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HUMAN RESOURCES

RESTRUCTURING & REDUNDANCY

QUICK GUIDE

This guide provides summarised information relating to an employer's obligations in redundancy/restructuring situations.

There is no one single definition for redundancy, but the concept can generally be summarised as a situation where an employer has a supply of labour that is surplus to requirements.

Redundancy can occur due to a range of circumstances, including: less work coming into the company, a need for cost saving, a relocation, the introduction of new technology, or sale or transfer of the business.

RESTRUCTURING

The Employment Relations Act 2000 sets out specific provisions that apply in situations defined as 'restructuring'.

Essentially this involves contracting out all or part of a business to another person, selling or transferring all or part of a business to another person, or terminating a contract with a contractor and either re-tendering the work to another contractor, or taking the work back in-house. A restructure does not include a share sale or transfer, or any transfer made in situations of bankruptcy, receivership or liquidation. Nor will a restructure include situations of internal positional restructuring or reorganisation where all work remains in-house.

If a restructuring fits into the above definition the Act provides specific provisions for dealing with a specified group of employees¹, and all other employees must have an 'employee protection provision' in their employment agreements. Contact the Employers' Chamber for information on the Act's provisions, or for assistance in getting employee protection provisions into your employment agreements.

Where an employee may be made redundant under this type of restructuring, employers must follow the provisions of the Act (for employees in the specified group) or the employee protection provision in the relevant employment agreement (for all other workers).

REDUNDANCY

Redundancy may occur as a result of restructuring as it is defined in the above section or in any other situation where an employer has staff surplus to requirements.

Where an employee has been made redundant, that employee has been dismissed. As with any other termination of employment, the employee may challenge the dismissal by raising a personal grievance. The employer must then be able to show that the dismissal was justified on both substantive and procedural grounds.

Before commencing any process that may result in redundancy, it is essential that employers check the relevant employment agreement(s) since it/they may govern the process, selection criteria and compensatory entitlements.

SUBSTANTIVE GROUNDS

Justifying a dismissal on substantive grounds requires the employer to show that redundancy was the genuine reason for the termination of employment (not poor performance or other). Redundancy must result from a genuine commercial decision. It is the position, not the person that is no longer required.

PROCEDURAL GROUNDS

Consultation

An employer must consult with the employee or employees concerned in an attempt to avoid redundancy. Employees should have an opportunity to input into the decision making process, making any representations that they wish about the employer's proposed course of action. Alternatives such as redeployment should be considered.

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.

The employee must be afforded the opportunity to have a competent representative present at all discussions.

Selection

Where redundancy is unavoidable, the employer must also be prepared to justify the selection of which employee(s) was/were made redundant. If there is a choice as to who could be made redundant (for example, if there are several employees performing the same role) the employer may, in consultation with the relevant employees, determine an appropriate selection criteria. Traditionally this is 'last on first off', but a selection criteria could include an objective assessment of employees' skills and/or performance.

Notification

Where an employee is made redundant, the employer must give the employee the correct notice as per the relevant employment agreement.

Compensation

There is no statutory obligation to pay redundancy compensation. Compensation is only payable where an employer and employee have agreed that it will be (in an employment agreement or otherwise).

Before taking any action, employers faced with a potential redundancy situation are strongly advised to contact The Chamber, email info@cecc.org.nz or phone 03 366 5096.

¹ The specified group of employees includes those employed in cleaning and food catering services across all sectors; those employed in laundry services in the education, health and aged care sectors; caretakers employed in the education sector; and orderlies in the aged care and health care sectors.