

Redundancy rights and entitlements during COVID-19

Having your position made redundant can feel overwhelming, especially if you don't know where you stand legally. The situation around COVID-19 can make redundancy feel even more complex.

But while redundancy isn't easy, knowing your rights and entitlements could make the process less stressful for you, and help you decide if there are any steps you need to take.

Here Jaenine Badenhorst, Associate with [Rainey Collins Lawyers](#), explains what you need to know about being made redundant.

What are reasons for a redundancy?

Here in New Zealand, an employer is only allowed to carry out a redundancy process for "genuine reasons".

According to Badenhorst this includes (but is not limited to) situations where:

- the business is under financial pressure and needs to cut costs;
- the business has outsourced work and now has surplus employees;
- a department or product has been disestablished;
- the business is closing down;
- the business has been bought by another owner.

"The thing to note about reasons for redundancy is that it usually relates to the role being surplus, rather than any issues with the employee," Badenhorst says. "For instance, you can't be made redundant for doing something wrong (misconduct) or because you are underperforming. These are separate issues and have their own processes which need to be followed."

Do I get a say in my position being made redundant?

Your employer must follow a fair process when they make a decision about redundancy. A fair redundancy process includes consulting with any employees who will be impacted by a proposed restructure.

"You should be provided relevant information about the proposal, so that you can give genuine feedback," Badenhorst says. "You may seek legal advice at this point to make sure the process is fair. If you have any questions or concerns about the proposal or the process, a lawyer can also help."

Your employer must consider the feedback you provide with an open mind. "No decision should be

made until after the feedback is considered,” Badenhorst adds.

At the end of the process, the final decision about whether to make an employee redundant lies with the employer. As long as your employer has followed a fair process, and has a genuine reason for the redundancy, Badenhorst says the redundancy will be difficult to challenge.

How much notice do employers have to provide?

If a decision has been made to make your role redundant, you will usually be informed of the outcome and given notice of termination (i.e. when your last day of work will be).

The amount of notice your employer has to give you will depend on what you’re entitled to under your employment agreement.

“There may be different notice periods for termination due to redundancy versus termination for other reasons,” Badenhorst says. “It’s important to check your agreement to avoid mistakes.”

How much of a redundancy pay out am I entitled to?

Again, this will depend on your employment agreement. Badenhorst says that no employee is typically entitled to redundancy compensation as a right. Rather than a right, it’s usually something that can be agreed upon and set out in your employment agreement when you first sign on to your role.

However, your employer may still offer you redundancy pay. “An employer may in some cases offer to pay redundancy compensation even though that’s not required under the employment agreement,” Badenhorst says.

“This often happens when a long term or highly valued employee is being given an ex-gratia payment as a ‘thank you for your service’ gesture (often known as a golden handshake), or where there is a large scale restructure and the employer wants to incentivise employees to accept voluntary redundancy.”

Badenhorst notes that as with any employment coming to an end, you’re still entitled to be paid for work already completed, for your notice period (sometimes paid in lieu), and for any accrued annual leave.

“There is no legal entitlement to be paid out for unused sick or bereavement days unless the agreement says otherwise,” she adds.

Could the COVID-19 pandemic affect my redundancy pay?

Regular employment law still applies during COVID-19. According to Badenhorst, even if your employer becomes bankrupt and physically unable pay, they will still be liable to pay their employees their legal requirements.

“Failure to pay an employee what they are entitled to under the law or under the employment agreement could be grounds to raise a personal grievance,” Badenhorst says.

What legal options do I have for challenging a redundancy?

If you think a redundancy has been carried out for an improper reason, or the way it was carried out was procedurally wrong (or breached good faith obligations), you can raise a personal grievance with your employer.

“In the first instance the parties can try to settle the disagreement directly between themselves or with the assistance of their lawyers,” Badenhorst says. “If that isn’t successful, the parties may agree to attend mediation. If mediation fails, you can file a claim with the [Employment Relations Authority](#).”

Can I have a support person with me at redundancy meetings?

Having a support person with you can help during what can be a [very difficult and emotional time](#). It can also help ensure that your employer is carrying out the process fairly.

You’re entitled to take a support person into any meetings that are held. “This can be a friend, family member, a union representative or a lawyer,” Badenhorst says.

“It is a breach in the redundancy process and good faith obligations for an employer not to inform their employee of this right [to have a support person present], or to take steps to prevent a support person from being present. This is another ground where a personal grievance can be raised.”

Are there alternatives to redundancy?

Your employer must consider alternatives to redundancy as part of the redundancy process, Badenhorst explains.

“This can include redeploying employees into different roles, company-wide pay cuts, reducing hours, prohibiting overtime and providing employees with other roles that can be applied for in the company,” she says.

Badenhorst emphasises that it’s important to know you can’t have your terms of employment agreement altered by your employer without your consent.

“That being said, many employees have voluntarily agreed to change the terms and conditions of

employment (to be less favourable), in an attempt to help their employer get through tough financial times as a result of the economic impacts of COVID-19,” she says. “To many, this alternative is better than losing their job altogether.”

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If you're finding things tough right now, there's support available, [including these helplines you can reach out to](#). [Allright.org.nz](#) also has tips and advice on dealing with stress during COVID-19.

Read more:

- [What is \(and what isn't\) unjustified dismissal?](#)
- [The truth about redundancy](#)
- [Has COVID-19 affected your work? Here are the key resources for help](#)