
Redeployment – a key piece of the redundancy puzzle

As New Zealand continues to grapple with post-COVID economic uncertainty, we are seeing a steady flow of business restructures and resulting employee redundancies.

A key, but often overlooked, aspect of a lawful redundancy process is the consideration of redeployment – whether there are any other roles in the business that the employee could do, instead of losing their job.

The employer *must* consider whether there are any suitable redeployment options for an employee who has been made redundant. But what exactly does this look like, and how can employers avoid falling short?

The legal requirements

An employer who dismisses an employee, for any reason, must comply with the good faith obligations in section 4 of the Employment Relations Act 2000 (**the Act**), and should ensure the decision is one that a fair and reasonable employer could have made in all the circumstances.

More specifically, section 4(1A)(c) of the Act provides that where an employer is proposing to make a decision

that will, or is likely to, have an adverse effect on the continuation of employment of an employee, the employer must provide to that employee access to information relevant to the continuation of the employee's employment, as well as an opportunity to comment on the information before any decision is made.

What this means in the context of redeployment

Where an employer has consulted on the proposed restructure and resulting redundancy, consideration of redeployment can often be an afterthought. However, consideration of redeployment is as crucial as being able to set out clearly the rationale for the restructure, and following a fair and genuine consultation process.

Considering redeployment means considering whether the displaced employee could fill an existing vacancy within the business, or a new position set to emerge as a result of the restructure. As a start, this will involve identifying those vacant positions, and then consulting with the employee as to whether any are suitable redeployment options.

Once redeployment options have been identified, the employee should be offered any role which they have the relevant skills and experience to perform, or which they could reasonably be trained to do.

The requirement to consider redeployment requires a robust approach. An employer will not adequately consider redeployment if they assess the employee's suitability for any alternative roles in isolation. Rather, the law requires the employer to consult with the employee before concluding whether a vacant role is suitable. This means properly engaging, providing sufficient information about the role(s) so the employee can provide feedback, and genuinely considering that feedback.

Redeployment – a key piece of the redundancy puzzle (Continued)

Recent guidance from the Employment Court

In the recent case of *Gafiatullina v Propellerhead Ltd*, the employer was heavily criticised for its failure to properly consult regarding redeployment, which largely contributed to a finding of unjustified dismissal.

Ms Gafiatullina was employed by a tech company, Propellerhead Limited, and held a number of different roles as part of her job. Propellerhead faced significant financial issues for a number of months before proposing to disestablish Ms Gafiatullina's main role and redistribute the rest of her roles to other workers.

Having been made redundant, Ms Gafiatullina raised a personal grievance alleging she was unjustifiably dismissed based on a procedurally unfair and substantively flawed restructure. Her claim made its way up to the Employment Court, which released its decision in late 2021.

The Court found Ms Gafiatullina was made redundant for genuine business reasons – i.e. the employer had a good reason for looking at whether it needed her role, and how it could do things more efficiently to save costs given its financial position.

However, Propellerhead's conduct fell short of what was expected of a fair and reasonable employer when it came to the process it followed around redeployment. During its restructuring process, Propellerhead led Ms Gafiatullina to believe there were no viable redeployment opportunities within the business, because it had already decided that she would not be suitable for any of the available roles.

The Court ultimately agreed with Propellerhead that it was reasonable for it to decide these opportunities were not suitable for Ms Gafiatullina. However, it said that the failure to discuss the opportunities with Ms Gafiatullina and seek feedback on that decision was procedurally unfair and a breach of Propellerhead's good faith obligations.

This recent decision makes clear to employers that it is not sufficient for the employer to say "*we have considered whether there are any suitable redeployment opportunities, and decided you are not suitable for any vacant roles*" – the standard one-liner we see in restructure proposals.

Rather, employers must genuinely consult with affected employees as to what the redeployment opportunities are, and whether the employee is suitable for any of those opportunities.

Want to know more?

If this article raises any questions or concerns, please get in touch with one of our [Employment Team](#).