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# HUMAN RESOURCES

## RESTRUCTURING PROCESS

QUICK GUIDE

This Quick Guide provides summarised information about the process an employer should follow when undertaking restructuring that may result redundancy.

### INTRODUCTION

The following is a six step process that you can follow if you are considering restructuring that may result in redundancy. The key aspect of the process is consultation - considering alternatives to redundancy and considering ways of minimising the consequences arising from the loss of employment.

If an employee is made redundant you must be able to justify your actions, showing that you:

- had a genuine business reason why you no longer need the employee's position, and
- engaged in a consultative process with the employee before making any decisions.

There are a few key principles to keep in mind.

- You must be prepared to evidence the need for the redundancy, proving that the decision was genuine and based on commercial grounds.
- It is the employee's position that is no longer required - redundancy is not about disciplining a poor performer.
- Throughout the process you must keep an open mind and not pre-determine the outcome.
- Ensure you comply with any requirements in the employee's employment agreement or house rules.
- *If you are considering making a position redundant and more than one employee performs that role, it is likely you will need to initially involve all employees who perform that role in the redundancy process (even if you are only proposing to make one employee redundant).*

The process set out below is only a guide and you are strongly encouraged to seek advice from an adviser at the Employers' Chamber before commencing any downsizing or restructuring process that may lead to redundancy. You can contact us by telephoning 03 366 5096 or by emailing [es@cecc.org.nz](mailto:es@cecc.org.nz).

This guide should be read in conjunction with the information contained in our 'Quick Guide to Restructuring and Redundancy', available on [www.cecc.org.nz](http://www.cecc.org.nz)

### STEP ONE – ESTABLISHING GENUINE COMMERCIAL REASON AND DETERMINING INVOLVEMENT

Identify the factors that suggest that downsizing or restructuring is necessary for, or will be beneficial to, the organisation. Determine the benefits that are to be derived from restructuring and gather information to support your position. Collate this information into a form that you can show to your employee(s) to help them understand the need for restructuring.

*It is necessary to consider which employees need to be involved in the process. If there is only one employee performing a role that may be made redundant, then only that employee needs to be involved. However, if two or more employees are performing the same or similar roles, then it is likely that you will need to consult with all employees performing that role - contact us if you are unsure of who to involve.*

**STEP TWO – ARRANGE TO MEET WITH THE EMPLOYEE(S)**

Write a letter to the employee(s) to arrange a meeting so that you can explain the proposed restructuring and the reasons behind it. The letter should:

- arrange a time and place for the meeting,
- briefly outline the reasons why you are considering restructuring/downsizing,
- inform the employee that they can have a representative or support person present at the meeting, and
- notify them of the possibility that their position may be made redundant following full consideration of the situation.

(A template letter is available from The Chamber.)

Ideally you should arrange the meeting at least 48 hours in advance. If you are conducting the meeting yourself, it is strongly recommended that you have a witness present to take notes.

**STEP THREE – MEET WITH THE EMPLOYEE(S) TO EXPLAIN PROPOSED RESTRUCTURING/DOWNSIZING**

*(If more than one employee is involved in the process because they are performing the same role, it is permissible to conduct this meeting with all the applicable employees together at the same time - you do not need to meet with them individually at this stage.)*

At the meeting explain in full:

- the reasons behind the proposed changes (show the information that you have compiled in step one),
- details on the proposed restructuring/downsizing (there may be more than one proposal to present),
- how work could be reorganised if you do go ahead with the proposed restructuring, and
- the effect the proposed restructuring/downsizing would have on the employee's current position(s).

Assure the employee(s) that you wish to consult with them before any decisions are made. Inform them that if viable alternatives to redundancy can be identified they will be given consideration, and invite the employee to think about the proposal(s) and put forward any alternatives or suggestions they may have.

*If you have more than one employee involved in the process because they are performing the same role, and your proposal involves the retention of one or more of those employees in their current role then, unless this aspect is dealt with in employment agreements, you should also set out a proposed selection criteria. The selection criteria is how you will decide which of the employees will be made redundant **if** redundancies do occur - for example 'last in first out' or a performance or skill based assessment. Invite employees to give feedback on the proposed selection criteria as well as the overall proposal(s).*

It is advisable to have a written outline of the proposal and related information - at least in bullet form - and to give a copy to the employee(s). This will not only assist you in ensuring that you cover off the essential material but also assist employees who may not fully take in all the information at the time - particularly if there is an element of shock or surprise.

Access to information – As part of the duty to act in good faith, employers must ensure that when contemplating a decision which may have an adverse effect upon the continuation of employment, employees are provided with all information, relevant to that decision and a real opportunity to comment on that information before any decisions are actually made.

Arrange a further meeting for the employee to make submissions/comment on your proposal after allowing a reasonable period in which to digest and consider the information. Again invite the employee to bring a representative or support person of their choice.

*If you have more than one employee involved in the process because they are performing the same role,*

*arrange to meet with them individually for the second meeting.*

#### **STEP FOUR – SECOND MEETING WITH EMPLOYEE TO HEAR EMPLOYEE FEEDBACK**

At the second meeting allow the employee to make any comments/representations that they wish, encouraging them to say anything that they want you to take into account when making your decision. Listen with an open mind to any alternatives or suggestions that they present. Consider with the employee whether there would be any scope for redeployment in the company if the employee's current position is made redundant.

At the end of the meeting, explain that you will consider what has been said and then make a decision. Invite the employee(s) to submit any further comments/submissions in writing by a certain time.

#### **STEP FIVE – FURTHER CONSIDERATION AND MEETING**

If the employee presents any plausible suggestions, then you should investigate these. It may be appropriate to have a further meeting with the employee (and their representative or support person) to discuss their suggestions.

#### **STEP SIX – MAKE AND COMMUNICATE DECISION**

Once the consultation process is complete and you have heard and considered any input provided by your employee(s), you are in a position to make a decision on what action, if any, you will take. It is crucial that you keep an open mind and do not make a decision until you reach this stage of the process.

You can initially convey your decision to the employee verbally, but if you decide to restructure and the employee's position will become redundant then you should give the employee confirmation of your decision in writing.

*If more than one employee is involved in the process because they are performing the same role, and you are using a skill or performance based selection criteria to determine which employee(s) are made redundant, you should first advise employees of your decision regarding the overall restructuring. If redundancies are to take place, next inform employees of the selection criteria you will be using to determine which of them is to be made redundant and then conduct any necessary assessments. Each employee should be given a chance to comment on your findings from such assessment (as far as they relate to that individual employee) before you finalise your decisions.*

A written confirmation of redundancy should include:

- the date upon which you met with the employee to present the proposed restructuring,
- the date(s) upon which you met with the employee to discuss the proposed restructuring,
- whether or not the employee elected to have a representative or support person present at meetings,
- any alternatives/suggestions that the employee raised,
- your decision,
- the affect your decision has on the employee (i.e. their position will be redundant),
- the employee's final date of employment (give notice as per the employee's employment agreement),  
and
- any entitlements due to the employee (e.g. a compensatory payment, a reference, counselling etc.).

(A template letter is available from the Employers' Chamber.)

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For assistance with any aspect of your recovery plan contact The Chamber on 03 366 5096.