

## Redundancy

**Are you an employer who needs to make an employee redundant?**

**If so, then you must be able to show that you have genuine reasons for making that employee redundant.**

**Employer's must also take care to ensure the correct procedure is followed.**

As recent Employment Court cases show even a small scale employer who has genuine reasons for terminating a staff member's employment must make sure the procedure they follow is not flawed.

Failing to get the procedure right might mean an employee taking a personal grievance against the employer. A wronged employee could be awarded not only their lost income (including holiday pay) but also thousands of dollars in compensation for humiliation, loss of dignity and injury to their feelings. The employer may also be required to pay the employee's legal and other costs.

### Reinstatement

Another possible remedy for the employee in a successful claim against the employer is that the employer is ordered to reinstate the employee into their old position.

### Is it a genuine redundancy?

In a recent case, an employee was employed by the employer on the expectation that there would be an upswing in business. That expected increase in demand did not happen. After a short period of time, the employer met with the employee. At the meeting the employee was told that there was insufficient work for her and that her position was to be made redundant. In such a case the Court is entitled to enquire into the merits of the business decision to make an employee redundant. The genuineness of the redundancy will be a key focus for the Court.

While the Court decided that there were genuine reasons for the termination of the employee's employment, the procedure that the employer followed was flawed. In this case, the employer failed to actively engage with the employee and the employee was disadvantaged as a result.

In another case where an employee claimed a personal grievance for unjustified dismissal after being made redundant by her employer, the Court said that an employer's genuine commercial reason (a significant down turn in the annual turnover) to make an employee redundant was not sufficient to justify the employer's decision to restructure their business when their reason for doing so was based on inaccurate financial information. The employee was awarded \$65,000 for lost wages and \$20,000 compensation for injury to her feelings.

An employer must be able to show that the reason for making an employee redundant is not only genuine (so there was no ulterior motive) but it is also justified.

## How can we help?

Justifying a decision to make an employee redundant involves an enquiry into what is reasonable in the circumstances. If an employer is relying on, for example, financial information to justify making an employee redundant then the employer needs to be sure that such information is accurate. If you are concerned about redundancy or any other employment matter please contact Julie Withers and Graeme Withers of Graeme Withers Law. We are very experienced lawyers. For prompt, professional and personal service please phone (04) 478 4888; (027) 7155421; Email [info@witherslaw.co.nz](mailto:info@witherslaw.co.nz) Please visit our website [www.witherslaw.co.nz](http://www.witherslaw.co.nz)

*This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.*