

(Fair Work Act 2009)

## 121 Exclusions from obligation to pay redundancy pay

- (1) Section 119 does not apply to the termination of an employee's employment if, immediately before the time of the termination, or at the time when the person was given notice of the termination as described in subsection 117(1) (whichever happened first):
  - (a) the employee's period of continuous service with the employer (other than periods of employment as a casual employee of the employer) is less than 12 months; or
  - (b) the employer is a small business employer.
- (2) A modern award may include a term specifying other situations in which section 119 does not apply to the termination of an employee's employment.
- (3) If a modern award that is in operation includes such a term (the **award term**), an enterprise agreement may:
  - (a) incorporate the award term by reference (and as in force from time to time) into the enterprise agreement; and
  - (b) provide that the incorporated term covers some or all of the employees who are also covered by the award term.

(Fair Work Act 2009)

## 122 Transfer of employment situations that affect the obligation to pay redundancy pay

*Transfer of employment situation in which employer may decide not to recognise employee's service with first employer*

- (1) Subsection 22(5) does not apply (for the purpose of this Subdivision) to a transfer of employment between non-associated entities in relation to an employee if the second employer decides not to recognise the employee's service with the first employer (for the purpose of this Subdivision).

*Employee is not entitled to redundancy pay if service with first employer counts as service with second employer*

- (2) If subsection 22(5) applies (for the purpose of this Subdivision) to a transfer of employment in relation to an employee, the employee is not entitled to redundancy pay under section 119 in relation to the termination of his or her employment with the first employer.

Note: Subsection 22(5) provides that, generally, if there is a transfer of employment, service with the first employer counts as service with the second employer.

*Employee not entitled to redundancy pay if refuses employment in certain circumstances*

- (3) An employee is not entitled to redundancy pay under section 119 in relation to the termination of his or her employment with an employer (the **first employer**) if:
  - (a) the employee rejects an offer of employment made by another employer (the **second employer**) that:

	<ul style="list-style-type: none"><li>(i) is on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the first employer immediately before the termination; and</li><li>(ii) recognises the employee's service with the first employer, for the purpose of this Subdivision; and</li></ul> <p>(b) had the employee accepted the offer, there would have been a transfer of employment in relation to the employee.</p> <p>(4) If the FWC is satisfied that subsection (3) operates unfairly to the employee, the FWC may order the first employer to pay the employee a specified amount of redundancy pay (not exceeding the amount that would be payable but for subsection (3)) that the FWC considers appropriate. The first employer must pay the employee that amount of redundancy pay.</p>
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