

Fact Sheet

Getting Business Reorganisation Right – Set up your Business for Success

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WHAT IS BUSINESS REORGANISATION? WHY WOULD I BOTHER?

While none of us have time to be constantly reevaluating our business, it is really important on a regular basis to take the time to consider the direction your business is going in, how that compares to your business goals, and whether the infrastructure of your business including staff and staff skills are maximising the opportunities for the success of your business. It is also an opportunity to identify potential problems before they explode into actual problems which can cost you a lot of time and money. Many businesses just cruise along, expecting conditions to just continue as they are – through the triple whammy of drought, bushfire and COVID over the last 12 months, we've all learned that small issues can become big issues very fast in difficult situations. It's always easier to review and reorganise your business, make good decisions and apply them lawfully when you're not in the middle of a crisis!

WHAT DO I NEED TO CONSIDER IN RELATION TO MY EMPLOYEES?

If your workplace change will have significant effects on your employees you must:

- Consult with any and all staff directly or indirectly affected – this means get their input, not just inform them of what you're going to do. All Modern Awards have a Clause 8 – Consultation and Dispute Resolution, but you should consult any award-free staff in the same way
- Take that input into consideration – you don't have to agree, just actually consider it
- What if you only have one staff member? Same situation – you need to consult with them.

There's been a change in operational requirements, and I don't need anyone to do this particular role anymore

In this situation, you can make the affected employee redundant in accordance with the requirements of Section 389 of the Fair Work Act. The job must be no longer required to be done due to changes in operational requirements, the person can't be reasonably redeployed within the same or a related business, and the employer must have complied with consultation requirements with the staff member about the workplace change.

If you have less than 15 staff (headcount, not full time equivalent), you must pay notice, but don't need to pay redundancy pay.

For these kinds of employees, redundancy doesn't apply:

- Less than 1 year service
- Casuals
- Termination due to serious misconduct
- Genuine fixed term contract coming to an end
- Fixed term training contract coming to an end
- Apprentices.

What's the actual process I need to follow to lawfully make an employee/multiple employees redundant?

- Identify staff directly or indirectly affected

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- Notify those staff in writing that changes are being considered:
 - Give a summary of, & reasons for, the changes
 - Set a meeting time & venue all staff can reasonably attend
 - Invite all staff to bring a support person (not a practising Solicitor/Barrister)
 - Remind them all matters are confidential
- Prepare a meeting script so you cover all you need to say
- Invite staff to make suggestions as to mitigating effects & give a deadline for suggestions
- Set a second meeting date for once suggestions have been received & considered
- Consider suggestions & see if any have merit
- Notify staff of the second meeting
- Prepare a meeting script for meeting number two
- Advise staff of the outcome, changes that will happen & how these will be implemented
- Consider implementation plan:
 - Changes to roles & associated contracts & PDs
 - Selection process/es for any new roles
 - Determine if transfer to another job averts redundancy obligations
 - How will roles/staff be made redundant – is it set or do you need a further process to choose?
 - Proceed to termination/s, providing notice and details of entitlements in writing once termination calculations are done
 - Notify relevant external agencies, eg Centrelink
- Make sure all of this is IN WRITING.

What can happen if I stuff this up?

A [recent decision](#) of the Fair Work Commission showed how a lack of proper business restructure planning, combined with a crisis, can lead to bad and expensive decisions for business.

The employee in question was “made redundant” by telephone with no notice to him or any other staff. He applied to the Fair Work Commission for a remedy for unfair dismissal on the basis that it was not a genuine redundancy. Given the conditions we’ve just talked about to ensure a redundancy is lawful, can you see what the key problem was? CONSULTATION. In this matter, the employer thought that COVID had changed the rules about redundancy and so blithely ignored its consultation requirements – this is not the case. Of course there are other factors relevant to whether this was a matter of unfair dismissal, but the key point stands about the issue of genuine redundancy. While the amount of compensation that this employee will receive has not yet been determined, it’s a fair expensive mistake for a business to make, when it is not that difficult to do things properly.

On review of my business, one of my staff is no longer a good fit or doesn't have the right skills my business needs, but it's not a situation of redundancy – how do I terminate them lawfully and sensitively?

Lawful is the most essential concept here – when terminating an employee, you need to dot those I's and cross those t's to protect you and your business. Be mindful of:

- General Protections provisions
- Unfair Dismissal provisions
- Equal opportunity legislation (State and Federal)
- Terminating an injured worker

Of course, the way to make termination as straightforward and stressfree as possible is to front-load the process. What does this mean? Consider termination issues before each

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employee begins working for you. Carefully draft the employment contract, and have clear, unambiguous policies & procedures in place.

Other key aspects of lawful termination include:

- Get things in writing:
 - Notice of termination (if you're instigating)
 - Confirm notice of resignation (if they're instigating)
- Comply with notice periods:
 - You don't have to accept more notice than required, but put it in writing
 - Over 45 & with you 2 years or more = you're required to give an extra week's notice
 - You can elect to pay notice in lieu, provided you pay all entitlements, inc superannuation
- Employees must be paid their accrued entitlements:
 - You can withhold some or all payment to cover legitimate debt to the business or failure to give required notice – check contract &/or Award
- Meet documentation requirements:
 - You must keep employment, payroll & termination records for 7 years post termination
 - You must provide a Statement of Service where requested
 - You may need to notify an external agency, eg Centrelink &/or workers' compensation insurer
- Return of company property:
 - Make sure that all company property is returned prior to the termination date – a Property Return Checklist can help with this.
- Exit survey:
 - Conduct during the notice period – it can be hard to chase employees down after they depart.
 - Valuable information can be gleaned in the process which might help inform your next business strategy review!

WHAT DO I DO RIGHT NOW?

- Take a moment to consider whether now is a good time to review where your business is at, where you're going, and whether you have the right people and infrastructure in place to reduce risks and take advantage of opportunities.
- If it is, then do it properly and get professional advice and support if you think you need it. Badly managed workplace change is a recipe for disaster and will cause many more problems than it could possibly solve.
- Workplace changes affecting your staff are the riskiest. Use this information to make sure you are doing it lawfully and as sensitively as possible.
- If you're unsure about any of this, get professional advice! Your people are the biggest asset, expense and risk of your organization, and it makes sense to take as good care of them with professional HR support as it does to get professional tax, accounting and legal advice for the financial side of your business. We offer a free initial consultation with no obligations – call us anytime on 1300 856 231 or email admin@pinnaclepeoplesolutions.com.au – we've got your back.

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Last updated 16 September 2020