



## REDUNDANCIES – ADDITIONAL OBLIGATIONS TO NOTIFY CENTRELINK AND UNIONS WHERE 15 OR MORE EMPLOYEES IMPACTED

AS AT 10 JANUARY 2017

This fact sheet provides information about redundancies and the additional obligations employers must comply with to notify Centrelink and all relevant registered employee associations under the *Fair Work Act 2009* (Cth) ('the **Act**') where an employer has decided to dismiss 15 or more employees by way of redundancy.

### What is a redundancy?

A redundancy occurs when an employer does not need a particular job to be performed by anyone because of changes in the operational requirements of the employer's enterprise.

This might occur when the employer's business:

- has economic reasons, such as suffering a downturn in trade and sales;
- relocates interstate or overseas;
- introduces new technology;
- implements structural changes following an assessment of the business' operations; or
- is reorganised following a merger or transfer.

An employee will be unable to successfully make an unfair dismissal claim if the employer can show that the redundancy was a 'genuine redundancy', which is defined to mean:

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

### Are we dismissing 15 or more 'employees'?

For the purposes of these obligations, 'employee' is defined to mean a national system employee and would include all individuals employed by the employer, except those employed on a vocational placement.

Employers would need to carry out a simple head count to determine whether they are dismissing 15 or more employees by way of redundancy.

## Do we have to notify Centrelink?

Short answer: Yes, if you are dismissing 15 or more employees due to redundancy.

Long answer:

Where an employer has decided to dismiss 15 or more employees by way of redundancy, the employer must:

- give written notice of the proposed dismissals to Centrelink;
- in a form prescribed by the regulations;
- as soon as practicable after making the decision; and
- before dismissing the employees.

## What needs to be included in the notification form to Centrelink?

The notification form to Centrelink must include the following information:

- the reasons for the dismissals;
- the number and categories of employees likely to be affected; and
- the time when, or the period over which, the employer intends to carry out the dismissals.

To assist employers, we have **attached** a sample notification form for Centrelink.

## What are the consequences if we don't notify Centrelink?

Where an employer fails to notify Centrelink prior to dismissing an employee, the employer is in breach of the Act and may face monetary penalties of up to:

- \$6,300 against an individual responsible for the contravention; and
- \$31,500 against the employer/corporation.

In addition to the above consequence, the Federal Court of Australia or Federal Circuit Court of Australia may make any order it deems appropriate, including an order that the employer not dismiss employees except as permitted by that order. However, the Courts cannot make an order granting an injunction (i.e. a ban on dismissals entirely).

## Do we have to notify relevant registered employee association/s prior to the proposed dismissals due to redundancy?

Short answer: Yes, if you are (a) dismissing 15 or more employees due to redundancy and (b) an employee is a member of a registered employee association.

Long answer:

Where:

- (a) an employee is a member of a registered employee association (i.e. an employee union which has been registered by the Fair Work Commission ('FWC') under the *Fair Work (Registered Organisations) Act 2009*); and
- (b) that registered employee association is entitled to represent the industrial interests of the employee;

an employer must notify the registered employee association (e.g. a union) of the following:

- the proposed dismissals and reasons for them;
- the number and categories of employees likely to be affected; and
- the time when, or the period over which, the employer intends to carry out the dismissals.

Employers must notify the relevant registered employee association/s as soon as practicable after making the decision and prior to dismissing any employees.

To assist employers we have attached a link to the list of registered employee associations [here](#).

### **Do we have to consult with registered employee associations prior to the proposed dismissals due to redundancy?**

Short answer: Yes, if you are (a) dismissing 15 or more employees due to redundancy and (b) an employee is a member of a registered employee association.

Long answer:

Following notification, an employer must give each registered employee association an opportunity to consult the employer on:

- measures to avert or minimise the proposed dismissals; and
- measures to mitigate the adverse effects of the proposed dismissals (such as finding alternative employment).

This obligation must be carried out as soon as practicable after making the decision and prior to dismissing any employees.

### **What are the consequences of not notifying and/or consulting with relevant registered employee association/s?**

Where an employer could reasonably be expected to have known that one or more employees being dismissed by way of redundancy were members of a registered employee association, the FWC may make any order it deems appropriate in the public interest.

Such orders must put the employees and registered employee associations in the same position (or as close to as possible) as if the employer had complied with the requirement to notify and such orders could delay or impact on your business' redundancy process.

### **Need assistance to navigate these legal obligations?**

The laws governing redundancies and the legal obligations that must be complied with are highly complex and we recommend employers seek legal advice before carrying out this process.

Phone: 1800 RETAIL (738 245) | Email: [law@nra.net.au](mailto:law@nra.net.au)

#### **IMPORTANT INFORMATION**

The information contained in this fact sheet is accurate at the time of distribution to you. Award conditions and industrial relations laws change regularly, however, and you should ensure that you maintain your copy of this fact sheet in an up to date form. Any revised fact sheets issued will be available at [www.nra.net.au](http://www.nra.net.au). The information contained in this fact sheet is not a substitute for independent professional advice. You should obtain any appropriate professional advice relevant to your particular circumstances.

## NOTICE TO CENTRELINK OF PROPOSED DISMISSALS

Date: [ *Insert date* ]

To: Centrelink

I, [ *full name of employer or person completing notice on behalf of employer* ], the [ *position held* ] of [ *name of employer of person completing notice* ], give notice, under subsection 530(1) of the *Fair Work Act 2009*, that [ *name of employer* ] proposes to dismiss the employment of 15 or more of its employees, for the following reasons:

- [ *Set out reasons for proposed dismissals* ]
- ...

The number and categories of employees likely to be affected by the proposal are:

- [ *Set out the categories and number per category* ]
- ...

It is intended that [ *name of employer* ] will carry out the proposed dismissals at the following time/s, or over the following period/s of time:

- [ *Provide specific dates if known, or approximate period of time* ]

Kind regards,

[ *Insert name* ]

[ *Insert position* ]