

## EMPLOYERS GUIDE TO REDUNDANCY VOLUME 1

HR/IR is a HR consultancy firm based out of Wollongong. We are legally trained and focus on workplace/employment problem solving and advice. We work with management teams to help manage workplace relations. In addition to advice/problem solving, we write any formal documentation that you require including contracts, policies and onboarding procedures.

### What is Redundancy?

#### 5 rules of redundancy

1. Redundancy is the removal of the job, not the specific person.
2. Business case. No redundancies can take place until a valid business case has been set for restructuring the workforce.
3. Consultation. Workers must be consulted and their feedback listened to.
4. New Roles & Drafting a Selection Criteria. Consider if any roles can be offered to any of the employees. How will the new jobs be selected?
5. Notice & Redundancy Pay. When a role is abolished, they are entitled to receive notice under the National Employment Standards. If a business has more than 15 employees, employees may be entitled to severance pay.

#### RULE ONE: REDUNDANCY IS THE REMOVAL OF THE JOB, NOT THE PERSON

##### Reasons for Redundancy:

New technology may have been introduced, eliminating the need for a position.

Restructuring so that work is completed differently or by other members of the team.

Financial issues may require an employer to reduce the size of their workforce.

Physical factors of the business such as relocation.

##### What Laws Cover Redundancy?

Redundancies are covered by the National Employment Standards (NES) under the *Fair Work Act 2009* and most Modern Awards. Award-free employees are covered by individual contracts and the NES redundancy provisions.

## RULE TWO: BUSINESS CASE

Before a role is abolished, the business manager must develop a written business case justifying such a change. Without a valid written business case the Fair Work Commission could find the redundancy was a sham and the employer could face an unfair dismissal case.

For example, wanting a more qualified accountant is *not* a valid reason for redundancy (*McIlwraith v Toowong Mitsubishi*). Your business case should show valid *need* for change.

### Business case checklist:

Make sure you ask yourself the following questions for your business case:

- Has there been a downturn in business? What percentage?
- Do you anticipate a downturn in business? What is the timeframe?
- If you do, what do you expect the downturn to be? Give two reasons.
- Has there been a cost increase? Can this be passed on to your clients?
- What costs can you reduce?
- Can you outsource any duties?
- Have there been any technological changes that can save you money/time?

### Key Takeaways:

- Drafting a business case is the first step in the redundancy process. The business case should outline your need for change.
- That a limited number of matters can give rise to the abolition of a role.
- Redundancies must not be used because of poor performance; they are a result of problems within your business.

An example of a business case is attached to book 2, 'Templates and Case Studies'.

The logo consists of a blue circle containing the letters 'H' and 'R' stacked vertically on the left, and 'I' and 'R' stacked vertically on the right, separated by a diagonal slash.

Always get advice from your accountant and other advisors in developing a business case or ring John Morrissey for help at 0407069507.

## RULE THREE: CONSULTATION

No decision is made about abolishing a job until the potentially affected employees have been consulted about the possibility that their job may no longer be a requirement to the business.

Modern awards require you to have a consultation *before* making any redundancy decisions.

An improper consultation can lead to a claim of unfair dismissal. The failure to consult can be the only reason a dismissal is deemed unfair. In *UES v Harvey*, the employer had to pay the redundant employee an extra two weeks' pay despite having valid reasons for redundancy.

### **When do I need to consult with my team?**

When it is deemed necessary to make changes within your business, you should begin consulting staff. Staff must be actively involved in the consultancy process, including Q&A sessions and time to voice their opinion.

### **What does a redundancy consultation look like?**

A redundancy consultation is performed in person. Part-time staff should be consulted while working, or risk paying overtime. Employees working from home should be given a choice between coming in and connecting remotely.

Have a script for the meeting and workshop possible Q&A subjects. You should discuss:

- Timetable of decisions
- Advising the union
- Positions affected & positions created
- How the extra work will be shared with the team
- Why you need to make cuts
- How you're going to choose staff for redundancy
- Give employees time such as 2-4 days to give you oral or written feedback.

### **Key Takeaways:**

- You need to consult your employees *before* making any decisions about redundancies.
- You make sure that your employees are available for the consultation.
- You should plan what will be said and what may be asked.
- Consultation is not a box-ticking exercise, it should be a two-way conversation, and you should hear from all staff members.

#### **RULE FOUR: NEW ROLES & DRAFTING SELECTION CRITERIA**

If new roles are to be created, you must decide if the old employees can apply for the new positions. You need to let the employees know if they can apply for the new roles.

*Can an employer direct an employee whose position is abolished to do other work?*

Answer: Usually yes. This is provided that the new job is within the employee's skill set and training is available.

When selecting employees for compulsory redundancy, you must use objective criteria to make your decision. The criteria should be objective and non-discriminatory. Concepts of "first on first off" or "last on first off" will not be valid.

For some example selection criteria, consult book 2 on redundancy, 'Templates and Case Studies'.

#### **Support impacted employees**

Whilst the position may be redundant, this does not diminish the employee's contribution. You should ensure that the employee understands that it is purely a business decision and provide other forms of support.

When employees are part of your business, you want them to remain productive and supported. This is best for both the employee and your business.



When creating new roles, it is important that you have correctly formatted contracts and job descriptions. Contact HR/IR Solutions Wollongong for professional advice and drafting.

## RULE FIVE: NOTICE & REDUNDANCY PAY

### Notice:

The notice period can be tricky, but the general rule is this:

- Period of continuous service: 1 Year or less
  - 1 week of notice
- Period of continuous service: 1-3 Years
  - 2 weeks' notice
- Period of continuous service: 3-5 Years
  - 3 weeks' notice
- Period of continuous service: 5+ Years
  - 4 weeks' notice

If an employee is over 45 and has worked for at least two years of service, they are entitled to an additional week of notice.

You will additionally need to give your employee paid time off during the notice period to allow your employee to search for a new job. This time off will be dictated by your employee's award.

### Redundancy pay:

Redundancy pay follows a neat structure which is outlined in this table:

| Period of continuous service                   | Redundancy pay (weeks of salary) |
|------------------------------------------------|----------------------------------|
| At least one year but less than two years      | 4 weeks                          |
| At least two years but less than three years   | 6 weeks                          |
| At least three years but less than four years  | 7 weeks                          |
| At least four years but less than five years   | 8 weeks                          |
| At least five years but less than six years    | 10 weeks                         |
| At least six years but less than seven years   | 11 weeks                         |
| At least seven years but less than eight years | 13 weeks                         |
| At least eight years but less than nine years  | 14 weeks                         |
| At least nine years but less than ten years    | 16 weeks                         |
| At least ten years                             | 12 weeks                         |

**Tax:**

It is important to note that there is a tax-free threshold on severance pay. The way to work out this tax-free limit is as follows:

$$\text{Tax-Free Limit} = \text{Base Amount} + (\text{service amount} \times \text{years of service})$$

The Base Amount and Service Amount are changed each year. For example, in 2022-23, the base amount is \$11,591 and the service amount is \$5,797.

**Long-Service Leave:**

It is also important to note that you must pay out long service leave when making an employee redundant. Regularly, long service leave is accrued when an employee has over 10 years of service, but in the case of redundancy, you start the calculation at 5. It is important to note that unpaid forms of leave will cause the calculation to pause.

**Employees who are not entitled to redundancy pay include:**

- Employees whose period of continuous service with the employer is less than 12 months
- Employees employed for:
  - a stated period
  - an identified task or project
  - a particular season
- Employees fired because of serious misconduct
- Casual employees
- Trainees engaged only for the length of the training agreement
- Apprentices
- Employees of a small business (Less than 15 employees).
  - The 15 employees are not made up of contractors but include casuals, interstate/territory employees and international employees

**Notifying Services Australia:**

It should also be noted that if you are planning on making 15 or more staff redundant, you need to fill out a copy of Services Australia's "Notice to Services Australia of proposed dismissals" (<https://www.servicesaustralia.gov.au/redundancy-information-for-employers>).