Guide to Redundancy Entitlements

1. What is "redundancy"?

Redundancy is where the employment is terminated because their employer no longer requires the employee's role to be done by anyone.

Redundancy may result from circumstances including:

- insolvency or bankruptcy of their employer;
- merger or takeover of their employer;
- relocation of the employer's business;
- restructure;
- downturn in business and downsizing; and
- technological change.

2. Entitlements on redundancy

An employee by be entitled to additional benefits on termination for redundancy, depending on factors such as:

- type of employment;
- length of service;
- applicable modern award or enterprise agreement (if any);
- their employment contract.

Industrial instruments such as awards, collective agreements, individual agreements or employment contracts may provide employees with a right to receive payments in the event of redundancy.

National system employees are covered by the "National Employment Standard" for redundancy pay. To be eligible for redundancy pay under the NES, an employee must meet certain criteria including having completed at least 12 months of continuous service with their employer and is not working for a "small business" that employs fewer than 15 employees.

3. Genuine redundancy

An employee who has completed their minimum employment period of 6 months (or 12 months for a business with less than 15 employees) may be able to apply for unfair dismissal if their redundancy was not "genuine". For more information about unfair

dismissal refer to our “Guide to Unfair Dismissal in the Fair Work Commission” and our “Guide to When a Dismissal is Harsh, Unjust or Unreasonable”.

A redundancy is genuine if:

- the employer no longer requires the job to be done by anyone;
- redeployment opportunities have been offered; and
- consultation obligations in the applicable award or enterprise agreement have been followed.

4. Casual employees

Casual employees are usually not entitled to pay entitlements on redundancy but still may be protected by fair dismissal law from a redundancy that is not genuine.

5. Voluntary redundancy

Sometimes an employer that wants to downsize may ask for expressions of interest from persons who are willing to be made redundant. Sometimes the employer is willing to pay an extra amount to incentivise personnel to agree to a redundancy. This can be an excellent opportunity to negotiate additional benefits. For executive, professional and sales positions it may also be an opportunity to negotiate the relaxation of post-employment termination restraint clauses.

6. Further information

You should consider contacting WorkLegal without delay for advice about a redundancy situation.