



Employment Issues for Stressful Economic Times

The current economic climate brings with it ever constant talk about downsizing, rightsizing, and mergers with a hope of building a stronger entity ready to face the challenges ahead. Where a merger, acquisition, downsizing or right sizing is being contemplated, the issue of redundancy must be considered.

An employee will be deemed to have been dismissed by reason of redundancy if the dismissal is attributable wholly or partly to:

(a) the fact that his employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was employed by him or has ceased, or intends to cease, to carry on that business in the place where the employee was so

employed; or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish; or

(c) the fact that he has suffered personal injury which was caused by an accident arising out of and in the course of his employment, or had developed any disease, prescribed under this Act, being a disease due to the nature of his employment.

It is important for the employer to remember that he is required within 21 days of the date the decision to dismiss an employee by reason of redundancy is made to notify the Minister in writing of his decision.

There is no specified form that this notice must take but it must contain certain specified information.

Where employers are considering mergers for example, it is important to note that if the employer offers to renew the contract of employment or renew the engagement on the same terms and conditions, which renewal would take effect on the termination date or within two (2) weeks of that date, and the employee unreasonably refuses that offer, the employee is not entitled to receive a redundancy payment. Similarly, if the offer to re-engage is on terms which are different but:

(a) Which constitutes an offer of suitable employment in relation to that employee;

(b) The place in which he would be employed would not be more than ten (10) miles from the place at which he was employed previously; and

(c) The renewal or re-engagement would take effect on or before the relevant date or not later than two (2) weeks after that date; and

(d) he has unreasonably refused that offer, no redundancy payment is payable upon termination.

Where a change in ownership of the business results from the proposed restructuring and in connection with that change the employer terminates the contract of employment, if:

(a) by agreement with the employee, the new owner renews the employee's contract of employment (merely substituting the new employer for the previous owner) upon the renewal or re-engagement the employee shall not be taken to have been dismissed by his employer;

(b) similarly if the new owner offers to renew or re-engage the employee but he unreasonably refuses that offer, no redundancy payment shall be payable.

It is clear therefore that in the two (2) scenarios looked at above, where the employee is re-engaged, he is not entitled to a redundancy payment and his period of employment for the purposes of any future redundancy exercise is deemed to include both the period before and after the renewal. Where the employee refuses the offer of reengagement, whether or not his refusal was reasonable will be considered in the context of the particular individual and his personal circumstances.

The employer is required on making any redundancy payment to give to the employee a written statement of how the amount of the payment has been calculated. If the employer does not provide the employee with this statement, the employee is entitled to issue a notice in writing to the employer requiring him to give him that statement within a stated period, not less than a week.

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