

CORONAVIRUS (COVID-19) EMPLOYMENT ISSUES

GUIDANCE FOR PUBLIC PRACTITIONERS IN AUSTRALIA

INTRODUCTION

These are tough times, but our businesses are only what they are because of our people. Australia will defeat COVID-19 and, when we do, we will need our people safe, engaged and at work for the inevitable rebound. In the interim, there are a number of legal considerations and strategies that can be deployed.

LEGAL CONSIDERATIONS FOR EMPLOYERS

Employers should consider the following:

- Can we stay open? Currently, this decision depends on whether your business is essential and whether or not your employees can work from home – this should be the first question businesses are asking themselves;
- Are any employees a high risk of having COVID-19? If so, what strategies do you have in place to avoid the risk of transmission to others?
- What are the short-term and long-term commercial and operational implications of any proposed directions to the workforce (i.e. directions to stand down and not attend work, directions to provide medical evidence of fitness for work, directions to work remotely etc.)?
- What is your workforce sustainability (i.e. casual employees vs full-time employees)?
- What discretionary payment and rostering options have you considered (i.e. amended pay cycles, special leave, carer's leave, annual leave or long service leave, agreeing to reduce employees' hours, agreeing to reduce rates of pay)?
- Have you considered your duty of care under Workplace Health and Safety legislation to employees and others in the workplace?

LEGAL CONSIDERATIONS FOR EMPLOYERS

The following strategies can be considered:

Reduced hours

Allows an employer to reduce a full-time employee to part-time, or a part-time employee to casual hours. Agreement will be required, and consultation and engagement with employees is vital. If agreed, this can be achieved by issuing a letter and an agreement to vary the employee's employment contract.

The Fair Work Commission has introduced, and continues to introduce, temporary COVID-19 changes to some Modern Awards (to date, this includes the very broad Clerks—Private Sector Award 2010). These changes allow for industrial flexibility, subject to compliance with some mandatory steps. Employers should check which Modern Award(s) apply and consider these flexibility options.

Importantly, employers cannot reduce an employee's rate of pay without their consent. If an employer wants to take this action, you will need to have an employee agree to a variation of their employment contract. However, you cannot pay an employee below minimum wage.

Stand down

Allows an employer to lawfully stand down an employee without pay during a period when the employee cannot be usefully employed because of particular reasons, including a stoppage of work for any cause for which the employer cannot reasonably be held responsible. It means 'hitting pause' on work, and on pay. This law was not drafted with an international pandemic in mind – but it can be applied flexibly.

It is important to consider if employees can work from home or perform reduced hours of work before determining if there is a stoppage of work. Modern Awards and enterprise agreements may also require consultation before a stand down decision is made. Employers will, generally, have to agree to an employee accessing annual leave during a proposed stand down.

Employers should seek individual advice about whether this option is right for them, as getting it wrong can result in back-pay obligations or penalties.

Redundancy

Is an option when an employer either decides they no longer need an employee's job to be done by anyone, or the employer becomes insolvent or bankrupt, and terminates their employment. Consultation and payment obligations will arise. Redundancy is usually a last resort for managing the impacts of COVID-19.

JobKeeper payments

Eligible businesses (including not-for-profits) who elect to participate in the scheme can expect a wage subsidy of \$1,500 per fortnight per eligible employee. The JobKeeper payment is a flat rate regardless of a person's salary. An employer will continue to receive the JobKeeper payment for each employee while they remain employed.

Eligible employees whose wages are at least \$1,500 per fortnight before tax, will continue to receive their pay as normal. The JobKeeper payment will assist the employer to subsidise all or part of the employee's income. If an employee usually receives less than \$1,500 in income per fortnight before tax, their employer must pay their employee at least \$1,500 per fortnight, before tax (regardless of whether the person is working or stood down). Eligibility requirements apply to both employers and employees.

Further changes are planned by the Fair Work Commission in relation to the majority of Modern Awards, including an entitlement to 2 weeks' unpaid pandemic leave and greater flexibility around taking twice as much leave on half pay. These changes have not yet occurred, with the Fair Work Commission currently taking submissions on the proposals.

As indicated above, employers should consider what strategies are appropriate for them and seek legal advice if needed.

ONLINE EMPLOYMENT RESOURCES

The Fair Work Ombudsman has published a resource page that deals generally with the different circumstances an employer might face during the COVID-19 pandemic. This resource can be accessed [here](#).

The information detailed in that link is general in nature, employers should seek individual legal advice around how to manage their exact situation.

As this situation evolves daily, employers will need to regularly keep up to date with changes. Information from the Federal Government can be located at the following websites:

- <https://www.australia.gov.au/>
- <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert>
- <https://coronavirus.fairwork.gov.au/>
- <https://treasury.gov.au/coronavirus>

Health, business and other information from the States and Territories can be located here:

- [Queensland](#)
- [New South Wales](#)
- [Victoria](#)
- [Tasmania](#)
- [South Australia](#)
- [Western Australia](#)
- [Northern Territory](#)
- [Australian Capital Territory](#)

NOTE: The information in this document is current as at 31 March 2020. However, given the ongoing and uncertain nature of the COVID-19 pandemic, it is recommended that employers use this document as a guide only and continue to stay up to date with any announcements from the Federal Government. This publication covers legal and technical issues in a general way. It is not designed to express opinions on specific cases. It is intended for information purposes only and should not be regarded as legal advice. Further advice should be obtained before taking action on any issue dealt with in this publication.