FAQs - Redundancies

What is a redundancy?

It is a termination of employment. It is where an employee loses their employment through no fault of their own. A redundancy can occur when either the employer doesn’t need an employee’s job to be done by anyone or in the same way or in the same location, or the employer becomes insolvent or bankrupt or the company needs to reduce costs and as a result, headcount. Due to the fact that the employee has lost their employment this way, they are compensated with termination benefits. There are also special procedural obligations for employers to follow.

Can I make a role redundant?

Yes, you can when the following occurs:

* The employer decides that it no longer wishes the role that the employee holds to be performed by anyone
* This is not due to ordinary turnover of labour
* The decision means the employee is no longer employed by the organisation
* The termination is not due to any performance issues

What can trigger a redundancy situation for an employer?

The following scenarios can potentially trigger a redundancy situation:

* Substantial reduction in duties, responsibilities or reporting lines
* Change in the location of the position
* Sale or transfer of the business
* Significant financial pressure on a business to reduce costs

When do you need to make redundancy payments?

If your business has fewer than fifteen (15) total employees (including part-time employees and regular casuals), then you **may** not have an obligation to pay a redundancy payment, as you are classified as a small business. Please refer to your modern award or registered agreement to confirm whether or not you will have to provide redundancy pay. The casuals that are included in the calculation would need to be employed on a regular and systematic basis. This calculation also includes employees from any associated entities and also includes the employee(s) being dismissed.

If you have fifteen (15) or more employees (including part time employees and regular casuals) you will need to make a redundancy payment. Casuals are not entitled to a redundancy payment, but they may be entitled to a Long Service Leave payment depending on state legislation.

What are the redundancy payout figures if you have fifteen (15) or more employees?

If an employee is under a **registered agreement**, then redundancy entitlement information will be specified in the agreement. If the employee is covered by a **modern award**, then specific redundancy entitlements will be specified in the relevant modern award. Please see below for general entitlements. You can also refer to the [Fair Work Ombudsman](https://www.fairwork.gov.au/ending-employment/redundancy/redundancy-pay-and-entitlements) website for more information.

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| --- | --- |
| Employee’s continuous service at the time of termination | Redundancy Pay Period |
| Less than a year | Nil |
| At least one year but less than 2 years | 4 weeks’ pay |
| At least two years but less than 3 years | 6 weeks’ pay |
| At least three years but less than 4 years | 7 weeks’ pay |
| At least four years but less than 5 years | 8 weeks’ pay |
| At least five years but less than 6 years | 10 weeks’ pay |
| At least six years but less than 7 years | 11 weeks’ pay |
| At least seven years but less than 8 years | 13 weeks’ pay |
| At least eight years but less than 9 years | 14 weeks’ pay |
| At least nine years but less than 10 years | 16 weeks’ pay |
| Ten years and over | 12 weeks’ pay |

**Note:** You may question why at the ten years and over level there is a drop in the payout figure, this is due to the fact that they would have either accrued or taken their Long Service Leave at this point.

What is the process to make a role redundant?

The employer needs to meet with permanent employees to advise them that their role is at risk of redundancy. The employer should offer each individual employee access to a support person, if they would like to have one present. The employer needs to let them know they are considering whether there are redeployment opportunities for the employee and ask whether the individual has any thoughts around this. It may be highly unlikely that they hae anything to contribute but it is **very** important, they are given the opportunity.

At this point the employer should share with their permanent employees an indicative redundancy package in the event the redundancy progresses.

This would include annual leave and notice (if there are under 15 employees then you may not have to provide a redundancy payment). If there is a headcount of 15 or more employees, (and casual employees are included in this headcount), then redundancy payments would be required. It could also include a Long Service Leave payment, if the individual has over five years of service (depending on legislation in your state).

In the event that the employee confirms after being given time to consider, that they see no other alternatives then the redundancy can be finalised

If alternatives are put forward, you must consider these before making a final decision

Any payout upon termination needs to be paid on or before the next regular payday.

In many states, casual employees would also be entitled to a Long Service Leave payment. Check your state legislation to confirm this. As a casual, there are no annual leave entitlements.

How long does a former employee have to raise an Unfair Dismissal case with Fair Work?

All claims need to be registered within 21 days from the termination.

Do I have to provide more entitlements if the employee is over 45 years old?

Yes, employees over 45 years old who have completed at least two years of service when they receive notice are entitled to **one** additional week of notice.

Who is entitled to a redundancy payment?

A redundancy payment is due to any employee, who is either permanent part-time or full-time, who is made redundant from a business with 15 or more employees, or some eligible small businesses depending on the modern award.

What are my consultation obligations?

Modern Awards and the Fair Work Act stipulate the process employers are required to follow when making employees redundant. By not following the correct consultation process the redundancy may be considered unfair, and the employer could be instructed to pay the employee up to 6 months salary if the employee makes an unfair dismissal complaint to the Fair Work Commission.

The consultation process sets out what the employer needs to do when they decide to make changes to the business that are likely to result in redundancies.

Employers are required to :

* Notify the employees who may be affected by the proposed changes as soon as possible after the decision has been made to make the changes
* Provide the employees with information about the changes and their expected effects
* Discuss the steps taken to avoid and minimise negative effects on the employees
* Give consideration to employees ideas or suggestions about the changes

Can I re-employ a person whom I have made redundant?

Employers are not prohibited under the Fair Work Act from re-employing former employees who were terminated as a result of redundancy, provided the termination was a genuine redundancy.

If an employee alleges that the redundancy was not genuine, you may receive an unfair dismissal claim, and be required to demonstrate that the redundancy was genuine.

Some companies have a policy which prohibits the re-employment of a former employee for a specified period of time, often 12 - 24 months.

There may also be tax implications as ‘bona fide’ redundancy payments are given concessional tax treatment.

Do I need to develop a business case for the changes that have resulted in a redundancy?

Without a strong business case outlining the justification for a redundancy, the redundancy may not be considered genuine, leaving you liable for up to 6 months salary if the employee makes an unfair dismissal complaint to the Fair Work Commission. Redundancy happens when either:

* an employer doesn't need an employee’s job to be done by anyone, or
* the business becomes insolvent or bankrupt.

Your business case should be communicated to the employees as part of the consultation process.

Why do I need to know the Modern Award that my business or your employee/s are covered by?

Modern Awards stipulate the process an employer is required to follow and the rate of redundancy pay the employee is entitled to (if applicable). By not knowing the Modern Awards your business employee/s are covered by, you could unknowingly not adhere to your legal obligations under Fair Work, and be liable for up to 6 months salary should an unfair dismissal complaint be made to the Fair Work Commission.

What are my obligations as a Small Business (less than 15 employees) regarding Redundancy Pay?

There is different guidance on Redundancies for Small Businesses. Some businesses are not required to provide Severance Pay in the case of Redundancy. If your business or employees are covered by a Modern Award, this Award will stipulate the guidance on Redundancies. You may be required to provide severance pay.

Are you aware that most small businesses (less than 15 employees) are not required to pay redundancy pay under the National Employment Standards?

Employees of most small businesses (<15 employees) are not entitled to redundancy pay, **unless** the Modern Award stipulates otherwise. Small businesses still must follow a Redundancy Process as stipulated by the Modern Award, or National Employment Standards.

What are my obligations around redundancy notice periods?

Modern Awards and the National Employment Standards outline the minimum notice period an employer is obligated to provide the employee. However, an employee's employment contract may provide for a higher notice period. Failure to provide the correct notice period according to Fair Work or the employment contract could result in a fine.

What are my obligations around payment in lieu of a notice period?

If payment instead of notice and the appropriate redundancy pay is paid to the employee, their employment ends at the time that payment is made. Any payment in lieu of notice is calculated based on the employee’s full pay rate and usual hours and days of work (as if any stand down didn’t apply). For example, an employee who is entitled to 3 weeks’ notice will get 3 weeks’ pay at their full rate for their usual hours.

What other payments are employees entitled to upon redundancy?

In addition to redundancy pay and notice, an employee is entitled to be paid all accrued, unused annual leave, as well as any outstanding long service leave (if applicable).

What process do I need to follow if multiple employees are doing the same job and only some need to be made redundant?

In a situation where multiple employees are performing the same role and not all are being made redundant, an employer is obligated to conduct a fair and reasonable selection process to identify which employees will be made redundant. You must outline the redundancy criteria relevant to your business in order to demonstrate a genuine redundancy and avoid a potential unfair dismissal claim.

Do I need to provide a support person for my employee during the consultation process?

It is best practice to allow the employee to bring a support person to a redundancy meeting. This could be a friend, family member, colleague or trade union representative. If you refuse the request of a support person this could be deemed unfair dismissal in terms of process, and could lead to a payment of up to 6 months salary if the employee makes a complaint to the Fair Work Commission.

What is the role of a Support Person in a consultation meeting?

The Support Person attends the meeting to provide emotional support to the employee, they are not to advocate for the employee. Fair Work provides guidance around what a Support Person can or cannot do as part of the consultation process.

What are my obligations in relation to redeployment?

An employer has an obligation to offer suitable alternative employment to an employee at risk of redundancy as well as alternative employment which may not be deemed suitable e.g. this could mean offering a role on a lower salary. By not offering suitable alternative employment an employer is at risk of paying up to 6 months salary if the employee makes a complaint to the Fair Work Commission.

What are the documentation requirements for a redundancy?

Employers are obligated to provide employees with documentation outlining the reason for the termination of employment, and the entitlements to be paid to the employee. Documentation is required as part of the consultation process, and when confirming the Redundancy.

Do Centrelink need to be notified when redundancies take place?

When 15 or more employees are being made redundant the employer has an obligation to notify Services Australia.

COVID-19 and Redundancy

How do the Jobkeeper provisions interact with the rest of the Fair Work Act in regards to redundancies?

The redundancy provisions of the Fair Work Act continue to apply for those businesses claiming JobKeeper.

What are my ATO obligations when making an employee who is receiving Jobkeeper redundant?

If an employee is receiving JobKeeper the employer is required to notify the ATO if the employee is made redundant so that they can be removed from the Scheme.

What are my obligations under Jobkeeper that relate to requesting an employee take paid leave during a redundancy notice period?

The Fair Work Act JobKeeper provisions mean that a qualifying employer can:

- request an eligible employee to take paid annual leave (as long as they keep a balance of at least 2 weeks)

- agree in writing with an eligible employee for them to take annual leave at half pay for twice the length of time.

What are my obligations in relation to a redundancy during leave or a stand-down?

If an employee is on leave or has been stood down, the usual rules about dismissal still apply (for example, rules about unfair dismissal and redundancy). If an employer makes an employee’s job redundant while the employee is stood down, the employer can:

- let the stand down continue, and at the end of the notice period, pay the employee the required redundancy pay

- let the employee return to work through their notice period, pay them for any time worked, and at the end of the notice period, pay the required redundancy pay

- pay the notice period out to them (known as payment in lieu of notice) and pay the appropriate redundancy pay, or

- give a combination of the above.

What are my obligations in relation to redundancy entitlements for employees working reduced hours under an award variation?

The Fair Work Commission has recently varied some awards as a result of COVID-19. Some of these changes affect employee entitlements. Employees working reduced hours under these awards continue to accumulate entitlements based on their original hours before the change. Redundancy and final pay entitlements need to also be based on their original hours.