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LawTalk Blog



## Know your redundancy entitlements

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So you have just received the devastating news that you have been made redundant. Where to now?

Firstly, make sure that you know what you are actually entitled to so you can establish whether you have received all your entitlements from your employer.

The first place to look is your employment contract, enterprise bargaining agreement (EBA) or Modern Award. If you do not have a contract, EBA or Modern Award, the [National Employment Standards](#) (NES) in the *Fair Work Act 2009* provides the minimum payments if you have been made redundant.

**Severance pay** (an entitlement upon being made redundant) and the **Notice Period** are two separate concepts. If you have been made redundant, it's very important to ensure you know the difference.

### What is the Notice Period?

The rationale behind the Notice Period is to allow time for an employee to find alternative employment and to adjust to the termination of employment. The minimum provisions are outlined in the [NES](#). These are minimum periods and often an employee may have a contract, enterprise agreement or Award which specifies a greater amount.

If your contract prescribes a lesser amount than the NES, then the NES minimum notice period will prevail. If there is no notice period provided nor any reference to an Award prescribing a notice period or the legislative minimum provided in the NES, then a period of "reasonable notice" will be determined based on the "Common Law". The Common Law is made up of the precedent set by case law.

It is important to remember that the NES only provides a minimum notice period and if your contract does not make reference to a notice period, the provision of an Award or the NES minimum, then you will be entitled to "reasonable notice".

Your employer may request that you work out your notice period or alternatively they may pay you "in lieu". This means that you will receive both a lump sum for your notice period as well as severance pay for your redundancy (if you qualify).

An employee will be required to receive their notice period when their employment is terminated, with the exception of [summary dismissal](#) (instant dismissal) based on misconduct of a serious and wilful nature.

## What is Severance Pay?

Severance pay is the amount of money an employee is entitled to if they have been made "genuinely redundant". Genuine [Redundancy](#) is defined in the *Fair Work Act 2009* as a "person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise". The rationale behind severance pay is compensation for the loss of continuity of employment and the inconvenience to the employee including their social routines, social contacts and the benefits of working for one stable employer.

Redundancy has only become a minimum entitlement since 1 January 2010. Prior to this, an employee's right to redundancy was only found expressly in contracts or enterprise agreements or Awards, and such instruments with provisions that recognised redundancy prior to 1 January 2010 will continue on. If an employee was not entitled to redundancy prior to 1 January 2010, then their potential entitlement to severance pay will be calculated from 1 January 2010. Remember that you will still be entitled to your notice period even if you do not have any entitlement to severance pay due to the redundancy.

It's important to know however, that redundancy is not an automatic entitlement. You must have at least 12 months of continuous service with your employer. Casual employees are not entitled to redundancy, small business employers (those with fewer than 15 employees) are not required to pay severance pay and an employee is not entitled to severance pay if there is acceptable alternative employment available with the employer or if the employee can be redeployed or transferred.

If you have been made redundant, make sure you are receiving your full entitlement from your employer.

\* Current notice of termination and redundancy pay figures can be found on the [Fair Work website](#).

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