

REDUNDANCY AND COVID-19 – FREQUENTLY ASKED QUESTIONS

1. My employer told me I am or may be made redundant, what does it mean?

Under the *Fair Work Act 2009* (Cth), redundancy is a type of termination of employment due to your position no longer being required to be performed. It is not related to your performance as an employee. Many businesses are making employees redundant during the COVID-19 pandemic. It is important for you to know:

- a. your employment status;
- b. what you are entitled to; and
- c. your rights.

2. I understand times are tough, but I need my job: what can I do?

Your employer needs to ensure that the redundancy is genuine, otherwise it could be an unlawful unfair dismissal.

Before your employer makes you redundant, ask your boss to consider if there are any other options, such as:

- a. Working less hours each week or reducing your pay. Any such reduction must be agreed by you and your employer. Your wage cannot be reduced below the rate in your modern award or enterprise agreement, or the national minimum wage;
- b. Taking paid or unpaid leave;
- c. If the business is closing down, standing you down. This means you stop working during the COVID-19 period but you will return to work when the business re-opens;
- d. If they are an eligible business, applying for the JobKeeper subsidy.

Redundancy should be the last resort for employers who have considered these options. MELS has advised employees fired on the spot for non-genuine reasons due to the employer wanting to avoid paying redundancy entitlements. If you think this has happened to you, you have 21 days to file a claim at the Fair Work Commission. Contact us to make an appointment for legal advice.

3. If I am made redundant, what rights do I have?

Under the *Fair Work Act 2009* (Cth), an employee who has worked continuously for more than six months in a business of more than 15 staff members and 12 months for a smaller business has the right to receive a notice of termination and redundancy pay (the period of notice and amount of pay depend on the employee's period of continuous service with the employer).

There are steps your employer has to take before making you redundant. They must consult with you about any proposed changes to your pattern of work as outlined in your relevant Award or your Enterprise Agreement. Your employer also has an obligation to consider whether there are other areas you can be redeployed in the business, where you can usefully contribute.

Micah's Story

Micah was working in an Italian restaurant as a waiter in Surry Hills. Restaurants were forced to shut because of COVID-19 restrictions and Micah's manager told him he had to make Micah redundant as there was no position for him as a waiter anymore. At the time there was talk about JobKeeper or JobSeeker but Micah knew he wouldn't qualify because of his visa status. Micah proposed to his employer that he could become a delivery driver for the business instead of being made redundant. Micah's manager thought this was a great idea and so Micah was able to stay employed with the business because they were able to adjust his role.

However, there are exceptions to an employee's entitlement to redundancy. Please contact **MELS** on 02 8002 1203 or text 0475 360 741 for legal advice about being made redundant.

The information provided in this factsheet is for information only. It must not be relied on as legal advice. The information provided is correct at 6 May 2020. Information may change. You should seek legal advice about your own situation.