



Wider Public Service Heads of HR

Thursday 7 December 2023

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3. Employment Relations update

In the last couple of months we've spoken about fiscal sustainability, particularly engaging with your people and their representatives on ways for meeting the expected fiscal challenges. As we see changes being implemented across the sector, it's timely to highlight the issue of re-employing someone that had recently received a redundancy payment.

A high-level overview of restrictions on redundancy payments - [Section 88 of the Public Service Act](#) notes the restrictions:

1. *A public service employee who has received a notice of termination by reason of redundancy is not entitled to a redundancy payment if, before the employee's employment has ended, the employee—*
 - a) *is offered and accepts another position as an employee in the State services (either in the employee's current department or interdepartmental venture or elsewhere in the State services) that—*
 - i) *begins before, on, or immediately after the date on which the employee's current position ends; and*
 - ii) *is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and*
 - iii) *is on terms that treat service within the State services as if it were continuous service; or*
 - b) *is offered an alternative position as an employee in the State services (either in the employee's current department or interdepartmental venture or elsewhere in the State services) that—*
 - i) *begins before, on, or immediately after the date on which the employee's current position ends; and*
 - ii) *is a position with comparable duties and responsibilities to those of the employee's current position; and*
 - iii) *is in substantially the same general locality or a locality within reasonable commuting distance; and*
 - iv) *is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and*
 - v) *is on terms that treat service within the State services as if it were continuous service.*

There are some simple actions that can be taken:

- **The current employer** – during the change management process, educate staff about the provisions in the Act. If an employee is at risk of redundancy, they can be advised that if they receive an offer from another employer from the State services prior to their last day, they must advise the HR team. HR staff can meet with the employee and discuss the offer in relation to the Act.
- **The prospective employer** – during recruitment, likely at preferred candidate stage, can ask any applicant who is currently employed in the public sector, if they have received notice of redundancy, or left employment with a redundancy payment. During reference checks, they should also ask if under notice of redundancy.
- **The employee** - be transparent about job offers, the timing and conditions of employment offers.

In Confidence

We have seen that the Public Service Association (PSA) has produced material for their members that refers to these restrictions, so it likely that your staff are already aware of this legislation. As always, where agencies have concerns about any particular issues they are facing, they may wish to seek their own legal advice.

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