



Restructuring and Redundancy

OVERVIEW

Employers have the right to make structural changes to their business in a way they believe will be most effective in achieving their business strategy and delivering outcomes to their customers or clients.

An employer might, for example, restructure their business because of changes in the economic climate, which have financially impacted the business' performance and profitability. As a result, some roles may, after consideration, become superfluous to the employer's requirements and be disestablished.

If a role is disestablished, the employee(s) performing that role may be terminated. This is where a redundancy situation would arise.

This is a prickly area of employment law that results in many personal grievance claims.

Why would I consider implementing an organisational restructure?

You may wish to restructure the roles in your business when you have a **genuine business reason** such as:

1. The current business model is not fit for purpose, and you either need to cut costs or organise your business more efficiently; or
2. Some roles in the business are superfluous to your business' needs.

Can I make an employee's role redundant because of a restructure in my business?

You must have a genuine business reason to restructure your business, and to make the decision to terminate an employee's employment by way of redundancy. Workplace changes should **not** be used to 'get rid of' an underperforming employee.

You should be able to produce evidence of the need for change in your business. As an example, genuine business reasons might be a drop in turnover and profitability, or an alternative structure being of greater overall benefit to the organisation.

Changes of this nature may result in a structural change such as merging two or more existing roles, refocussing aspects of a role, removing roles that are not needed, or a combination of these things.

Key considerations

All restructuring processes need to be **genuine** and carried out in a **procedurally fair manner**.

Procedurally fair means:

- Consulting in good faith with potentially impacted employees before deciding to change your business structure.

- Keeping an open mind throughout the consultation process.
- Not predetermining the outcome (i.e., you have not already decided which employees will be made redundant during the process).

You must also consider the selection process for who will be made redundant. An employer must act fairly and reasonably in determining the criteria against which redundancies will be decided.

As a general rule, permanent staff should have priority for any redeployment opportunities. Redeployment opportunities arise when the business may create new roles that are similar to the existing roles, and which existing employees have the right skills to transfer into the new role.

I want to consider a restructure (reorganisation) of my business which may result in redundancy. What should I do next?

1. Confirm your *genuine* business reason for the restructure.
2. Prepare a written proposal for affected employees which sets out the following:
 - a. What the proposed restructure entails.
 - b. Which positions may be affected.
 - c. Why and how the employees currently in those positions may be affected.
 - d. An opportunity for those employees to discuss or provide feedback on the proposal.
3. Undertake a fair and reasonable consultation process in good faith including the following minimum steps:
 - a. Circulate the restructure proposal to all employees likely to be affected.
 - b. Give your employees reasonable opportunity to respond, comment and suggest alternative options to the proposal. This may involve setting up a meeting(s) with affected employee(s) to discuss the proposal and answer any questions they may have.
4. Provide time for you to consider the feedback and any alternative suggestions presented; then
5. Issue a decision that shows that you have considered the feedback provided on the proposal, and the basis for the final decision.

Ultimately, you need to ensure you are communicative and transparent throughout the restructuring and redundancy process and keep your mind open to suggestions that you may not yet have considered.

If you have restructuring or redundancy provisions in your employment agreements, or a separate business policy, you must adhere to these.

Failing to get the restructuring or redundancy processes right could lead to complications, delays, and, potentially, personal grievance claims for reinstatement or a variety of financial penalties.

If you are considering restructuring your business which may result in redundancy, get in touch as we can help.

[Click here for more information on our Restructuring Package](#) or contact us below:

E helpdesk@tradielaw.co.nz
W www.tradielaw.co.nz/tradie-law/contact/

One of our team will be in touch to assist you within 24 hours.