



Worried About the Prospect of Having to Restructure? Let's Review the Steps.

In 2024, New Zealand's economic landscape and government policies are prompting many organisations and businesses to consider restructures and redundancies. Economic pressures, such as the need to “reduce wasteful spending” in the public sector, and the challenges of a recession are often cited as key reasons. If you're a business owner or senior manager thinking that you might need to restructure, you might be wondering what the usual key steps of the process are, or how to avoid risks of action or a negative impact on your workplace culture. In this post we consider the key requirements as well as tips for a smooth process.

Legal Requirements and Employment Legislation

New Zealand's Employment Relations Act 2000 and case law provides something of a framework for managing restructures and redundancies. Key requirements include:

Good Faith: Employers and employees must act in good faith, meaning they should be open, honest, communicative, and responsive. They must also ensure they do not do anything to mislead or deceive each other.

Consultation: Before making any decisions, employers must consult with potentially affected employees, giving them a genuine opportunity to provide feedback.

Justification: Employers need to have a sound business reason for the restructure, supported by evidence.

Documentation: Detailed documentation is essential throughout the process. Potentially affected employees have a right to see information the employer may be taking into account and to provide feedback about it, before decisions are made.

Prominent Case Law

Cases such as *Grace Team Accounting Limited v Brake* and *Totara Hills Farm v Davidson* clarify the Court's view of the requirements when considering redundancy and underscore the importance of following a fair process. These cases highlight that failure to consult adequately or justify decisions can lead to successful personal grievances against employers.

Communication and Timing

Effective communication is critical to a smooth restructuring process. Key steps include:

Confidentiality: Ensure you meet both your Privacy Act and confidentiality obligations throughout the process.

Early Consultation: Initiate consultation when you consider progressing an idea that could significantly impact any employee's employment. This means engaging with employees *before* any decisions are made (and includes where you might be considering closing, or selling some or all of your business, or contracting out). Employer's must ensure that any early information, such as that contained in board papers seeking Board authority to initiate a restructuring consultation process, or corresponding meeting minutes, is appropriately worded to show that no decisions about progressing an idea that might require a restructuring process have been made at that stage.

Proposal Letter: Provide a detailed proposal letter outlining the reasons for the restructure, the roles potentially affected and how, what other initiatives might have been considered ahead of considering to restructure, and the proposed changes, and provide supporting information. Set out the process for consultation and a timeline.

Written Communication: If an employee's role is ultimately made redundant, following due process, this must be confirmed in writing, even if discussed verbally. If an employee is offered an alternative role, the offer might be provided in the form of an employment agreement or variation letter for their consideration.

Sufficient Time: While you don't want unnecessary delays, it's important to ensure sufficient time is allowed throughout the process. For example, the employee needs time to review your proposal and any supporting information, seek a support person or representative if they wish, and prepare their responses or alternative proposals. Receiving a proposal to restructure that could impact the employee's role can come as a shock to the employee. Providing sufficient time can also assist the employee to move through the natural stages of a change process.

Support and/or Representation

Employees have the right to have a representative or support person present during any meetings about the proposed restructure.

Practical Considerations:

Delivery of Proposal Documentation: Provide the proposal documents at the start of the consultation period without meeting or discussing any details initially, unless where the

employee has the opportunity to bring a support person or representative with them. Ensure employees understand they can bring a support person or representative to any subsequent meetings too.

Meeting Arrangements: Schedule meetings at times that allow employees to bring their representative or support person – this can mean needing to delay a meeting to allow the employee's support person or representative to attend. Also ensure a private venue for meetings with individuals.

Providing Support During and After Restructure

There may be various types of support that as an employer, you might want to consider offering, such as:

EAP Services: Employee Assistance Programmes can provide counselling and support.

Career Transition Services: Assistance with job searching, CV writing, and interview preparation.

A restructure can be unsettling for any stakeholder of the business or organisation, whether they are directly impacted by proposed changes or not.

Redeployment Opportunities

Employers must consider redeployment opportunities for employees whose roles are disestablished. This means actively seeking suitable alternative positions within the organisation and offering them to affected employees.

Vulnerable Employees

Under the Employment Relations Act 2000, employers are required to provide special protections for vulnerable employees during a restructure. Vulnerable employees are

typically those in industries such as cleaning, food catering, caretaking, orderly, and laundry services, often working in sectors like education, healthcare, and government. The protections include, amongst other things, the right to elect to transfer to a new employer, in the case of the work being contracted out, on the same terms and conditions of employment.

Conclusion

Navigating a restructure can be daunting and there are certainly a number of requirements to meet. However, complying with legislation, maintaining transparent communication, and considering what support could be provided, employers can manage restructures more smoothly, minimising the risk of employee actions. This post highlights some of the usual requirements, but there can be other requirements for various circumstances or as the process progresses. It is therefore highly recommended that employers seek advice before embarking on a restructuring process. If this is a process you may need to consider in the future, please do not hesitate to reach out to me for some initial advice or support.

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