Redundancy

A redundancy is where the employer does not want the job to be done by the employee anymore and does not want the job to be done by anyone else because of the operational requirements of the workplace. This may be due to a downturn in business, the implementation of machinery to perform the employee's job, or the position is over-resourced and too many people are performing the same function.

Under the *Fair Work Act 2009*, a "genuine redundancy" makes an employee ineligible for a claim of unfair dismissal. A "genuine redundancy" is where:

1. the employer no longer requires the employee's job to be performed by anyone because of the operational requirements of the employer's enterprise; and
2. the employer has complied with any obligations in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

Consultation may require the employer to notify the employees (and their representative, which may be the union) of coming terminations once the decision has been made. The employer may have to discuss the changes with their employees and provide written information to them about the changes, although they do not have to reveal confidential information. There is a Best Practice Guide - Consultation & Cooperation in the Workplace that has been published by the Fair Work Ombudsman.

A redundancy is not genuine if it would have been reasonable in all the circumstances for the person to be redeployed within the employer's enterprise or the enterprise of an associated entity of the employer. This requires a consideration of the employee's skills and the available positions within the employer's enterprise or an associated enterprise.

Certain situations are not terminations or redundancies, such as the expiry of a specified period or task or the demotion of an employee.

Employees including high income earners are entitled to redundancy pay except for casuals, seasonal, trainees, specific task/period employees or employees of a small business. To be eligible, the employee must have at least 12 months service, which excludes periods of unpaid leave. Where an employee is made redundant, the employee is entitled to:

1. notice of termination (or payment in lieu thereof); and
2. an amount of redundancy pay based on the employee's period of continuous service with the employer using the following table. Redundancy pay is paid at the employee's base rate of pay.

Period of Service - Amount of Redundancy Pay

At least 1 year but less than 2 years - 4 weeks' pay

At least 2 years but less than 3 years - 6 weeks' pay

At least 3 years but less than 4 years - 7 weeks' pay

At least 4 years but less than 5 years - 8 weeks' pay

At least 5 years but less than 6 years - 10 weeks' pay

At least 6 years but less than 7 years - 11 weeks' pay

At least 7 years but less than 8 years - 13 weeks' pay

At least 8 years but less than 9 years - 14 weeks' pay

At least 9 years but less than 10 years - 16 weeks' pay

At least 10 years - 12 weeks' pay

Redundancy pay does not need to be paid for the transmission of a business or if the Fair Work Commission makes an order exempting the employer due to the employer's incapacity to pay, or if acceptable alternative employment has been obtained for the employee.