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## Amendments to the Small Business Fair Dismissal Code

The Small Business Fair Dismissal Code (**Code**) sets out a process for the dismissal of employees by small business employers (ie, currently, employers with fewer than 15 full time equivalent employees). In addition, a Small Business Fair Dismissal Code Checklist (**Checklist**) exists as a tool to help small business employers comply with the Code.

In an effort to make clearer the obligations of small business employers in dismissal situations, the government has changed the preamble to the Code and the Checklist.

### Key changes

The key changes to the Code and the Checklist relate to redundancy and dealing with employee requests for a support person.

The preamble to the Code has been amended to highlight the requirements for determining whether a dismissal was a 'genuine redundancy' within the definition of section 389 of the Fair Work Act 2009 (Cth) (**Act**). Under the Act, a dismissal will be considered a genuine redundancy if:

- the employer no longer required the employee's job to be performed by anyone because of changes in the operational requirements of the

employer's enterprise; and

- the employer complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

A dismissal is not a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within the employer's enterprise or an associated entity of the employer.

The key changes to the Checklist include:

- new introductory text regarding the function of the Checklist and its interaction with the Code;
- amended and additional questions regarding whether the dismissal was a 'genuine redundancy'. The Checklist now asks employers whether:
  - the dismissal arose because it 'didn't require the person's job to be done by anyone because of changes in the operational requirements' of the business;



- it complied with any applicable redundancy consultation requirements; and
- it considered redeploying the employee;
- additional questions concerning the discussions between the employer and employee, namely whether the employee made any request to have a support person present (who was not a lawyer acting in a professional capacity) at those discussions and whether the employer agreed to any such request.

## What this means for small business employers

In effect, the amendments to the Code and the Checklist do not change the obligations of small business employers with respect to dismissals.

The Checklist provides an invaluable guide for small business employers. However, it is important to note that simply completing the Checklist will not mean that you have complied with the Code, nor is it a requirement of the Code that the Checklist be completed. The Checklist may however help you assess and record your reasons for dismissing an employee, which may prove useful if you face a future unfair dismissal claim.

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