

## Redundancy and Business Change *Information for Employees*

### **What does redundancy mean?**

Redundancy is a situation where a position has become, or is likely to become, surplus to the employer's needs, and the employee holding the position is likely to be dismissed as a result. A redundancy relates to the position, not the person.

### **My employer is talking about making changes to the business, with possible redundancies. What are my rights?**

An employer is entitled to make an employee's position redundant if there is a genuine commercial reason for the redundancy. This means that if there is really no longer a job for the employee the redundancy will be genuine. It will not be genuine if the redundancy is decided because the employee's performance is not up to scratch or there is an interpersonal difference between the employer and the employee or between employees.

An employer is required to consult with you in good faith about any matter affecting your employment interests, including the effect on those employees of any proposed change to the employer's business.

### **What is Good Faith?**

The requirement to act in good faith is a fundamental principle of the Employment Relations Act (ERA). The ERA requires that all parties to an employment relationship (the employer, the employee and any union or employee representative) must deal with one another other in good faith.

A useful working definition of good faith is:

*All parties to an employment relationship are required to deal with one another on a basis of fair dealing and mutual trust and confidence in all aspects of the employment relationship.*

### **What is the process my employer must go through when making redundancies?**

The ERA places particular responsibilities on employers when redundancy situations arise. Case law suggests that an employer contemplating a redundancy should follow a two step process in consulting with any affected staff and/or their union.

#### **Step one - Consult on the proposed change**

The employer should begin a consultation process with you as soon as they become aware that redundancy is a possibility. They should be informing the affected employees of the proposed change and giving them an opportunity for input into the decision.

The employee should not make any final decisions until you have had an opportunity to consider proposal and provide any suggestions for alternate proposals. You may ideas as to how the problem may be solved without redundancy.

Where a redundancy may affect one or more employees, the employer needs to develop a criteria for selection. You need to be made aware of what the selection criteria will be. Unless the employment agreement includes specific selection criteria, the employer can determine the criteria that will apply and the weighting they may give to any of those criteria.

#### Step two - Consult with affected individuals

Having consulted on the proposed change and reviewed the input from staff, the employer is then in a position to make the decision on the changes to be made and the individuals to be affected. This decision needs to then be advised to the employees directly affected.

As an employee, you should expect that you will be given prior warning for this meeting and you should be offered an opportunity to have a support person at the meeting.

If your position is being made redundant, this meeting should discuss the timeframe for your employment to end, any redundancy compensation available, and any support available to you until you leave.

Check your employment agreement. If it outlines a different redundancy process, that process needs to be followed.

#### **I am a union member – does this change anything?**

If you are a union member, you must be given the opportunity to involve the union at the beginning of this process. You may find that your employment agreement requires that the employer advises the union before any consultation process begins.

#### **Can my employer change my hours of work without my approval?**

Yes, in the same way that the employer is entitled to make an employee's position redundant if there is a genuine commercial reason for the redundancy, they can also reduce or change hours of work. They have to follow the same consultation process. If you are unable to agree on the new hours, then your position could be made redundant.

#### **Am I entitled to redundancy compensation?**

There is no automatic right to monetary compensation for redundancy unless the employment agreement specifies this or it is agreed as part of the consultation process.

If no compensation is in your employment agreement, then it is up to the employer to decide if they will pay you any redundancy.

#### **What notice must my employer give me?**

If your employment agreement specifies a notice period for termination, this is the minimum that will apply. If your employment agreement does not state a period of notice, your employer is required to give you 'reasonable notice'. Reasonable notice has not been defined but it can depend upon the position held, the length of time you have been employed, and how likely it is you will be able to find a new job. The purpose of a reasonable notice period is to give you an adequate opportunity to adjust to your changed circumstances or to seek a new job.

### **What are my rights if the practice I am working in is sold?**

If you lose your job as a result of a sale, there will be a redundancy in the normal sense. Even if you are offered and accept a job from the new employer, there will be a 'technical' redundancy.

You old and new employer may reach an agreement that you are offered a job with the new employer on the basis that you waive your right to any redundancy pay out. If this is the case, service from one employer to the next should be seen as continuous.

### **I have been made redundant but feel I was not treated right throughout the process – what can I do?**

If you feel the termination was unfair or wasn't handled properly, you could issue proceedings against the employer for an unjustified dismissal. This can include injunctive action to restrain the employer from declaring the position to be redundant until the grievance is resolved, or for reinstatement if you were dismissed the Employment Relations Authority finds that the dismissal was not justified.

There are three questions to consider when deciding if you have been treated fairly:

- Was the redundancy must be genuine?
- Was the procedure surrounding the redundancy fair?
- Were you treated fairly before leaving?

If you do not think you were treated fairly, then you could consider taking a grievance to the Employment Relations Authority. More information on the Employment Relations Authority can be found at: <http://www.era.govt.nz/>.

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## **Need more help?**

Contact the NZMA:

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