



## I am a high income earner. Am I protected by redundancy laws?

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If you are an employee in the National System, your redundancy entitlements are guaranteed by the National Employment Standards (**NES**). The fact that you are a high income earner, does not, on its own, prevent you from redundancy entitlements. There are several factors to consider.

An employee will be entitled to a redundancy payment under the NES if:

1. they have been working for their employer for over 12 months;
2. their employer is not a Small Business Employer under the *Fair Work Act 2009*; and
3. their employment is terminated by the employer because their position is no longer required to be performed (and the employee cannot be redeployed within the employer's business or an associated entity).

The NES redundancy entitlements provide for a certain number of weeks' pay per year of service. It is important to remember that the NES entitlements are just the safety net and employees may have more favourable redundancy entitlements in their enterprise agreement or their contract of employment.

## My employer is saying I'm not entitled to a redundancy payment – is that true?

In some circumstances, an employer will not be required to make a redundancy payment to an employee even though the employee's position has been made redundant.

If you have been working for the employer for less than 12 months and/or your employer is a Small Business Employer, you may not be entitled to a redundancy payment.

If you earn more than the [high income threshold](#) (as set out in the *Fair Work Act*), this fact alone will not prevent you from being paid your redundancy entitlements.

However, if your employer offers you another position within the employer's business, or the employer takes steps to secure you a role in another business, the employer may be able to reduce the redundancy payment that they are required to pay by a proportion (up to and including 100%).

It is important to seek advice about the consequences of rejecting an offer of alternative employment in these circumstances, as your entitlement to a redundancy payment may be at stake.

## What if my employer offers me a more junior role?

While an offer of alternative employment does not need to be identical to (or better than) your current position, it still needs to fall within a 'range of tolerance' before the employer can seek to reduce your redundancy entitlements. Various factors are relevant when considering whether an alternative position is within the 'range of tolerance', including:

1. salary;
2. duties and responsibilities;
3. location;
4. status within the organisation; and
5. opportunities for career progression.

## Get help from an employment lawyer

No one factor is determinative, or more or less important than any other factor. This means the 'range of tolerance' can be difficult to define. If your position is being made redundant and your employer has offered you alternate employment that you consider is inappropriate (taking into account the above factors), you should seek advice from a lawyer experienced in [employment law](#).

You can get in touch directly with today's blog writer, [Ellie Bassingthwaite](#), for advice and assistance in relation to your specific circumstances.