement of Policy unless the award or agreement excludes the relevant condition or provides an alternative provision.

This amendment does not apply if the application to certify an agreement was made on or before 1 September 2005.

What if I'm Not Employed Under a Contract or Award?

In this case you can apply to the industrial relations commission in your state for an order to ensure your employer pays the required severance pay. The commission will look to the federal law and current practice to make the provisions.

Your employer is obliged to consult you before making your position redundant and may be required to contact Centrelink to help you find another position.

What Are Entitlements?

Employment Contracts and Awards

These documents generally have sections in them that detail the procedures that will be followed when a person is made redundant. They cover the entitlements that will be paid, the period of notice that must be given, if you are entitled to some period of time to search for new employment and if any ex gratia severance payments are to be made.

Notice Periods

Period of Continuous Service	Notice Period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

In addition to the above notice periods if you are over 45 years of age and have worked with the same employer continuously for two years, the minimum notice period above is increased by one week. Employers may also choose to give payment in lieu of notice or a combination time notice and payment in lieu to equal the required notice period.

Time Off

If an employee is made redundant then they are entitled to one day paid leave for every week of notice. In the case where more than one day is given to an employee then the employer may request to see some proof that the employee has attended an interview to seek further employment.

Severance Payments

Period of Continuous Service	Severance Pay (weeks' pay*)
Less than 1 year	Nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

* Weeks' pay means the ordinary time rate of pay for the employee and excludes overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

Exceptions

Employees

The above does not apply to employees if they are:

- dismissed for misconduct;
- employed for specific period or task;
- casual employees;
- excluded from the provisions because they are seasonal workers or employees employed by the hour or day.

Employers

Some employers can be exempted from the provisions under the following circumstances:

- Small business employers are generally exempt from the redundancy section, where they employ employees who work a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The total of 550 hours per week is an average calculated over the previous 12 months;
- Incapacity to pay - an employer must make application to the relevant commission to amend the general severance pay prescription.

- Alternative employment - an employer can make application to the relevant commission to amend the general severance pay prescription where they obtain acceptable alternative employment for an employee.
- Where the business is transmitted from one employer to another, the severance pay provisions do not apply in the circumstances where:
 - the employee accepts employment with the new employer, who in turn recognises the employee's previous continuous service and accepts it as service with the new employer; or
 - the employee rejects an offer of employment with the new employer. This offer of employment must have been, in overall terms, substantially similar and no less favourable to the employee and it must recognise the employee's previous continuous service.

What Happens When There is a New Business Owner?

When a business is transferred to a new owner they can offer the employees new contracts of employment. Severance pay will not be payable where the employee accepts the new contract for employment and the new employer accepts the entitlements that the employee had accrued under their previous employment contract. Severance pay will not be payable if the employee who has been offered a new employment contract rejects this offer. However, the offer must be on a least as favourable terms as their previous employment contract and recognise their previous entitlements.

Disputing A Redundancy

Employees who believe their dismissal was unnecessary, harsh, unjust or unreasonable can apply to the Industrial Relations Commission for a hearing. The Commission will decide whether a dismissal is harsh, unjust or unreasonable by considering:

- the case's merit (the dismissal must be based on the operational requirements of the business i.e. has the position been made redundant); and
- the process involved in the dismissal (whether a fair process was followed).

The Act ensures that there is a balance between questions of process and the merits of the case. The process involved in making the dismissal is just one of several factors considered in deciding whether a dismissal is unfair.