

# Fact Sheet

## EMPLOYMENT LAW



### Redundancy for Small Business Employers

An employee's role becomes redundant if an employee's employment is terminated by his or her employer because the employer no longer requires the role to be performed by anyone<sup>1</sup>. A redundancy may also occur where an employer becomes insolvent or bankrupt<sup>2</sup>.

An employer that terminates a person's employment on the grounds of redundancy is at risk of an unfair dismissal claim in circumstances where a genuine redundancy has not occurred. A genuine redundancy occurs if: [fn s 389]

- the employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise;
- the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy; and
- it was not reasonable in all the circumstances for the person to be redeployed with the employer's enterprise or an associated entity of the employer.

If a ***genuine redundancy*** occurs an employer will be required to pay a redundancy payment unless they are a ***Small Business Employer*** within the

1. s119(1)(a)

2. s119(1)(b)

meaning of the ***Fair Work Act 2009*** (FW Act)<sup>3</sup> or unless the employee is a true casual employee in which case he or she is not entitled to a redundancy payment<sup>4</sup>.

A ***Small Business Employer*** is an employer that employs less than 15 employees at the time that the termination occurs<sup>5</sup>. To calculate the head count, the permanent employee or employee(s) being terminated at that time are included together with any casual employees who work on a regular and systematic basis. If the owner works in the business he or she is also included in the head count.

Therefore if you are a ***small business employer***, you will not be required to make a redundancy payment in the event of a genuine redundancy.

You will however be required to give any permanent employees notice on termination in accordance with the National Employment Standards<sup>6</sup> or the employee's contract of employment or enterprise bargaining agreement, whichever is the higher. Notice may be worked or paid out in lieu.

For further information regarding termination of casual employees, please read our Fact Sheet entitled – The Fair Work Act 2009 (Cth) - Termination of Casual Employee.

3. s121(1)(b)

4. s123(1)(c)

5. s23

6. s117



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