

Shonky Redundancies Risky

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On a couple of occasions I have discussed the concept of redundancy and a person's monetary rights should their position of employment become redundant.

But what happens if, after accepting the redundancy, the former employee sees an advertisement for their – the job that was no longer required and they lost not so long ago.

Sometimes employers mistakenly believe they can make an employee redundant as an “easy” way to remove a person from the workforce for whatever reason.

The reality is that it is not the “easy” way out, particularly if you get caught out.

Section 389 of the Fair Work Act 2009 (Cth) sets out the meaning of a genuine redundancy as a situation where the employer no longer requires the job to be performed by anyone because of changes in the operational requirements of the employer's enterprise. There must also be compliance with any consultation requirements for the individual position to ensure the dismissal is indeed a genuine redundancy.

The section then goes on to state at 389(2) that there is no genuine redundancy if the employer could have reasonably redeployed the employee either in their own enterprise or the enterprise of an associated entity of the employer.

The definition certainly does not permit “redundancy” in the case of an employee being injured or sick. It also does not allow the employer to pay a redundancy to one employee then employ a fresh face to do that exact job. This would not amount to a genuine redundancy, and might constitute unfair dismissal.

If the employer has legitimate concerns about an employee in respect of their fitness for work, their work performance or other issues surrounding their employment status, it is imperative that they take the correct steps to either counsel, discipline or lawfully terminate the employment contract. Rather than playing the redundancy game, employers should seek advice to ensure they are complying with employment contracts, modern awards and the Fair Work Act.

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Elsbeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elsbeth-ledwy/> or you can find Elsbeth's column “Mind Your Own Business” in the Daily Mercury newspaper each Wednesday.



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