

Downsizing Workforces

When the economy is tough, employers seeking to downsize their workforce may be tempted to take shortcuts which can lead them into legal difficulties.

Small businesses of less than 15 employees (not including non regular casual employees) are not liable to pay redundancy pay but otherwise, redundancy liabilities need to be considered carefully.

Some awards allow for employers to restructure by offering a new position to employees where they are competent to perform the new role (so some re-training may need to be offered), on no less pay and without the employee having to move to another town. But framing that offer requires careful consideration otherwise it could amount to a genuine redundancy, entitling the employee to redundancy pay calculated under the National Employment Standards or applicable award plus all of their accrued entitlements, sometimes including pro rata long service leave.

On the other side of the coin, if a redundancy is used as a method of removing an employee from the employer organisation but it is not a genuine redundancy, that is, where their role is still being performed within the organisation, the employer may be exposed to an unfair dismissal application. Whether the employer's strategy is to offer a genuine redundancy or to try to avoid offering redundancies, the Fair Work Act, National Employment Standards and relevant award need to be considered and the terms of any offer carefully crafted.

Contact Paul Kelly (07 4911 0510) or Jason Garrick (07 3179 2712) to find out more.

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Mackay Office

Level 1, City Court, 78 Victoria Street, Mackay
PO Box 1035, Mackay Qld 4740

P 07 4911 0500 | F 07 4911 0599 | E mail@kellylegal.com.au
www.kellylegal.com.au

Brisbane Office

Level 4, Bank of NSW Chambers, 33 Queen Street, Brisbane
PO Box 13531, George Street, Brisbane Qld 4003

P 07 3179 2700 | F 07 3179 2799 | E mail@kellylegal.com.au
www.kellyfamilylaw.com.au

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