

# WHEN DOES REDUNDANCY PAY APPLY?

The *Fair Work Act 2009* (Cth) (Act) and Vehicle Manufacturing, Repair, Services and Retail Award 2010 (VMRSR Award) set out an employer's obligations when it comes to redundancy and redundancy pay

## What is redundancy?

Redundancy occurs when an employer no longer requires an employee's job to be performed by anyone or becomes insolvent or bankrupt. Some examples of when redundancy can occur include when:

- the job the employee has been doing is no longer required due to the employer acquiring new technology;
- the business is restructured, reorganised or relocates;
- business slows down due to lower sales or production; or
- the business merges or is taken over by another.

Terminating the employment relationship based on redundancy may constitute a valid reason, however, the redundancy must be genuine.

## What is a genuine redundancy?

The Act states that an employee will not have been unfairly dismissed if it was through 'genuine redundancy.' Genuine redundancy occurs when an employer:

- no longer needs the employee's job to be done by anyone because of operational requirements of the business (ie. the employee's substantive position is no longer required to be performed by anyone as a result of changes in the operational requirements of your business (ie. restructure) or a downturn in the business (ie. less sales));
- the employer followed all consultation requirements (for information on consultation requirements, contact Employer Assist); and
- there was no position for the employee to be reasonably redeployed to within the business.

If the Fair Work Commission decides that an

employee's redundancy was not genuine, an order can be made to reinstate the employee or to pay the employee compensation.

## What is redundancy pay?

When an employee's position is made redundant, they are usually entitled to redundancy pay. Redundancy pay is made in addition to the required notice of termination (or payment in lieu of such notice) and all termination payments the employee has accrued such as annual leave, time in lieu and long service leave payments.

## How much redundancy pay?

Under the VMRSR Award, employees are entitled to the following minimum redundancy pay:

PERIOD OF CONTINUOUS SERVICE	REDUNDANCY PAY
At least one year but less than two years	Four weeks
At least two years but less than three years	Six weeks
At least three years but less than four years	Seven weeks
At least four years but less than five years	Eight weeks
At least five years but less than six years	Ten weeks
At least six years but less than seven years	Eleven weeks
At least seven years but less than eight years	Thirteen weeks
At least eight years but less than nine years	Fourteen weeks
At least nine years but less than ten years	Sixteen weeks
At least ten years	Twelve weeks



## What earnings are excluded from redundancy pay?

Under the VMRSR Award, redundancy pay is paid at the employee's base pay rate for their ordinary hours of work, but doesn't include:

- incentive-based payments and bonuses
- loadings
- monetary allowances
- overtime or penalty rates
- any other separately identifiable amounts.

## Are there any exceptions to the requirement to pay redundancy pay?

There are exceptions to the requirement to pay redundancy pay. For instance, small business employers (ie. less than 15 employees) are not required to pay redundancy pay.

Also, certain employees do not get redundancy pay including:

- employees with less than 12 months service
- casual employees
- employees employed for a specified period of time, task or season
- apprentices/trainees

For more information on these and other exceptions, contact Employer Assist.

## AAAA Member Benefits

Employer Assist provides all AAAA members with advice regarding all aspects of your workplace and employment law. It can assist in planning a redundancy process by ensuring legislative processes are followed and redundancy payments are correct and can also assist in the required consultation with employees and provide information regarding redeployment, employment and payment entitlements to affected employees.

Please contact Employer Assist on 1300 735 306 or [aaaa@employerassist.com.au](mailto:aaaa@employerassist.com.au) if you require any assistance.

