

> Industrial Relations Fair Work Information Sheet Redundancy

This fact sheet is relevant to all employers in Queensland.

What is Redundancy?

Redundancy occurs when an employer decides that a position within the workplace is no longer required to be performed by anyone. This decision may be due to:

- Technological changes
- Restructuring of the workplace
- An employer's inability to pay employees
- The sale of a business, where employees are not kept on by the new owners

A position is not redundant when it is slightly restructured or renamed. The key to determining whether a position is redundant is to consider whether that particular role will continue to be done by anyone. The decision should be based on circumstances other than the ordinary and customary turnover of labour. It is always the position that is redundant, **not** the person.

Redundancy Provisions and Where to Find Them

Redundancy is provided for in the Fair Work Act 2009 ('the Act'), and is contained in the National Employment Standards (NES). Awards, workplace agreements and employment contracts may also provide for redundancy, only if provisions are more generous than those in the NES. These instruments stipulate the level of consultation, notice and redundancy payment required to make an employee redundant.

Redundancy and Unfair Dismissal Claims

Under the Act, an employee who is made redundant can pursue an unfair dismissal claim as long as certain criteria are met. Fair Work Australia (FWA) will determine if the dismissal was due to genuine operational reasons, and if such reasons exist, the claim should not proceed.

Exemptions From Redundancy Payments

A number of exemptions exist, including automatic exemptions for small businesses, casuals and fixed term employees. An employer can also apply to FWA for an exemption on the basis of incapacity to pay, the employee turning down comparable employment in another position, or if they have found suitable alternate employment for the employee.

Small Business Exemption

Under the Act, a small business employer is not required to pay redundancy. A small business employer is an employer who, immediately before or at the time of giving notice, employs fewer than 15 employees, inclusive of any employees whose employment is being terminated.

Specific Employees

Fixed term, seasonal and casual employees are not entitled to receive notice or payment in the event of redundancy. However, long-term casuals (those with over 12 months regular and systematic employment) are eligible to claim unfair dismissal, so employers should remain mindful of best practice to ensure the dismissal cannot be viewed as harsh, unjust or unreasonable.

Transmission of Business

When a new employer purchases a business they may take on the existing employees. The new employer if an associated entity is then responsible for the service and accruals the employees accumulated with the previous employer and no redundancy is payable. If the employee rejects an offer of employment with the new employer where the terms and conditions are no less favourable than with the previous employer, the employee is not entitled to redundancy payment. If the new or second employer is a non-associated entity who decides not to recognise the [employee's service](#) with the [first employer](#), but accepts employment with the second employer then accrued entitlements must be paid by the first employer and severance payment unless the first employer on application to Fair Work Australia it is determined that severance pay is not payable or may be reduced.

See also our fact sheet on 'Transfer of Business'

Redundancy Processes

Employers should follow the process specified in the Modern Awards for consultation regarding major workplace change, which specifies that when a definite decision to introduce major change has been made, such as making positions redundant, the employer must notify all employees potentially affected and their representatives as early as practicable. The employer must also provide to the employee in writing all of the relevant information regarding the redundancy as detailed in the above-mentioned process.

To prevent or defend any unfair dismissal claims, it is important to demonstrate procedural fairness throughout this process. This means that an employer's actions should be transparent and communication open with regard to any redundancy situation. Employers can achieve this by notifying affected employees as soon as possible, providing clear and rational explanations for the redundancy, allowing employees to ask questions and answering any questions honestly.

Where the number of similar positions is being reduced and therefore only one or some employee/s in these positions will be redundant, an employer should ensure they use a well documented, merit based selection process to justify which employees were terminated.

In addition, there is also a requirement under the Fair Work Act to show that the employee could not have been redeployed elsewhere in the employer's business or an associated entity of the employer.

Employers who are making 15 or more employees redundant have an obligation to notify external parties such as Centrelink or the relevant union in certain situations. Employers who are making more than 15 employees redundant should contact CCIQ for assistance.

Notice of Redundancy

The notice period for redundancy is the same as the notice period for termination. The Act prescribes the following minimum periods of notice:

Period of continuous service	Notice period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks



More than 5 years

4 weeks

If an employee is over 45 and has completed 2 years or more continuous service, they are entitled to an additional week of notice.

An employer may require the employee to work during the notice period, or may elect to pay the employee in lieu of serving the notice period. Should an employee serve the notice period, they are entitled to the equivalent of one day's time off without loss of pay for the purpose of seeking alternate employment. This is to be at a time or times mutually agreed between the employee and employer.

Redundancy Pay (Severance)

Redundancy pay is separate and in addition to the notice of redundancy or payment in lieu thereof specified above. The amount of redundancy payable to an employee is set out in the Act. Redundancy is payable at the base rate of pay for the employee's ordinary weekly hours of work. The Act prescribes the following amounts of redundancy payable to redundant employees on termination:

Period of continuous service	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

Continuous Service

Generally, continuous service refers to paid working time and paid leave. Periods of approved unpaid leave, such as maternity leave, do not break an employee's continuity of service but do not count as service for the purpose of calculating termination payments.

Continuity of service is only broken by a period of unauthorised absence exceeding 3 months. For example, an employee who resigns having 2.3 years service and is re-employed by the same company 2 months later would have their previous 2.3 years service reinstated.

Please note that Redundancy Pay under the Act is a new provision. For employees who have no previous redundancy provision in an award or agreement the Redundancy Pay provisions in the Act will apply. For continuity of service purposes, 1 January 2010 is the beginning of service for employees covered under the Act. For example, an employee began employment in February 2006 and had no redundancy provisions in an award, agreement or contract. From 1 January 2010 they have the entitlement to redundancy pay, however their previous service from 2006 to 31 December 2009 does not count for calculating continuous service for redundancy pay and the first time they can access redundancy pay is on 1 January 2011.



For further information contact the Chamber of Commerce and Industry Queensland's Employer Assistance Line on 1300 135 822 or lodge a query at our Online Portal found on the CCIQ website under Employer Assistance Line.

DISCLAIMER: This document is an information source only. Despite our best efforts, CCIQ makes no statements, representations or warranties about the accuracy or completeness of the information and disclaims responsibility for all liability for all loss or damage you might incur as a result of the information being inaccurate or incomplete in any way, and for any reason. The information contained in this document is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

Last Updated: 1 February 2010

Invigorating Business

www.cciq.com.au