Fact Sheet

LIVE PERFORMANCE AUSTRALIA

REDUNDANCY

1. When is an employee redundant?

A redundancy occurs when the employer either:

- does not want the employee's job to be done by anyone; or
- becomes insolvent or bankrupt.

This may be due to a downturn in business, closure of the business, 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:

- 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
- the employer has complied with any obligations in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

A termination of employment is not a "genuine redundancy" when:

- the employer still needs someone to do the employee's job (or hires someone else to do the job); or
- the employer has not followed the requirements to consult with employees about the redundancy under the relevant modern award or agreement; or
- the employer could have given the employee another job in the employer's business.

2. How does an employer consult with employees?

All modern awards and enterprise agreements have a consultation process which must be followed when there are major changes to the workplace, including redundancies. See for example:

- *Live Performance Award 2010* (clause 8);
- *Broadcasting and Recorded Entertainment and Cinemas Award 2010* (clause 8);
- *Amusement Events and Recreation Award 2020* (clause 31)*; and*
- *Clerks - Private Sector Award 2020* (clause 38).

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. An employer does not have to reveal any confidential business information during a consultation.

3. What is an employee entitled to be paid for redundancy?

When an employee is made redundant, an employer must give the employee redundancy pay. To be eligible, the employee must have at least 12 months' service, excluding periods of unpaid leave.

Redundancy pay does not have to be paid when the employee was:

- employed for a specific season, task or stated period of time;
- terminated because of serious misconduct;
- employed on a casual basis;
- a trainee engaged for the length of a training contract;
- an apprentice; or
- employed by a business that employs fewer than 15 people.

Where an employee is made redundant, the employee is entitled to:

- notice of termination (or payment in lieu thereof); and
- an amount of redundancy pay based on the employee's period of continuous service with the employer; and
- redundancy pay is paid at the employee's base rate of pay; and
- an employee who has been stood down, or is working reduced hours due to a JobKeeper enabling direction is entitled to redundancy pay as if they had not been stood down, and as if they had not been given the JobKeeper enabling direction. The redundancy pay is based on the usual hours of work before the employee was stood down.

Period of continuous employment	Amount of Redundancy Pay
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

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.

4. What if an employer cannot afford to pay the redundancy amount?

An employer can apply to the Fair Work Commission to have the amount of redundancy pay reduced (including to zero) if:

- the employer finds other acceptable employment for the employee; or
- the employer cannot afford the full amount of redundancy pay.