

28 March 2011

Management of Change, Redeployment, and Redundancy Compensation Policies

The State Services Commission (SSC) has been asked for guidance on situations where an agency is considering employing or re-employing someone who has recently been affected by redundancy.

The issues of concern to many Chief Executives include:

- what is appropriate when/if a State servant is re-employed in the State sector soon after (or at the same time as) receiving redundancy compensation for the loss of a former role
- whether current levels of redundancy compensation are appropriate.

Before addressing these two issues, outlined below is our general guidance on change management, which should be incorporated in employment agreements:

- State sector agencies are expected to have well-developed policies for managing change that first seek to retain skilled and competent individuals within the agency.
- If this is not reasonably practicable, then affected employees are to be assisted to seek employment elsewhere in the State sector. (The importance of redeployment was most recently confirmed by Government in May 2009 with the release of “Government Expectations for Redeployment in the State Services”.)
- Redundancy is to be a last resort. The use of redundancy payments should be limited by making reasonable efforts to find the affected person alternative employment elsewhere prior to the termination of employment.
- Redundancy compensation should be fair to both the individual and the taxpayer. “*Fairness to the taxpayer*” means that conditions should not be extravagant and must not lead the wider labour market. Employment retention is a key consideration in assessing “*fairness to employees*”.
- Employment agreements should contain provisions that prevent an employee being entitled to redundancy compensation where that employee has been made redundant but is offered a position in the State services on comparable terms and conditions of employment before the expiration of his or her notice period. An example of such a provision is outlined in the Appendix below. (It should also be noted that ‘technical redundancy compensation’ may not be available where sections 30C to 30G of the State Sector Act 1988 apply.)

Specific Issues

The situation is more difficult where:

- No provision applies that prevents employees from claiming redundancy compensation where they have been given notice of redundancy and obtain alternative and comparable employment in the State services during the notice period.
- An agency is considering employment of an individual who has received redundancy compensation and who properly applies for an advertised role, either with another state sector agency or their former employer. Legislation and/or management of change policies do not cover such situations.

In these situations, a single inflexible approach will not necessarily meet the justice of every situation and employers will need to exercise sound judgement. Employees who receive redundancy compensation in good faith and who have not obtained an offer of employment have no certainty (even if they have begun to apply for other positions during the notice period) that they have another position to go to, and suffer a loss of continuity in employment. Such employees will have properly received redundancy compensation and will often use the compensation to protect their position.

Where, however, an employee receives a job shortly after receiving redundancy compensation the following may help to shape your thinking and to ensure that the decision to make or not make an appointment in these circumstances is robust and defensible.

SSC guidance on re-employment post redundancy:

- The SSC expects Chief Executives to ensure that good candidates are not barred from re-employment because they have received compensation for a recent loss of employment, but the decision to proceed with an employment offer must be balanced against the questions of fairness to the taxpayer and responsible use of resources.
- If you are considering offering employment to someone recently made redundant, on similar or better terms and conditions than they previously enjoyed in the State sector, we would advise you to consider all relevant factors and to look for possible options that avoid “double dipping”. While there is a legal obligation to recruit the person best suited to the position, if the time elapsed since the employee left their previous role is short you might consider agreeing some arrangement with the employee like deferring the appointment if this is feasible or for the applicant to repay part of the compensation to the former State sector employer. The more senior the position the more appropriate such an arrangement may be.

We are NOT advocating that anyone made redundant should not be re-employed, but rather that the taxpayer should not pay twice for the same period of time.

Best practice in both the private and public sectors is for redundancy compensation to be a capped entitlement, sometimes based on current service, but becoming less so. We note that some entitlements currently provide for redundancy payments based in part on an employee’s family status - that may be discriminatory.

However, in considering any approach to this matter you must always pay due regard to the applicable employment agreement and any other specific legal requirements.

The SSC employment relations advisors are available to provide advice and support to agencies in this area if required.

Appendix

Management of Change Clause

- 1 In the event of the employee's position ceasing to exist, after consultation with the employee, the employer shall give the employee at least one month's notice of termination of employment, on salary. (This shall be instead of, not in addition to, the notice period provided in Clause ... above.)
- 2 During the notice period, subject to the provisions of the State Sector Act 1988, both the employer and the employee shall make reasonable efforts to locate suitable alternative employment for the employee including in the following areas:
 - within the Public Service
 - within any other part of the State sector (which term shall include Crown entities, Crown companies and State Owned Enterprises)
 - in the organisation acquiring some or all of the business of the employer whether or not that organisation is within the State sector (where the position ceases to exist due to the part of the employer's business in which the employee's position is situated being sold or transferred).
- 3 In the event that a reasonable offer of employment is received by the employee prior to the expiration of the notice period the employer's responsibilities under these provisions shall be fulfilled, and the employee shall not be entitled to any payment under Clause ... For the purposes of this provision, the offer of a position with duties and responsibilities commensurate with the employee's skills, qualifications and attributes, in substantially the same general locality or one within reasonable commuting distance, with terms and conditions of employment that are overall no less favourable shall constitute a reasonable offer.
- 4 The parties may agree to any other arrangement as an alternative to the provisions contained in Clauses ...

Where no reasonable offer of employment is made by expiry of the notice period, and no alternative arrangements have been agreed, the employee shall be offered a redundancy payment equivalent to three months' remuneration at the rate payable under this Agreement.