

Fact Sheet – Redundancy

1. What is redundancy?

Redundancy is where an employee is dismissed from their employment because their employer no longer wishes the employee's role to be done by anyone.

Redundancy can occur even if the work of the dismissed employee continues to be performed by other employees, as long as the position that the former employee occupied has been eliminated.

There is no redundancy where a worker is seconded to work for another firm, but is still employed by the same employer and performs the same duties.

Geographic relocation of an employee can amount to a redundancy where the relocation is because the employee's former position is no longer needed.

Redundancy can also occur when an employee is no longer employed due to the insolvency or bankruptcy of their employer.

1.1 Causes of redundancy

Redundancy may be a result of any of the following causes:

- merger or takeover;
- relocation of business;
- restructuring of business;
- downturns in the business;
- economic downturns;
- market changes;
- structural changes (for example, the exchange rate); and
- technological change.

2. Redundancy payments

2.1 Payment from the employer

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.

Also, from 1 January 2010, all employees covered by the national industrial relations system under the *Fair Work Act 2009* (Cth) (**FW Act**) are entitled to redundancy pay, even if it is not provided for in the industrial instrument applying to the employee. This forms one of the National Employment Standards (**NES**), the minimum entitlements for employees established under the FW Act. To be eligible for redundancy pay under the

NES employees must have completed at least 12 months of continuous service with their employer, and must not be working for an employer employing fewer than 15 employees.

Under the NES, an employee is entitled to be paid redundancy pay if his or her employment is terminated:

- at the employer's initiative because the employer no longer requires the employee's job to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
- because of the insolvency or bankruptcy of the employer.

An employee who is dismissed due to redundancy is also entitled to certain termination payments, such as unpaid wages (including superannuation), payment in lieu of notice (if applicable), payment for accrued annual leave and, if the employee has completed the necessary period of continuous service, payment for accrued long service leave.

(a) Eligibility

The following employees are not entitled to redundancy pay under the NES:

- casual employees;
- probationary employees;
- apprentices and trainees;
- employees terminated for serious misconduct;
- employees engaged for a specified period of time or for a specified task;
- employees who have less than 12 months' continuous service; and
- employees working for a "small business employer" (an employer employing fewer than 15 employees).

Employees will also not be covered by the redundancy pay provisions in the NES if they are covered by a modern award or enterprise agreement that already contains an industry-specific redundancy scheme.

(b) Transfer of business

Where there is a transfer of business to a new employer, the new employer can choose not to recognise the employee's service with the first employer for the purpose of calculating the employee's level of entitlement to redundancy pay. If the new employer recognises the employee's service with the first employer, the employee is not entitled to redundancy pay from their first employer, so long as the employee is being offered an adequate alternative role with the new employer.

An employee is also not entitled to redundancy pay from the first employer if they reject an offer of employment from the new employer that recognises their service with the first employer and is on terms and conditions no less favourable than their previous conditions of employment.

(c) Calculation of payment under the NES or awards

Redundancy payments are calculated according to the length of time the employee was continuously employed by their employer.

Redundancy entitlements are to be paid by the employer to the employee as follows:

Period of continuous service	Redundancy pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

The definition of a week's pay does not include overtime, penalty rates, bonuses, allowances or any other similar payment.

(d) Calculation of payment under workplace agreements and employment contracts

Redundancy payments may be negotiated between the parties to the agreement, but in cases where the workplace agreement or employment contract does not provide for an entitlement to redundancy pay, the right to redundancy pay in the NES will apply from January 2010. An agreement or contract cannot provide for redundancy payments that are less than what is provided for under the NES.

2.2 Payment from the Government

The *Fair Entitlements Guarantee Act 2012* (Cth) (**FEG Act**) provides for Fair Entitlements Guarantee (**FEG**) assistance; a scheme which assists employees who have lost their employment as a result of the insolvency of their employer and are owed certain employee entitlements, such as redundancy payments. This scheme is managed by the Federal government's Department of Jobs and Small Business (**DJSB**). For more information see <https://www.jobs.gov.au/fair-entitlements-guarantee-feg> or call 1300 135 040.

(a) Eligible employees

An employee may be eligible for FEG assistance if they:

- have ended their employment with their employer, and the end of their employment occurred:
 - because of the insolvency of their employer; or
 - less than 6 months before the appointment of an insolvency practitioner; or
 - on or after the appointment of an insolvency practitioner;
- are owed entitlements that are recognised by the FEG scheme (see below);
- have taken reasonable steps, as part of winding up or bankruptcy proceedings to prove that the entitlements are owed, and where relevant, have made reasonable efforts previous to the insolvency event to recover the owing money.
- are an Australian citizen or hold a permanent visa or special category visa.

(b) Ineligible employees

An employee may be ineligible to receive FEG assistance if:

- they are a contractor rather than an employee, or they were originally a contractor and were only recently converted to an employee;
- they have a personal connection to the employer (for example they are a relative or spouse of the employer, or they are or have been a director of the employer under the *Corporations Act 2001* (Cth)); or
- they were employed by a partnership and not all partners are subject to insolvency.

(c) Entitlements

An employee may be eligible to receive the following entitlements:

- unpaid and underpaid wages for the 13 weeks prior to the earlier of:
 - the end of the employee's employment; or
 - the time at which an insolvency practitioner assumed power to control or manage employment.
- unpaid annual leave;
- unpaid long service leave;
- unpaid payment in lieu of notice up to a maximum of 5 weeks; and
- unpaid redundancy pay up to a maximum of 4 weeks per year of service.

The amount owing to the employee may be reduced to nothing if DJSB is satisfied that the liquidator or bankruptcy trustee will be able to pay the amount owing to the employee within 112 days.

If an employee earns more than the maximum weekly wage prescribed by the FEG Act and accompanying regulations, then the employee's entitlements will be calculated as if they earned the maximum weekly wage. The maximum weekly wage is currently \$2451.00.

(d) Procedure and limitation period

The employee must lodge a FEG claim form with DJSB within 12 months of:

- the end of the employee's employment or the date of the insolvency event (whichever is later); and
- before the discharge of the employer's bankruptcy if the employer was a bankrupt.

DJSB's preference is for employees to make an online application from the DJSB website however hard copies of the claim form can also be downloaded from the website.

More information and a link to the online application process can be accessed at <https://www.jobs.gov.au/fair-entitlements-guarantee-feg>. Employees without internet access can call the FEG Hotline on 1300 135 040.

Provided a claim is made effectively (including being within the limitation period and in the prescribed form), DJSB must provide written notice of eligibility, and the amount payable to the employee under the scheme.

A person who has made a claim and received a decision has a right to have the decision reviewed. An application for review must be made within 28 days of the date of the decision notice (or longer if allowed by DJSB).

An initial review is conducted by DJSB. If the claimant is still unsatisfied following the internal review, they can make a further appeal to the Administrative Appeals Tribunal.

(e) Payment

Payment is made by DJSB.

Tax and/or any Higher Education Contribution Scheme debt is deducted.

Payments you receive may affect your Centrelink entitlements. Contact Centrelink on 132 850 if you wish to discuss the effect of a FEG assistance payment on your entitlements.

3. Requirement to notify Centrelink

If you receive a redundancy payment, you must provide Centrelink with the following details:

- the type of payment;
- the date payment was received;
- the gross amount received; and
- the amount of time the payment was for.

4. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111
Web www.elcwa.org.au

Fair Entitlements Guarantee

Tel 1300 135 040

Email feg@jobs.gov.au

Centrelink 132 850 (For job seekers)

Fair Work Infoline 13 13 94

Wageline 1300 655 266

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