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 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 either of 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 casuals), then there is no redundancy payment to be made as you are classified as a small business. 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 you will need to make a redundancy payment. Casuals are not entitled to a redundancy payment, but they are entitled to a Long Service Leave payment if they have worked for the company for more than 10 years, and have not taken their Long Service Leave.

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 i

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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 |

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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. In this circumstance, it is highly unlikely - but in order to follow due process this is important.

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 no redundancy package is payable). 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. This payment would be pro-rated and if they had been continuously employed for ten years this would be 8.67 weeks.

In the event that the employee confirms they see no other alternative roles, the employer might be able to finalise the redundancy discussion in the one meeting. (If not, they can arrange to meet the next day to consider the employee’s suggestions). If any are viable, the employer might look to transfer them to another role – otherwise the redundancy can be finalised. The payout needs to be paid on or before the next regular payday.

In NSW, casual employees would also be entitled to a Long Service Leave payment. 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 pay more if the employee is over 45 years old?

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.

Can I fire someone for non-performance?

Yes and I would encourage all small business owners to actively manage non-performing employees back to performance or ‘out the door’. One thing that I am very sure of is that SMEs cannot afford to carry a non-performing employee. The impacts can be enormous and can take a long time to repair. They often cause a loss in revenue, reputation, client relations and internal morale.

There are a couple of options. You can begin a comprehensive performance improvement plan. The individual will either return to or start performing at the required level or you terminate on the basis of non-performance.

Alternatively, you can conduct a ‘without prejudice’ conversation (otherwise known as off the record) and offer some money to resign and to not take legal action. This offer needs to be made attractive and is a payment on top of annual leave entitlements and any notice period.

Can I fire someone for misconduct?

Yes you can but you need to follow ‘due process’ which should go something like this:

* Call the individual into a meeting,  allow them to bring along a support person and then share the allegations verbally - a written copy of the allegations should also be provided
* Explain to the individual that a formal investigation is to be conducted, the process involved and that they are suspended, on full pay until further notice
* All the employees involved should be interviewed plus any other witnesses that come out of the investigation. All interviewees need to be advised on their confidentiality obligations and all interviews should be carefully documented
* The results of the investigation should be shared with the individual allowing the individual to respond to the allegations, including any reasons for this behaviour. You should also let them know that they are welcome to take legal advice
* All the interviews are then reviewed and assessed and a determination made of ‘*whether on the balance of probability’* the behaviour has occurred
* The next steps are to formally advise the individual of the findings and, again, ask for a response. The findings might be:
	+ the behaviour did not occur
	+ the behaviour did occur but there were extenuating circumstances or the instances were minor in nature, or
	+ the behaviour did occur

Can I fire someone for stealing?

Yes you can, and you should, as long as you followed the appropriate steps:

* Conduct preliminary investigation - have enough evidence to pursue a more detailed investigation and arrange to meet with them, asking them to bring a support person along. You should also have someone to make notes of the meeting
* Conduct meeting - explain your concerns and that you need to conduct a full investigation and, while this is occurring, they will be suspended from work on full pay. Remember ‘innocent until proven guilty'
* Suspension - look to suspend the employee on full pay while you conduct an investigation. You need to check your Award and also it is good to have a clause in your contract that allows you to do this
* Response sought - ask them whether they have any response to the allegations at this point and note these down. Also ask them whether there are any extenuating circumstances in play; for example an illness or relationship breakdown
* Formal investigation - conduct a detailed and thorough investigation until you are very comfortable that you can prove or disprove the alleged theft. This may include bank reconciliations and interviews with witnesses. Consider whether you wish to involve the police at this point
* Outcome meeting - arrange a meeting to share the findings and suggest that they bring a support person along. Advise the outcome of the investigation; should the investigation confirm that the theft did not occur, return the individual immediately to their role and look to manage any fallout
* Theft occurred – you can terminate immediately on the grounds of *gross misconduct* without notice. Provide a letter confirming the situation and termination

You need to manage this scenario with a high level of discretion and confidentiality before, during and post the investigation and any subsequent termination. Ensure that you draft a communication plan for management, employees, suppliers and clients.

You should also consider contacting the police as theft is illegal and too many employers don’t pursue legal action which leaves the culprit without a reference from you yes, but also still with the ability to go onto the next employer and potentially repeat the crime.

Can you fire someone on the spot & have them leave immediately?

Yes, if you are very sure that they have committed gross misconduct - that is they have committed assault, fraud, exhibited drunkenness or drug use, acting in an unsafe manner, absenteeism, abusive behaviour or sexual harassment. I would recommend, where appropriate, reporting this misconduct to the police. This termination would be with immediate effect and without notice pay.

Can you suspend someone without pay?

In most cases no, and this is generally covered in your Modern Award. For example, if an individual was accused of conducting fraud then you could suspend them, but on full pay, while you conducted an investigation. This is largely due to the presumption of innocence.

What are you trying to avoid when terminating or dismissing someone?

The test is, was the termination ‘Unfair, Unjust or Unreasonable? That is, did you follow ‘due process’ and were you ‘reasonable’ with your approach and expectations. For example, if you set unreasonable criteria for improvement, say demanding an individual to bill $300K revenue this month when $200K is a massive target for a top performer, then this would be deemed to be unreasonable.