

**IMPORTANT NOTICE:** The information outlined below applies to employees and employers who are under State industrial relations jurisdiction. Since the commencement of the federal government's workplace relations laws on 27 March 2006, employers who are constitutional corporations (including a financial or trading corporation – generally Pty Ltds or Limiteds) and their employees are now covered under federal industrial relations jurisdiction. These employees and employers should contact the Queensland Workplace Rights hotline on **1300 737 841** or visit [www.workplacerights.qld.gov.au](http://www.workplacerights.qld.gov.au) for further information and assistance on the laws.

### Introduction of Changes

#### Do Employer's have a duty to notify employees about significant changes at the workplace?

Yes. Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their union or unions.

"Significant effects" includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

**Note:** Where an award makes provision for alteration of any of these matters they shall be deemed not to have significant effect.

#### Do Employer's have a duty to consult employees about significant changes at the workplace?

Yes. An employer shall consult the employees affected and, where relevant, their union or unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).

The consultation must occur as soon as practicable after making the decision to introduce changes and the employer shall provide in writing to the employees concerned and, where relevant, their union or unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees.

An employer is not required to disclose confidential information which would be adverse to the employer's interests.

### Redundancy

#### What is redundancy?

Redundancy occurs when an employer decides that the job an employee has been doing is no longer needed. This decision is based on circumstances other than the ordinary and customary turnover of labour.

Reasons why a position is made redundant include:

- Technological changes;
- Restructuring of the workplace;
- An employer's inability to pay employees; and
- The sale of a business, i.e. employees are not kept on by the new owners.

#### What are the redundancy provisions?

Employers and employees need to know what redundancy guidelines apply to them. Refer to your award, agreement or the Industrial Relations Act 1999 for information about redundancy procedures and entitlements. In this regard, most awards and agreements will contain redundancy provisions which reflect the current Statement of Policy for Termination of Employment, Introduction of Changes and Redundancy (TCR) by the Queensland Industrial Relations Commission (the Commission).

**Note:** Until varied, some awards and agreements may still refer to the previous Termination of Employment, Introduction of Changes and Redundancy clause as laid down in a Declaration of Policy by the QIRC in June 1987.

From 1 September 2005 the Industrial Relations Act 1999 has been amended to provide that an employee covered by an award or agreement (State or Federal)

made after this date will have an entitlement to redundancy payments identical to those contained in the Statement of Policy unless the award or agreement excludes the relevant condition or provides an alternative provision.

This amendment does not apply if the application to certify any agreement was made on or before 1 September 2005.

### **Do redundancy provisions apply to employee's who have no industrial instrument coverage or where their award contains no TCR provisions?**

Yes. Where an employer decides to make a position or positions redundant, an employee or a union (that can represent the employee's industrial interests), can apply to the Commission for an order in relation to severance pay. The severance allowance considered will accord with national law and practice. i.e. similar provisions to those contained in the TCR Policy including any exemptions.

#### **Consultation**

An employer is required to consult with their employees and any relevant unions before making any position redundant.

Employers may also be required to notify the Commonwealth agency responsible for helping unemployed people to find work (currently Centrelink).

### **What are the entitlements?**

Most awards and agreements set out employees' redundancy entitlements including the following notice periods, time off for job search activities and severance payments.

#### **Notice**

The legislation prescribes the following minimum period of notice that an employer must give an employee. These apply unless an award or agreement sets a more favourable entitlement for the employee.

<b>Period of continuous service</b>	<b>Notice Period</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

If an employee is over 45 and has worked with the same employer continuously for two years, the minimum notice period is increased by one week. Employers may also choose to give payment in lieu of

notice or a combination time notice and payment in lieu to equal the required notice period.

#### **Time Off**

When employees are made redundant, they are entitled to time off work to seek other employment. For each week of their notice period, they are entitled to one day without loss of pay to look for work.

Where more than one day's paid leave is allowed during the notice period, an employer can require proof of attendance at an interview e.g. statutory declaration.

#### **Severance Payment**

In addition to the notice period prescribed above, an employee whose employment is made redundant is entitled to the following amounts of severance pay:

<b>Period of Continuous Service</b>	<b>Severance Pay (weeks' pay) *</b>
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9
More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

\* Weeks' pay means the ordinary time rate of pay for the employee and excludes overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

### **How do I calculate severance pay when my remuneration is linked to commission earnings?**

Where commission payments (in whole or in part) are a feature of the award, section 7 of the *Industrial*

*Relations Regulations 2000* offers assistance in the method of calculation to be adopted. i.e. average weekly remuneration in the 3 months before dismissal.

## Are there any exceptions?

### Employees

Yes. Under award and agreement provisions, redundancy and severance pay provisions do not apply to employees who are:

- dismissed because of misconduct;
- engaged for a specific period or for a specified task or tasks;
- casual employees; or
- excluded from the provisions of the TCR policy by a determination of an industry specific application relating to the following employees.
  - seasonal employees, where seasonal employment is a feature of the award
  - employees engagement by the hour or day.

### Employers

Yes. Employers are not required to observe redundancy and/or severance benefits provisions in the following instances:

- Except where the Commission orders in a particular redundancy case, employers that employ employees, are generally exempt from the redundancy section, when they employ employees who work a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

The term employer includes a company or companies that employ employees and a company is defined as:

- A company and the entities it controls; or
  - A company and its related company or related companies; or
  - A company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.
- Incapacity to pay – an employer must make application to the Commission to amend the general severance pay prescription.
  - Alternative employment – an employer can make application to the Commission to amend the general severance pay prescription where they obtain acceptable alternative employment for an employee.

- When the business is transmitted from one employer to another, the severance pay provisions do not apply in the circumstances detailed in the next question.

## What happens when a new employer purchases an existing business?

When a new employer purchases a business from an existing employer they may continue to engage the existing employees. This transfer of ownership is referred to as a “Transmission of Business”.

“Business” in this section includes trade, process, business or occupation and includes a part or subsidiary (as taken from Corporations Law), of any such business.

“Transmission” includes transfer, conveyance, assignment or succession whether by agreement or by operation of law.

Severance pay is not payable in the following situations where a transmission of business has occurred:

- When the employee accepts employment with the new employer, who in turn recognises the employee’s previous continuous service and accepts it as service with the new employer; or
- Where the employee rejects an offer of employment with the new employer. This offer of employment must have been, in overall terms, substantially similar and no less favourable to the employee and it must recognise the employee’s previous continuous service.

**Note:** The Commission may amend this exemption if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

## Can employees be transferred to lower paid duties?

Where a position is made redundant, the employee currently in that position may be offered a transfer to lower paid duties. A transferring employee is entitled to the same period of notice they would receive for termination.

Payment, equal to the difference between the former amounts the employer would be liable to pay and the new lower amount the employer is liable to pay for the number of weeks of notice, may be made in lieu of such notice.

The amounts must be worked out on the basis of:

- The ordinary working hours to be worked by the employee; and
- The amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
- Any other amounts payable under the employee's employment contract.

- Wageline Information Centre: Ph: 1300 369 945\*
- Fax: (07) 3872 0519
- Web site: [www.wageline.qld.gov.au](http://www.wageline.qld.gov.au)
- Telephone Interpreter Service: Ph: 131 450

\* Local call cost (mobiles & payphones may be extra)

## Does superannuation benefits affect the amount of severance payments?

Employers can apply to the Queensland Industrial Relations Commission for relief from the obligation to make severance payments in circumstances where:

- The superannuation scheme to which the employer has been contributing provides a benefit to employees in redundancy situations; and
- The benefit to the employee is over and above any benefit they might obtain from any legislative scheme (Superannuation Guarantee Levy) or an award based superannuation scheme.

(See Occupational Superannuation, another fact sheet in this series.)

## What happens if an employee wishes to dispute a redundancy?

Employees who believe their dismissal was unnecessary, harsh, unjust or unreasonable can apply to the Commission for a hearing. The Commission will decide whether a dismissal is harsh unjust or unreasonable by considering:

- The case's merit (the dismissal must be based on the operational requirements of the business i.e. has the position been made redundant); and
- The process involved in the dismissal (whether a fair process was followed).

The *Industrial Relations Act 1999* ensures that there is a balance between questions of process and the merits of the case. The process involved in making the dismissal is just one of several factors considered in deciding whether a dismissal is unfair.

(See Dismissal, another fact sheet in this series.)

## Where can I get more information?

### Contact

- Wageline  
4<sup>th</sup> Floor, Centro Lutwyche  
543 Lutwyche Road, Lutwyche Q. 4030  
(or) PO Box 820, Lutwyche Q. 4030

### Disclaimer

The information in this fact sheet is provided on the basis that readers will be responsible for making their own assessment of the matters discussed and are advised to verify all relevant representations, statements and information.

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