



# 7 Common Mistakes Employers Make When Restructuring

I have had a higher than usual number of business owners and managers seek my advice about restructuring in recent months, and it's perhaps no surprise, given the recent economic climate.

Restructuring is a complex process that must be handled carefully to ensure compliance with employment law and minimise risk. It's by no means a quick fix, and it's most definitely not the answer to ongoing and unaddressed performance issues.

Employers who fail to follow the correct procedures may face personal grievances, legal challenges, and reputational damage. So, below is a checklist outlining the seven most common mistakes made in regards to restructuring and how to avoid them.

## 1. Failing to Provide Genuine Business Reasons for Restructuring

- Employers must have genuine commercial or operational reasons for restructuring, such as financial difficulties, efficiency improvements, or changes in business strategy.
- Simply wanting to remove an underperforming employee is not a lawful reason for restructuring.
- Ensure reasons are clearly documented and communicated.

**Tip:** Prepare a business case outlining the rationale for the restructure and ensure it is based on objective and factual evidence.

## 2. Not Following a Proper Process

- Employees have the right to be consulted on any proposed restructuring when an idea arises that could impact their employment and before any decisions are made.
- There are some minimum acceptable timeframes for each step of the process too – it's important to allow sufficient time for employees to review and consider the proposal, and to provide their feedback, including any alternative ideas. On the flipside, you don't want to create any unnecessary delays in the process, as this can add stress for those involved.
- Employees also have a right to have a support person or representative with them in any discussions or meetings about a restructure.
- Employers must provide employees with sufficient information (everything they are taking into consideration in regards to the proposal), including details of the proposed changes, reasons, information relied on, and potential impact. Transparency is key. Don't put opinions in the proposal about why the change is necessary if you can't provide relevant evidence to support those points.
- Employees must be given a reasonable opportunity to provide feedback, which must be genuinely considered.

**Tip:** Provide a written proposal and allow employees at least a week to respond before making any final decisions.

## 3. Predetermining Outcomes Before Consultation is Complete

- Employers must not decide on any outcomes before completing the consultation process. The language used in the process, in meetings and documents, needs to reflect this.

- Employees should believe that their feedback could genuinely influence the outcome. This includes where your proposal is about selling, closing or transferring all or some of the business - some business owners don't always realise closing or selling the business requires a restructure process.
- Any pre-determined decision-making can invalidate the process and lead to legal challenges.

**Tip:** Keep an open mind, consider alternative solutions, and ensure the process is fair and transparent.

#### **4. Using Inappropriate Selection Criteria**

- If multiple employees are potentially affected, and the proposal is about a reduction of roles, employers must apply fair and objective selection criteria.
- You must consult on the selection criteria, and on any draft assessments for all involved, before reaching decisions. The selection process during a restructure is not exactly the same as the selection process during recruitment.
- Selection should be based on skills, experience, qualifications, and business needs, not personal preferences.
- Avoid vague or subjective criteria that could be seen as discriminatory or performance based.

**Tip:** Clearly define the selection criteria in writing, seek feedback on it before it is relied on, and apply it consistently and objectively.

#### **5. Failing to Consider Redeployment Options**

- Employers must consider whether there are suitable alternative roles within the organisation before confirming redundancy.

- Failure to explore redeployment could be seen as an unfair dismissal.
- If a suitable role exists, the employee should be given the opportunity to apply or be offered reassignment.

**Tip:** Document all redeployment considerations and ensure employees are informed of any opportunities.

## **6. Notice, Incorrect Final Pay or Redundancy Entitlements**

- Notice will apply in the case where an employee's employment ends by reason of redundancy, and it must be in writing. This will be the period of notice specified in their employment agreement, and it is important that it is clear when notice applies from. If the employment agreement allows for it, the employer may specify that the employee will be paid out their period of notice in lieu of them having to work it.
- New Zealand law does not require employers to provide redundancy compensation unless it is included in employment agreements or policies.
- Final pay must include outstanding wages, holiday pay, and any contractual entitlements.
- Miscalculations can result in claims for unpaid entitlements.

**Tip:** Review employment agreements before finalising redundancies and ensure all payments are calculated correctly.

## **7. Poor Communication and Lack of Support for Affected Employees and Others**

- Restructuring is a stressful process, and poor communication can lead to confusion, uncertainty, and low morale.
- Employers should clearly and sensitively communicate changes, timelines, and support options.

- Consider providing counselling support for affected employees.
- Afterwards it is likely work will need to be done to rebuild trust and the workplace culture, as these can be impacted by a restructure, even with staff not directly involved.

**Tip:** Hold meetings with individuals potentially impacted by your proposal to answer any questions about the process and ensure employees understand the decisions made and the options.

### **Some of the Ways that I Can Assist You**

As an HR and Employment Relations Consultant, I can help ensure your restructuring process is legally compliant, fair, and effectively managed. My services include:

- **Reviewing and drafting restructuring proposals** to ensure clarity and legal compliance.
- **Providing guidance on consultation processes**, selection criteria, and redeployment options.
- **Assisting with communication strategies** to ensure employees are well-informed and supported.
- **Conducting risk assessments** to minimise potential legal challenges.

By working with me, you can avoid costly mistakes and ensure your restructuring process meets requirements. **Need expert support? Get in touch today to discuss your needs.**

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