

# Building and Construction General On-site Award 2020

This industry award covers employers throughout Australia in the on-site building, engineering and civil construction industry and their employees.

## ***Employers: Are you aware of your legal obligations under Clause 41?***

### **41. Industry specific redundancy scheme**

**41.1** The following redundancy clause for the on-site building, engineering and civil construction industry (as defined) is an industry specific redundancy scheme as defined in s.12 of the Act.

In accordance with s.123 (4) (b) of the **Fair Work Act** the provisions of **Subdivision B—Redundancy pay** of **Division 11** of the **National Employment Standards (NES)** ***does not apply*** to employers and employees covered by this Award.

### **41.2 Definition**

For the purposes of this clause, **redundancy** means a situation where an employee ceases to be employed by an employer to whom this award applies, other than for reasons of misconduct or refusal of duty. **Redundant** has a corresponding meaning.

### **41.3 Redundancy pay**

(a) A redundant employee will receive redundancy/severance payments, calculated as follows, in respect of all continuous service with the employer:

<b>Period of continuous service with an employer:</b>	<b>Redundancy/severance pay:</b>
<i>1 year or more but less than 2 years</i>	<b>2.4 weeks'</b> pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks' pay
<i>2 years or more but less than 3 years</i>	<b>4.8 weeks'</b> pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks' pay
<i>3 years or more but less than 4 years</i>	<b>7 weeks'</b> pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay
<i>4 years or more</i>	<b>8 weeks'</b> pay

***A weeks' pay is the ordinary time pay rate an employee was being paid when their employment ended.***

(b) Provided that an employee employed for less than 12 months will be entitled to a redundancy/severance payment of 1.75 hours per week of service if, and only if, redundancy is occasioned otherwise than by the employee.

(c) Week's pay means the ordinary time hourly rate at the time of termination multiplied by 38. Hour's pay means the ordinary time hourly rate at the time of termination.

(d) If an employee dies with a period of eligible service which would have entitled that employee to redundancy pay, such redundancy pay entitlement will be paid to the estate of the employee.

(e) Any period of service as a casual will not entitle an employee to accrue service in accordance with this clause for that period.

(f) Service as an apprentice will entitle an employee to accumulate credits towards the payment of a redundancy benefit in accordance with this clause if the employee completes an apprenticeship and remains in employment with that employer for a further 12 months.

#### 41.4 Redundancy pay schemes

- (a) An employer may offset an employee's redundancy pay entitlement in whole or in part by contributions to a redundancy pay scheme.
- (b) Provided that where the employment of an employee is terminated and:
- (i) the employee receives a benefit from a redundancy pay scheme, the employee will only receive the difference between the redundancy pay in this clause and the amount of the redundancy pay scheme benefit the employee receives which is attributable to employer contributions. If the redundancy pay scheme benefit is greater than the amount payable under clause 41.3 then the employee will receive no redundancy payment under clause 41.3;
- or
- (ii) the employee does not receive a benefit from a redundancy pay scheme, contributions made by an employer on behalf of an employee to the scheme will, to the extent of those contributions, be offset against the liability of the employer under clause 41.3, and payments to the employee will be made in accordance with the rules of the redundancy pay scheme fund or any agreement relating thereto. The employee will be entitled to the fund benefit or the award benefit whichever is greater but not both.
- (c) The redundancy pay scheme must be an Approved Worker Entitlement Fund under the Fringe Benefits Tax Assessment Act 1986 (Cth).

41.5 Service as an employee for the Crown in the Right of the State of Western Australia, the Crown in the Right of the State of New South Wales, Victorian Statutory Authorities, or the Crown in the Right of the State of Victoria will not be counted as service for the purpose of this clause.

#### 41.6 Employee leaving during notice period

An employee whose employment is to be terminated in accordance with this clause may terminate their employment during the period of notice and if this occurs, the employee will be entitled to the provisions of this clause as if the employee remains with the employer until expiry of such notice. Provided that in such circumstances, the employee will not be entitled to payment instead of notice.

#### 41.7 Transfer of business

- (a) Where a business is, before or after the date of this award, transferred from an employer (in this subclause called **the old employer**) to another employer (in this subclause called **the new employer**) and an employee who at the time of such transfer was an employee of the old employer in that business becomes an employee of the new employer:
- (i) the continuity of the employment of the employee will be deemed not to have been broken by reason of such transfer; and
  - (ii) the period of employment which the employee has had with the old employer or any prior old employer will be deemed to be service of the employee with the new employer.
- (b) In this subclause, **business** includes trade, process, business or occupation and includes part of any such business and **transfer** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law. **Transferred** has a corresponding meaning.

#### NOTE: Apprentices and redundancy pay

Apprentices aren't entitled to redundancy while they're under a training contract.

An employee who has finished their apprenticeship is entitled to redundancy. Their years as an apprentice will be counted when calculating redundancy pay and notice amounts if:

- their employer kept them on for a further 12 months after the apprenticeship was completed.

**Fair Work Website:** [https://www.fwc.gov.au/documents/documents/modern\\_awards/pdf/MA000020.pdf](https://www.fwc.gov.au/documents/documents/modern_awards/pdf/MA000020.pdf)

**ReddiFund can assist Employers to meet their legal obligations under this Award plus the following benefits:**

- You avoid accruing significant liabilities
- Contributions are tax deductible in the year you make them
- NO administration fees are charged to you or your employees
- Your employees will see that you are investing in their financial security
- Provides you with time and cost savings by ReddiFund's efficient and timely administration in taking care of all claim processing.

**Please contact:**



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