



Restructuring and Redundancy

An employer must have a genuine work-related reason for a redundancy. Employers may need to make changes in the workplace for a variety of reasons, such as:

- improved technology
- more productive business processes
- product changes
- loss of suppliers or markets
- a decision to contract out or sell some or all of the business.

The law requires employers to provide information to employees when they are considering changes that will affect their jobs and to give them an opportunity to contribute to any decisions.

The first step is to refer to the employment agreement, since that sets out the basis for the relationship and the procedures for changing its terms.

The more significant a proposed change is, the more likely it is that it cannot be imposed without the employee's agreement. Even where the employment agreement states that certain changes can be introduced in the future, they should be introduced with early advice and discussion. Employees should have an opportunity to comment before an employer makes a decision.

Generally, there is no right to redundancy compensation unless employers and employees and/or their union have agreed to it. This can be done before or after an actual redundancy is planned. It is also up to the parties to decide what any redundancy compensation should be.

Where employees agree to a change, the terms of the employment agreement must be updated, signed by both parties and kept on file.

Employees may be able to raise a personal grievance if they believe their employer has acted unjustifiably in the event of a redundancy. For instance, the employer cannot use redundancy as a way of dismissing someone for reasons relating to the employee personally (such as the employee's performance). Remedies are available through the Employment Relations Authority or the Employment Court.

Employers do not have to disclose confidential information if there is good reason to maintain the confidentiality of that information. Good reason to maintain confidentiality includes:

- complying with statutory requirements to maintain confidentiality
- protecting the privacy of individuals
- protecting the commercial position of an organisation from being unreasonably prejudiced.

Employers also have some specific legal obligations where a business is sold or transferred, or work is contracted out:

Most employers must take the steps outlined in the employment agreement to protect employees in such situations.

Employers who employ staff doing certain catering, cleaning, caretaking, laundry and orderly work have special obligations that provide continuity of employment protection to employees during restructuring.

Protection in special circumstances - specified groups of employees

Who do the arrangements below apply to?

The rules below apply only to "specified groups of employee", namely employees who work in the following types of employment:

- cleaning services and food catering services in any place of work
- laundry services for the education, health or age-related residential care sector
- orderly services for the health or age-related residential care sector
- caretaking services for the education sector.

All other employees are subject to different arrangements.

What are "restructuring situations"?

Under the Employment Relations Act 2000, there are some specific types of "restructuring situations" where these rules apply in relation to "specified groups of employees". These situations are:

- where their employer sells or transfers the business (or part of it) to another person
- where their employer contracts another business to perform work that was being performed in-house
- where their employer is a contractor and they lose a contract to perform services and the contract is granted to another business, or
- where the business for whom the contractor is performing the work decides to undertake the work in-house.

What rights and obligations do employers and employees have?

In restructuring situations, employees in the specified groups will have a right to transfer to the new employer if:

- they will no longer be required to do all or part of their work for their existing employer because of the restructuring, and
- the new employer will perform the same type of work, or work that is substantially similar.

If an employer's business is to be restructured, the employer must:

- notify all the employees whose work will be affected
- give them relevant information about the restructuring, and
- tell them that they have a choice whether to transfer to the new employer, and the date by which they must make that choice.

The employees will be able to choose whether to transfer to the new employer on their existing terms and conditions. If they so choose, they will become employees of the new employer as if nothing about their work had changed.

Employers, employees and unions can negotiate alternatives to the transfer of employees, such as redeployment within the existing business. Any such alternative arrangements must be in writing.

Employees can also decide not to transfer to the new employer. This may mean, however, that their existing employer makes the employee redundant.

Once employees have transferred, it is up to the new employer to decide how best to manage their resources. This may mean that the new employer makes some employees redundant. If transferred employees are made redundant because of the transfer situation, they may become eligible for redundancy entitlements as follows:

- Where an employee's employment agreement specifically deals with the issue of redundancy entitlements in a restructuring situation, this agreement continues to apply after the transfer
- If the employment agreement is silent on this matter, the employee may be eligible for either:
 - redundancy entitlements agreed with the new employer, or
 - if the employee and the new employer cannot agree, redundancy entitlements determined by the Employment Relations Authority.

Employers and employees and their unions may get help from the Employment Relations Authority.

The Authority will first help the parties through examining the negotiation process followed by the employee and employer, and direct them on what further negotiation process they should use to reach an agreement. If the Authority

decides that further negotiation is not warranted, the Authority can set the redundancy entitlements to be provided to the employee.

If the Authority needs to fix the entitlements to be provided to the employee, it will take into account:

- any other redundancy entitlements contained in the employment agreement
- the employee's length of service with their employer and their previous employer
- how much notice of the redundancy the employee received
- the employer's ability to provide redundancy entitlements
- the likelihood of the employee being able to get another job, and
- any other relevant matters.

It is also useful for employers and employees to keep these things in mind when they are trying to agree on redundancy entitlements.

Ref: Department Of Labour

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