

Falling Iron-Ore Price means Rash of Redundancies Likely to Continue

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With benchmark iron ore prices continuing to fall, miners are cutting costs and workforces. And it's not just miners – falling iron ore prices have already had an effect on other business and the WA State Government's budget, resulting in public sector job cuts as well.

The current market presents challenges for employees and employers alike.

Employment law specialist Mark Cox says that his firm MDC Legal have seen an increase in redundancies across a range of sectors including support services such as construction and Information Technology.

Many employers do not understand their obligations when making an employee redundant and many employees do not know what they are entitled to.

What is Redundancy?

A redundancy occurs when an employer no longer requires a particular job to be performed by anyone because of changes in the operational requirements of its business.

This may involve eliminating a particular job, or splitting and reallocating tasks between other employees. It may also involve a 'spill and fill' where the number of employees performing a particular job is reduced, with all employees performing that job having to effectively 'reapply' for a limited number of remaining positions.

Redundancy and Severance Pay

Individual contracts or employer policies may provide for more favourable redundancy packages, but the Commonwealth *Fair Work Act* provides for the minimum for most employees. Under that legislation, employees are entitled to notice of the termination of their employment **and** a minimum redundancy payment.

Currently, the minimum entitlement to redundancy pay is as follows:

	Employee's period of continuous service with the employer on termination	Redundancy pay period
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks

	Employee's period of continuous service with the employer on termination	Redundancy pay period
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks

However, the entitlement to redundancy pay is only for employees who have been employed for 12 months or more; **and** whose employer has 15 or more employees.

Employers may in certain circumstances apply to the Fair Work Commission for orders to reduce the redundancy payment it must pay, even down to zero.

An employee's entitlement to redundancy pay is a minimum condition of employment under the National Employment Standards (NES) in the *Fair Work Act*. Breaches of the NES may be investigated, even prosecuted, by the Fair Work Ombudsman and can attract significant fines.

Genuine Redundancy and Unfair Dismissal

An employee whose job has been made "genuinely redundant" will not be able to succeed in an unfair dismissal claim.

An employee's dismissal will be a case of genuine redundancy if:

- (a) their employer **no longer required** the employee's job to be performed by anyone because of changes in its operational requirements;
- (b) their employer has **complied with any obligation** in any applicable modern award or enterprise agreement **to consult** about the redundancy; and
- (c) it **would not have been reasonable** in all the circumstances for the employee **to be redeployed** within the employer's enterprise or an enterprise of an associated entity of the employer.

Employees can pursue unfair dismissal claims where they can show it is not a genuine redundancy.

Redeployment

To show that it was not reasonable to redeploy a redundant employee, an employer must be able to show that it has considered possible redeployment and, ideally, consulted with the employee about those opportunities.

An employee who is offered redeployment to other acceptable employment, and who declines that offer, may have their redundancy pay reduced, or may not be entitled to redundancy pay at all.

Other acceptable employment is employment on conditions substantially similar, and no less favourable overall, to those the employee enjoyed before their position was made redundant. Matters such as pay levels, hours of work, seniority, status, fringe benefits and workload are all relevant.

Modern Awards may impose additional consulting obligations on employers to those set out in the *Fair Work Act*. Modern awards also often provide entitlements to jobseeker leave for employees whose positions are being made redundant. It is important to be aware of any relevant entitlements/obligations under any applicable Modern Award.

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