

Genuine Redundancy Compliance Checklist



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Guide

Understanding Your Obligations

Before proposing and implementing any redundancy at your workplace, employers must consider and objectively satisfy three key elements to ensure the redundancy is genuine.

This checklist summarises the essential requirements for employers in relation to a genuine redundancy under the Fair Work Act 2009 (Cth) (**FWA**).

If you would like assistance reviewing your current practices, please contact the **IRiQ Law** team.

How to use this checklist

This checklist provides a practical way to review your organisation's compliance with implementing a redundancy.

- Work through each section and confirm whether your organisation meets the listed obligations
- Identify any gaps or areas that require attention
- Keep supporting records and correspondence to demonstrate compliance
- Review operational requirements periodically or where there are changes to business needs that may give rise to redundancy

This checklist is intended as a general compliance guide only and does not replace tailored legal advice.

Looking for more practical HR/IR support?

Get in touch via email at iriqlaw@iriqlaw.com.au or call 07 3077 6767 to discuss your needs.

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Business Case for Redundancy

| Compliance Item | Requirement | Yes |
|--|---|--------------------------|
| Check the position itself is redundant | Focus on the roles that are no longer needed, rather than the individuals who perform the roles | <input type="checkbox"/> |
| Document your business case | Identify the specific operational, economic or structure reasons for change (e.g. significant financial downturn; business closure) | <input type="checkbox"/> |
| Regularly review role requirements | Monitor the requirement of each position in your business, particularly when operational needs change | <input type="checkbox"/> |

Consultation with Affected Employees

| Compliance Item | Requirement | Yes |
|---|--|--------------------------|
| Review legal and industrial instruments | <p>There may be procedures and consultation obligations you need to follow under an employment contract, or the relevant Modern Award or Enterprise Agreement</p> <p>Locate the applicable clause, often headed as '<i>Consultation about major workplace change</i>'.</p> | <input type="checkbox"/> |
| Commence consultation | Once a definite decision has been made about an operational change which will have a significant effect on employees, you must commence consultation with your employees as soon as practicable . | <input type="checkbox"/> |
| Send Notification Letters to affected employees | <p>You must notify employees about proposed redundancy / major workplace change, by clearly outlining:</p> <ul style="list-style-type: none"> • A statement of the nature and reason of change • (e.g. 'A proposed operational change is being considered in response to a significant business downturn and financial constraint') • Impact on employees such as roles at risk of redundancy • Anticipated timeframe of consultation period and final decision • Invitation to consultation meeting to address concerns (with support person if desired) • Outline of measures to mitigate impact such as redeployment or voluntary redundancy options. | <input type="checkbox"/> |

Redeployment

| Compliance Item | Requirement | Yes |
|---|---|--------------------------|
| Consider reasonable redeployment options | Explore <u>all</u> available vacancies to avoid redundancy such as: <ul style="list-style-type: none"> Existing vacancies within the employee's capability; Any alternative positions an employee is qualified to perform, including <u>upgraded roles</u>; or Any roles where employees could be reasonably trained to perform, including <u>downgraded roles</u> | <input type="checkbox"/> |
| Think outside the box! (Never assume that an employee may consider an available role as being unsuitable) | Proactively offer any available position within the business entity and avoid passive approaches like saying to the employee: <i>'apply if you want'</i> . An employer has a duty to take positive steps — e.g. communicate <i>in writing</i> — <u>any</u> current vacancy that an employee can be reasonably redeployed into — regardless of the position's status, remuneration or location. | <input type="checkbox"/> |
| Transfer of business to an associated entity (if applicable) | Facilitate or offer suitable employment to an associated entity of the employer as an alternative to termination | <input type="checkbox"/> |

Post Redundancy Obligations

| Compliance Item | Requirement | Yes | | | | | | | | | | |
|---|---|--------------------|----------------|----------------|--------|------------------------------------|---------|-------------------------------------|---------|-------------------|---------|--------------------------|
| Notice of Termination / Payment in Lieu | Instruct employees whether you require them to <u>work their notice period</u> or if you intend to make a <u>payment in lieu</u> of the notice worked. Statutory notice periods are listed as follows: <table border="1" data-bbox="604 1585 1267 2002"> <thead> <tr> <th>Continuous Service</th> <th>Minimum Notice</th> </tr> </thead> <tbody> <tr> <td>1 year or less</td> <td>1 week</td> </tr> <tr> <td>More than 1 year and up to 3 years</td> <td>2 weeks</td> </tr> <tr> <td>More than 3 years and up to 5 years</td> <td>3 weeks</td> </tr> <tr> <td>More than 5 years</td> <td>4 weeks</td> </tr> </tbody> </table> | Continuous Service | Minimum Notice | 1 year or less | 1 week | More than 1 year and up to 3 years | 2 weeks | More than 3 years and up to 5 years | 3 weeks | More than 5 years | 4 weeks | <input type="checkbox"/> |
| Continuous Service | Minimum Notice | | | | | | | | | | | |
| 1 year or less | 1 week | | | | | | | | | | | |
| More than 1 year and up to 3 years | 2 weeks | | | | | | | | | | | |
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Post Redundancy Obligations

| Compliance Item | Requirement | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------------------|---|-----------------------|--|--|--|---|-----------------------|---|-------------------------------------|---------|---|--------------------------------------|---------|---|--------------------------------------|---------|---|--------------------------------------|---------|---|--------------------------------------|----------|---|--------------------------------------|----------|---|--------------------------------------|----------|---|--------------------------------------|----------|---|---------------------------------------|----------|----|-------------------|----------|--------------------------|
| Redundancy Pay | <p>An employer must make a redundancy payment to the employee if the employee's employment is terminated at the employer's initiative because the employer no longer requires the employee's job to be done.</p> <p>The amount of redundancy pay is to be calculated using the following table at the employee's base rate of pay for ordinary hours worked:</p> <table border="1" data-bbox="576 645 1286 1697"> <thead> <tr> <th colspan="3">Redundancy pay period</th> </tr> <tr> <th></th> <th>Employee's period of <u>continuous service</u> with the employer on termination</th> <th>Redundancy pay period</th> </tr> </thead> <tbody> <tr><td>1</td><td>At least 1 year but less than 2 yrs</td><td>4 weeks</td></tr> <tr><td>2</td><td>At least 2 years but less than 3 yrs</td><td>6 weeks</td></tr> <tr><td>3</td><td>At least 3 years but less than 4 yrs</td><td>7 weeks</td></tr> <tr><td>4</td><td>At least 4 years but less than 5 yrs</td><td>8 weeks</td></tr> <tr><td>5</td><td>At least 5 years but less than 6 yrs</td><td>10 weeks</td></tr> <tr><td>6</td><td>At least 6 years but less than 7 yrs</td><td>11 weeks</td></tr> <tr><td>7</td><td>At least 7 years but less than 8 yrs</td><td>13 weeks</td></tr> <tr><td>8</td><td>At least 8 years but less than 9 yrs</td><td>14 weeks</td></tr> <tr><td>9</td><td>At least 9 years but less than 10 yrs</td><td>16 weeks</td></tr> <tr><td>10</td><td>At least 10 years</td><td>12 weeks</td></tr> </tbody> </table> <p>** If the employee is aged 45 or older and has at least 2 years of continuous service, add one extra week to the above.</p> <p>Note an employer is <u>not</u> required to make redundancy payments if one of the following exclusions apply:</p> <ul style="list-style-type: none"> • Casual workers • Employees with less than 12 months service <p>Transfer of business (in circumstances when the new employer recognises the employee's service with the old employer, or within a specific period of the termination)</p> | Redundancy pay period | | | | Employee's period of <u>continuous service</u> with the employer on termination | Redundancy pay period | 1 | At least 1 year but less than 2 yrs | 4 weeks | 2 | At least 2 years but less than 3 yrs | 6 weeks | 3 | At least 3 years but less than 4 yrs | 7 weeks | 4 | At least 4 years but less than 5 yrs | 8 weeks | 5 | At least 5 years but less than 6 yrs | 10 weeks | 6 | At least 6 years but less than 7 yrs | 11 weeks | 7 | At least 7 years but less than 8 yrs | 13 weeks | 8 | At least 8 years but less than 9 yrs | 14 weeks | 9 | At least 9 years but less than 10 yrs | 16 weeks | 10 | At least 10 years | 12 weeks | <input type="checkbox"/> |
| Redundancy pay period | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Employee's period of <u>continuous service</u> with the employer on termination | Redundancy pay period | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | At least 1 year but less than 2 yrs | 4 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | At least 2 years but less than 3 yrs | 6 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | At least 3 years but less than 4 yrs | 7 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | At least 4 years but less than 5 yrs | 8 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | At least 5 years but less than 6 yrs | 10 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | At least 6 years but less than 7 yrs | 11 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | At least 7 years but less than 8 yrs | 13 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | At least 8 years but less than 9 yrs | 14 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| 10 | At least 10 years | 12 weeks | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Post Redundancy Obligations

| Compliance Item | Requirement | Yes |
|---|--|--------------------------|
| Outstanding Pay | <p>Make final payment of any outstanding employee entitlements (less applicable taxation) including, but not limited to:</p> <ul style="list-style-type: none"> • Accrued but untaken annual leave • Long Service Leave (if applicable) • Outstanding wages up to and including termination date • Superannuation contributions payable on ordinary time earnings as required by law | <input type="checkbox"/> |
| Payslip | <p>Provide a payslip within one business day of all final entitlements being paid (electronic or hard copy)</p> | <input type="checkbox"/> |
| Employee Records Handover (if transfer of business) | <p>Handover all employee records including:</p> <ul style="list-style-type: none"> • General information of commencement date / employment status • Pay records including pay rate, gross and net amounts paid, deductions, loadings, penalties • Leave records including leave taken and leave balances | <input type="checkbox"/> |
| Post termination assistance | <p>An employer should freely avail itself to render further employee assistance required following the redundancy.</p> <p>This may include:</p> <ul style="list-style-type: none"> • Facilitating access to a counsellor • Assisting with updating Résumé • Statement of Service/ Separation Certificate • Introduction to a local job network provider | <input type="checkbox"/> |

*Note that well-executed practical considerations may add weight for reasonableness in unfair dismissal cases brought against an employer

Unsure if your redundancy process meets legal requirements?

Get in touch via email at iriqlaw@iriqlaw.com.au
or call 07 3077 6767 for more practical guidance and support.

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