Manage the separation/termination process

Overview

Managing a separation/termination involving either retirement or redundancy requires as much attention as managing any other type of termination. If a retirement or redundancy is not managed correctly, for example, the company will be at risk of being charged with unfair dismissal. This resource defines and outlines procedures that should be used in managing a separation/termination due to retirement or redundancy. It also provides the legal requirements attending either and outlines the communication process that should be used.

Key terms

Redeployment
The finishing of one contract of employment and replacement with a new contract for a different position.

Redundancy
When employees are laid off on a permanent basis because their work is no longer required by the company due to economic and technological reasons as well as other reasons.

Stakeholder
A stakeholder includes anyone that affects, or is affected by, the processes in an organisation. This includes management, staff, the HR department, but could also include unions and other labour organisations, employer groups, tribunals and courts, economists, and government departments.
Voluntary redundancy

When an organisation intends to lay off workers, it can ask whether any employees are interested in resigning voluntarily and taking a lump-sum payment.

Retirement

The issues surrounding retirement today can be complex. The HR team needs to anticipate retirement rates so that they can plan to maintain the skill level within the organisation. When long-term workers retire, they take with them a wealth of knowledge, which may be costly or difficult to replace. As HR manager your aim is to achieve an orderly handover of knowledge and skills, with older workers mentoring younger staff to help prepare them as a replacement.

Of course, not everyone wants to retire at a given age. Some will choose early retirement if they can. Others will choose to postpone retiring and continue working for as long as they can. This makes predicting retirement more of a challenge.

Management should have a written retirement policy which has been distributed to all employees. A policy that takes into account retirement incentives could potentially reduce the need for redundancies or a frantic scramble to recruit new staff.

Tip

Such a policy should not discriminate amongst employees on the grounds of age or gender. The Workplace Relations Act 1996 prohibits the dismissal of an employee on the grounds of age. However, a retirement policy could indicate an age when the employer is willing to offer retirement incentives. In some cases, an assessment of an older worker may be allowed to confirm competency.

A decision to retire is not the same as a decision to resign, as generally the employee does not go on to other work. There are also legal considerations—income tax laws provide certain tax advantages to those retiring and superannuation options can also be affected by timing. Early retirement benefits, from both a tax and superannuation perspective, start at 55 years.

Most organisations will require the same period of notice to be given for retirement as they would for a resignation. An alert HR manager might
discuss an employee’s intentions during an annual performance review, but care must be taken—giving an employee unreasonable options could be seen as constructive dismissal.

Workforce investment reports

Detailed records and projected rates of separation/termination have an important place in HR planning and feature in reports on the organisation’s investment in the workforce.

The future ratio of retirements to other forms of separation and termination could influence operational matters, such as:

- budgets
- project schedules
- opportunities for promotion
- training needs.

Predictions about retirement intention will be gathered from staff records, annual performance reviews and surveys. However, the nature and timing of such reports will vary from one organisation to another.

Redundancy

Redundancy occurs when a position is no longer required by the organisation. This can happen at all levels of the company hierarchy and describes a situation where employees are retrenched, or laid off, through no fault of their own. In such cases, the job may be terminated, rather than the employee. In fact, the employee could be offered alternative work and redeployed.

While a redundancy can also involve a termination of employment for individuals it is different from other terminations as the employer decides that the work currently being performed by the employee is no longer required.

Redundancy can come from a number of conditions:

- changes flowing from the introduction of new systems and technology—or modifications to existing systems and technology
- restructuring, relocation or reorganisation
- changing economic or market conditions.

When thinking about redundancy, it’s important that you consider issues related to general termination. However, there are also some special policies and processes that should be in place before redundancy notices are issued. For example, the job might be available only a short time (e.g., seasonal
work)—in such cases, a different set of rules may apply. Where changes are of a more permanent nature, redundancy has a similar impact to dismissal and can lead to cases of unfair or unlawful dismissal.

Planning

Losing a large number of employees means losing a wealth of experience and the organisation’s know-how. So you will have to work closely with departmental managers to decide who to terminate and who to retain.

To put a dollar benefit on a staff reduction program, senior management should first work out its overall cost reduction program. That calculation must be balanced by the need to make short-term allowances to provide the cash flow to meet notice and severance pay requirements. The remaining staff may also need retraining—learning to work in new ways with a smaller team.

If redundancy can’t be avoided, you should already have policies and plans in place describing how the organisation can safely and fairly affect the release of employees.

The key points when planning for redundancies are:

- Establish the number of jobs that must be cut, and decide if the redundancies can be voluntary or involuntary.
- Set criteria for selecting those to go.
- Check the award and legislative provisions regarding notice and the involvement of unions.
- Consider the timing (e.g., Are affected people on leave?)
- Define the terms of the redundancy payments.

Voluntary redundancy

Offering workers the opportunity to choose redundancy is one way to reduce disruption within the organisation when cutbacks are inevitable. Staff are advised of the organisation’s intentions and this leaves the option open for some to volunteer for redundancy.

One drawback is that longer-serving staff often take advantage of generous redundancy payments—and this can deplete the company’s knowledge base. However, on the plus side, voluntary redundancy may lessen the likelihood of morale collapsing amongst remaining staff and prevent possible disputes.

Voluntary redundancy offers need to be carefully worded, so that they are in fact an offer from the employee to accept a redundancy package which the
employer is under no legal obligation to accept. The eventual outcome will depend on the employer’s assessment of workforce needs and resources.

Redeployment

When faced with inevitable redundancies in one part of the organisation, it makes sound business sense to redeploy employees wherever possible, as both time and money will have been invested in training those employees. This course of action might also save on redundancy costs. If there are suitable positions elsewhere in the group, the HR team should be able to identify and recommend employees to fill those positions.

Employers are encouraged to provide staff with alternative work through an offer process. If the employee agrees, the position is automatically deemed ‘suitable’. If, however, they refuse a position that the employer considers suitable and that refusal is unreasonable, they may lose their entitlement to statutory redundancy payments.

An offer of suitable alternative work must:

- have similar status
- be within the employee’s capability
- not cause unreasonable additional inconvenience
- provide similar earnings.

If the employee accepts an offer of suitable alternative work, the employer has a right to stipulate a probation or qualifying period (three months). The employee remains entitled to statutory redundancy compensation if either they or the employer decides it is unsuccessful. (The probationary period can be extended to allow for necessary training.)

Tip

If an employer finds acceptable alternative employment for an employee, the organisation can apply to the Industrial Relations Commission to be exempted from its obligation to pay that employee severance payments.

Outplacement

It is considered best practice for an organisation to offer some form of outplacement service to those being made redundant.

Outplacement services can be provided by experts within the organisation or by outside agencies. Using an internal team to provide such services can
result in savings for the organisation. However, an employee who has just been made redundant might not be open to advice from the organisation. So offering the services of an independent outplacement consultant may be more acceptable.

Providers, whether internal or external, should offer a wide variety of counselling to assist staff in accepting the situation and moving forward. Outplacement services should include:

- helping employees develop a clear action plan for the future
- providing advice on career assessment
- updating résumés
- developing skills in effective job search strategies
- developing skills in successful interview techniques.

The length of time required for such services varies considerably between individuals, but generally two to three months of outplacement assistance might be expected. Costs will also vary between suppliers.

Research

Does your company offer outplacement services to those being made redundant?

Tip

For an example of a termination policy incorporating outplacement support, go to: [www.hr.murdoch.edu.au](http://www.hr.murdoch.edu.au) and go to their Policies and Procedures link

Legal considerations

Legal issues related to redundancy are many and varied. The starting point for selecting employees to be made redundant is to check in fine detail all the applicable award and agreement obligations.
The legislation you should have copies of are listed below.

**Table 1: Legislation acts and provisions (3 cols)**

<table>
<thead>
<tr>
<th>Power</th>
<th>Name of Act</th>
<th>Some provisions</th>
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<tbody>
<tr>
<td>National</td>
<td><em>Workplace Relations Act 1996</em>, Div 3 Pt VIA</td>
<td>• Period of notice</td>
</tr>
<tr>
<td></td>
<td><em>Employment Protection Act 1982</em></td>
<td>• Notice to CES</td>
</tr>
<tr>
<td></td>
<td><em>Industrial Relations Act 1996</em></td>
<td>• Unions</td>
</tr>
<tr>
<td></td>
<td><strong>Some provisions</strong></td>
<td>• Written notice</td>
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<tr>
<td></td>
<td></td>
<td>• Casuals</td>
</tr>
<tr>
<td>NSW</td>
<td><em>Employment Protection Act 1982</em></td>
<td>• Period of notice</td>
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<td></td>
<td><em>Industrial Relations Act 1996</em></td>
<td>• Scale of payments</td>
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<tr>
<td></td>
<td></td>
<td>• Power to insert provisions in awards</td>
</tr>
<tr>
<td>Victoria</td>
<td><em>Federal Workplace Relations Act 1996</em></td>
<td></td>
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<tr>
<td>Queensland</td>
<td><em>Industrial Relations Act 1999</em></td>
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<tr>
<td>SA</td>
<td><em>Industrial and Employee Relations Act 1994</em>, sec 2</td>
<td></td>
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<td>WA</td>
<td><em>Minimum conditions of Employment Act 1993</em></td>
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<tr>
<td>Tasmania</td>
<td><em>Industrial Relations Act 1984</em></td>
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<tr>
<td>Territories</td>
<td><em>Federal Workplace Relations Act 1996</em></td>
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Not all groups of employees are entitled to redundancy payments by Federal or State laws. Examples of employees, under the organisation’s general control who are excluded from redundancy cover are:

- employees serving a reasonable probationary period
- short-term casual employees
- employees engaged for a fix term of less than six months.

If the person is not an employee but a contractor, they too are excluded from the redundancy protection safety net. However, contractors may be able to seek other remedies under unfair contracts legislation if their work is made redundant before the contract expires.

**Selecting employees for redundancy**

One of the key decisions for an organisation planning redundancies is who to retain and who to let go. Where possible you will want to keep those people with the necessary skills and experience to take the organisation forward. However, an important part of that decision is the contractual and legislative obligations you must meet.
Where there is no award or contractual commitment to comply with for redundancy your organisation can formulate its own policy. Note: That policy should be published to all employees.

Once you have determined how many employees to let go, carefully scrutinise those affected. The core of your selection process should be based on fairness. So it’s advisable to be mindful of the same discrimination policies that apply when employing staff.

There are various factors you could look at when selecting employees for redundancy—for example:

- seniority—i.e., should those most recently employed be the first to be retrenched (‘last on, first off’)? Would this be considered discriminatory? Should it be based on merit instead?
- job performance—those with the poorest performance, according to the performance review system, are the first to go.
- skills and abilities for succession (merit-based)
- age—as long as it’s non-discriminatory
- attendance.

There are many methods of selection. One company, trying to make a difficult choice, divided their staff into four categories, gave points in each category, and then made those with the fewest points redundant. The points in this case were allocated for:

- teamwork
- skills and knowledge
- initiative
- other.

Certain best practice principles, for selecting employees for redundancy, have evolved from the Industrial Relations Commission hearings.

**Best practice principles**

They are as follows:

1. Give as much warning as possible, as early as possible.
2. Consult with the union to establish criteria of selection.
3. In determining selection criteria look at matters such as length of service, efficiency, experience and attendance record. Use staff records where possible, rather than the subjective opinions of managers.
4. Seek a fair selection in accordance with the criteria chosen.
5. Consider the availability of alternative employment.
Other points to consider are:

- Maintain ongoing communication with employees about redundancy negotiations. They will have questions about the loss of jobs.
- If the organisation's resources allow, consider making the services of an outplacement agency available to assist them.
- Discuss alternatives to redundancy where possible (i.e., job sharing, reduced working hours, salary reductions, etc.)

A fair go for all

Procedural fairness should be applied to all terminations. Even a genuine redundancy can still be found to be harsh, unjust or unreasonable and therefore be classified as an unfair dismissal.

While the Commission may not reinstate an employee if persuaded that the redundancy was genuine, it could still find that the dismissal was unfair and make an award of compensation if:

- the employee (and their union) were not consulted before the retrenchment date or notified as soon as possible once a decision to terminate was made
- the criteria used to select employees for redundancy were not fair and reasonable
- alternative suitable employment was available but not offered to the employee
- the amount of severance benefits offered was inadequate.

Employees should always have the reasons for a redundancy explained to them in advance and be given an opportunity to propose alternatives to the redundancy. For example, some groups of employees have offered to share the load when their organisation was faced with having to reduce staffing numbers; proposals included accepting a pay cut or working shorter hours.

Tip

Be careful—written agreement must be in place before such action can be taken and any change to a workplace agreement must be put before an Industrial Commission. Offers need to be written (with time period, etc, set out).
Think

Imagine that a number of people in a section of your company must go. No one wants redundancy, and no one volunteers to be relocated or retrained. So you must decide who goes first and on what grounds people will be selected for redundancy. What would be your strategy and criteria for deciding who should be made redundant?

Worker entitlements

Under applicable company policy, or in accordance with their employment contract, terminated employees may have an entitlement to severance pay. If this is the case, the employee will be entitled to receive severance payments in accordance with an applicable scale.

The Departments of Industrial Relations in most states will have an award enquiry service which can provide you with relevant details.

For example, an employee will only be entitled to a redundancy benefit if covered by a NSW award or industrial agreement and the employer has at least 15 employees.

The NSW Employment Protection Act 1982 makes provision for a redundancy entitlement if the NSW award or industrial agreement does not make specific provision for a redundancy benefit. The Employment Protection Act scale should be regarded as the minimum entitlement.

Employees could also argue that they are entitled to an ‘industry standard’ when it comes to redundancy payments. It is important to check the typical entitlements of an employee in a particular industry. Assuming payments of three or four weeks pay per year of service are typical may be wrong. Most industries have no requirements at all other than the minimum requirements of an award or Act.

Common law

A complication for many managers responsible for managing the redundancy process is poorly kept, or badly organised records. If your HR Information System isn’t of high quality, you may have difficulty supporting your case in a dispute.
The common law will recognise a contract that stipulates a minimum period of notice in a redundancy; this is typically one month notice of termination. However, if the contract makes no mention of a minimum notice period, or if there is ambiguity or uncertainty, the courts have applied what is called ‘reasonable notice’.

In circumstances where ‘reasonable notice applies’ the courts will more often than not test factors such as:

- the employee’s age
- their seniority
- their length of service
- their capacity to find other suitable employment.

A period of 12 months notice would ordinarily be considered for employees with more than 10 years service as a very senior executive.

**Notice requirements and payments**

Termination payments are not necessarily straightforward. For example, an employee whose service is being terminated may have outstanding entitlements, such as payment in lieu of notice, severance pay or holiday pay. So the redundancy payment may be seen as a separate sum of money.

An unwary HR manager may payout a redundancy payment and then face a claim for additional severance pay, particularly where lengthy periods of notice are involved.

This difference can be covered in the notice of redundancy, by a sentence that says:

The company has provided x months severance pay, which is inclusive of all entitlements to notice and redundancy pay.

**Research**

**What conditions apply to your own employment contract?** Check which of the following conditions might affect your separation payout if your position was declared redundant, and how the amount would be calculated. Ask your pay office to help you work out your entitlements if you left today and then repeat the process as for the same job in five years' time. Consider the following: a) which award (if any) and what conditions would apply to your redundancy; b) what conditions apply to redundancy or severance pay; c) if you had accrued annual leave and / or were eligible for long service leave, would you get pro rata payment as a part of severance pay; d) are there any other benefits that you might accrue and, if so, what conditions would apply in terms of your redundancy?
Federal award employees

Since the Federal termination change and redundancy case in 1994, most federal awards have provisions inserted in them which deal with redundancy. These redundancy provisions oblige on the employer to:

- consult with the employees in relation to the redundancy
- provide relevant information to the employees and their trade unions concerning the proposed terminations
- provide the required period of notice and severance pay in accordance with the following table, which is set out in the Workplace Relations Act.

Table 2 Severance pay for federal award employees (2 cols)

<table>
<thead>
<tr>
<th>Period of service</th>
<th>Severance pay</th>
</tr>
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<tbody>
<tr>
<td>1 year or less</td>
<td>Nil</td>
</tr>
<tr>
<td>1–2 years</td>
<td>4 weeks pay</td>
</tr>
<tr>
<td>2–3 years</td>
<td>6 weeks pay</td>
</tr>
<tr>
<td>3–4 years</td>
<td>7 weeks pay</td>
</tr>
<tr>
<td>4 years and more</td>
<td>8 weeks pay</td>
</tr>
</tbody>
</table>

An employer may however apply to the AIRC to have the severance pay prescription varied if they obtain acceptable alternative employment for the affected employee.

It has been clearly established that no redundancy payments should be made in cases where there has been a transmission of business and the relevant employees are transferred to the new employer. Although, technically, a termination of employment has occurred, the situation does not constitute a redundancy or call for a redundancy payout.

Managing termination

HR management is based on the simple premise that it does not exist as an end in itself, but for the purpose of supporting organisational policies and accomplishment of goals.

The staff of the HR department are not free agents when it comes to managing people. HR management activities are carried out within the legislative framework (such as the Anti-discrimination Act) and the values of openness, fairness and equity.
Nor can HR management systems and processes take on a life of their own— independent from broader organisational goals. The HR systems must be judged by how well they, and the people who administer them, support those who work each day to carry out the organisation’s main business.

A fundamental component of your HR management accountability and skills will be the link between your organisation’s strategic goals and the HR goals and systems.

As a HR practitioner, you should be able to take part in the following activities:

- HR planning
- developing HR plans to meet workforce needs
- equipping the organisation with the employees (human resources)
- perform HR services.

The HR management systems and operations for the termination of employees must fit comfortably within the overall management formula.

Accountability

Who is accountable for HR decisions and what responsibilities do they hold? In some decisions, the responsibility lies with the departmental manager. In other decisions, the responsibility is held by the HR manager.

Every organisation is likely to have its own unique management method. The following guidelines describe sharing HR management accountability, while raising important issues for consideration in your review of separation and termination policies.

Shared accountability means that both HR staff and management are ultimately accountable for effective, legally compliant HR management.

Ideally, the department manager will be directly accountable for the implementation of an HR management decision, while the HR staff will be directly accountable for the regulatory compliance of the action and recommendations.

It is the responsibility of senior management to commit the organisation to shared accountability. As you can see from the flowchart below, authority is delegated to the business, while HR staff remain responsible for processing the action—ensuring it meets both its legal obligations and company policy.
If your organisation decides on a division of powers and responsibilities for the management and implementation of separation or termination of employees, your policies must allow for co-ordination. This is so that procedures are uniformly applied and necessary steps don’t get missed as duties and responsibilities are distributed. So you need to have procedures and checklists in place to be followed.

Research

Are HR activities centralised in one office or delegated to managers throughout your organisation? In the event of a dispute over departure or termination of an employee, what level of delegation or co-ordination would you be expected to give to the manager of the employee(s) in negotiations and conflict resolution while performing your HR tasks?
Managing shared accountability

To ensure a more collaborative approach when managing separation and termination, HR staff, departmental managers and senior management may all need to redirect their efforts in several different areas.

Role of HR staff

- Focus more on creating human resource value in the organisation and policies to achieve those goals than on running day-to-day operating procedures that may be the responsibility of a manager of another division.
- Become actively involved in the development and management of HR management goals and strategies, including separation and termination policies. They will assist the achievement of those goals and support the effective communication of the policies to managers.
- Act as consultants to divisional managers on HR management issues, helping and encouraging them to consider the people aspect of their business decisions.
- Simplify, streamline or automate existing HR management processes such as staffing and work classification, separation and termination procedures, reports and records.
- Provide managers with accessible on-line HR management information. You need to have HRIS in place to be able to do this effectively.

Role of divisional managers

- Increase their knowledge of performance reward schemes and illegal personnel practices, as well as industrial laws and regulations.
- Develop a clear understanding of how HR management decisions affect the organisation’s goals and policies and how business decisions impact people.
- Ensure the proper use of HR management systems.

Role of senior management

*Note:* Divisional managers report to senior managers.

Senior management need to have a clear commitment to HR management and the strategic goals of the organisation.

- Recognise and communicate that people (and the knowledge accumulated by those people) in an organisation are a valuable and irreplaceable resource in the organisation.
• Demonstrate a strong commitment to HR management accountability and the shared roles between divisional managers and HR staff.

• Require management training and education to enable managers to make informed HR management decisions compliant with the law, and require HR staff to understand the programs they support.

Managing communication

Information overload and time pressures mean that people need the right kind of information delivered through the most effective medium in a timely fashion. This is especially true in times of stress and urgency, such as a move towards making a number of staff redundant.

We will now review HR communication policies and practical skills in light of the essential part they play in redundancy procedures. In brief, the three prime goals for getting HR management information to the workforce should be to:

• deliver useful information to the workforce
• help the workforce use the HR management communication system
• encourage and assist customers to provide feedback.

In the particular case of a large number of employees facing redundancy, the following guide to effective communications practice is vital.

The HR department will need to use efficient media, unbiased forums and effective messages to:

• consult with staff (and where relevant, unions) about plans and choices
• distribute information quickly, widely and accurately
• inform staff of the progress of negotiations and developments
• channel feedback directly from employees to those needing it.

Model goals of an HR communications program

Your HR communication plan should aim to carry out the following:

• Systematically use all available media to help the workforce use the HR management information system.
• Disseminate HR management information to the workforce that will help them in their work or decisions.
• Encourage staff and managers to give regular feedback and to make it easy for them to do so.
• Ensure that HR communications contain useful information that is timely and responsive to customer needs—communication documents should be valid, reliable and consistent.

• Clearly present information so it is easy for customers to find and understand.

• Provide credible (reliable and accurate) information. The content, tone and style of communication should be appropriate to the audience and believable.

HR communication roles and responsibilities

HR management will:

• communicate and clarify senior management’s values and their own, to HR staff

• set the tone for quality exchange of ideas and reliability

• model behaviour expected in communications with other departments and employees

• share available information with peers, in a timely manner

• emphasise the importance of getting authoritative information to department managers and staff

• use consultative mechanisms.

It is a key assumption that HR management staff will develop the necessary skills for effective communication. So, HR management will need to train staff in the skills such as:

• fitting a message to the audience and media

• constructively giving and receiving feedback

• sharing learning from conferences and workshops with others

• preparing clear, well-organised messages.

HR management staff are required to:

• recognise who in the organisation needs the information that they have special access to—recognising the restriction of privacy laws

• disseminate relevant information to employees when they need it

• communicate useful information—that is timely, accurate, complete, consistent and responsive to customer needs—emphasising HR management practices

• send clear messages which make it easy for customers to find and understand the information they need

• communicate in a manner and tone that present a credible image of themselves and the organisation and making messages convincing
• know how to choose the right media for communicating
• develop their communication skills.

Developing communication systems and tools

The HR department will be required to develop communication systems and tools. This involves:

• recognising kinds of information various customers are likely to need and want
• developing guides to help departmental managers or other HR staff plan, prepare and package message
• identifying communication resources such as books, videotapes, websites and training material
• selecting the best media for various communication purposes and audiences.

The HR communications plan should encourage and use feedback. This means:

• asking for it
• making it easy for customers to provide
• developing tools to make feedback easy to handle
• acknowledging and reply to messages.

The next steps

Of course, developing a communication system is only the first step in the process.

Listed below are the other steps you will need to take before the communications plan can be implemented.

1. Identify the pros and cons, strengths and weaknesses, opportunities and threats of creating an HR management communications team.
2. Develop a budget to implement the HR management communications plan.
3. Develop a plan to formally evaluate the results of the communications plan.

Adapted from Open Training and Education Network (2003) Learner's Guide BSBHR507A TAFE NSW; used with permission