

## REDUNDANCY AND COVID-19

### Frequently Asked Questions

#### 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 employer no longer requiring someone to work in your position. It should not be because of 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.

#### 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 unlawful and an unfair dismissal. Before your employer makes you redundant, ask your employer to consider if there are other options, such as:

- 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;
- Taking paid or unpaid leave;
- 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;
- 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 with the Fair Work Commission. Contact us to make an appointment for legal advice.

### **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.



### **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 or more than 12 months for a smaller business, is protected from unfair dismissal.

This means that your employer must genuinely not need anyone to perform your job position anymore and must take certain steps 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 must consider whether there are other areas where you can be redeployed in the business or if there are any other ways to keep you on, as explained above.

If you are made redundant you are entitled to be given notice before your employment ends. Employees who have worked continuously for more than 12 months in a business of more than 15 staff members may also be entitled to redundancy pay. The period of notice and amount of redundancy pay depend on the employee's period of continuous service with the employer. Not everyone is entitled to redundancy pay, so please contact us if you have questions about these entitlements.

If your job is made redundant or you are fired, you may be able to complain to the Fair Work Commission. There is a **21 day** time limit from the date of your dismissal for making a complaint to the Commission.

Please contact **MELS** on 02 8002 1203 or text 0475 360 241 for legal advice about being made redundant or if you have any other questions about your employment.

***The information provided in this factsheet is for information only. It must not be relied on as legal advice. You should seek legal advice about your own situation.***