



Coping with Covid-19

Options for managing staff

Background

- A moving feast!!
- Initially immense confusion and stress
 - Coronavirus and leave
 - Reducing hours
 - Annual / Personal leave
 - Working from home
 - Redundancy
 - When can I stand down etc
- Session will also cover common questions / options
 - Non JobSeeker and JobSeeker payment approved businesses
 - Focus on Employee Relations issues
- Q&A

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Reducing Staff Hours

- By agreement an employee can have their hours of work reduced from fulltime (38 hours per week) to part time (less than 38 hours per week).
- Can be based at an individual by individual basis.
- These agreements **(in writing)** are usually reviewed after an agreed period and either extended or returned to full time status.
- An employee can refuse to have their hours of work reduced. If this occurs, care needs to be taken to avoid a redundancy situation.

See our “Agreement to vary work hours” template.

- <https://bit.ly/2RMwD5Y>

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Encouraging Annual and Long Service Leave

- If employees can no longer be offered paid work due to a lack of business, or an order to shut down operations, and working from home is not an option, an employer can offer an employee the opportunity to take Annual Leave.
- If the employee refuses, then the employer can offer unpaid leave (also see Stand Down option).
- The same applies for longer serving employees who have accrued Long Service Leave.
- Note: each State has different rules around when Long Service leave can be taken as leave. Please check your local State legislation.

Working from home

- For roles that can WFH / strategic so key people are separated (50/50)
- Suggest a policy to manage this process:
 - Procedure for Approval
 - Equipment
 - Security of assets and information
 - Dependent care
 - Conditions of employment and variations in the conditions of employment
 - Hours of work/overtime
 - Insurance
 - Safety (checklist)

See our “Work from home policy” template.

<https://bit.ly/3cwZSI4>

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Stand down

- The Stand Down Provisions are section 524(1)(c) of the Act.
- Provide that an employer may stand down an employee ***without being required to pay them, if***
 - ‘the employee cannot usefully be employed’ and
 - standing them down is ‘**because of...a stoppage of work for any cause for which the employer cannot reasonably be held responsible.**’ However, National Employment Standard (NES) entitlements do accrue during a period of stand down.
- Employers cannot generally stand down employees (***without pay***) simply because of a deterioration of business conditions or because an employee has coronavirus.

Stand down – some examples

- if there was an enforceable government order or direction requiring the business to close (which means there is no work at all for the employees to do, even from another location)
- if a large proportion of the workforce was required to self-quarantine with the result that no useful work was able to be performed in the business by the remaining employees/workforce
- if there was a stoppage of work due to lack of supply for which the employer could not be held responsible.
- If a Stand Down is introduced for reasons such a downturn in business, you may still liable for payment of unpaid wages at the end of the Stand Down period

See our “Stand Down HR Pack” template.

- <https://bit.ly/34NdN3W>

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Redundancy

In some cases, the only option may be to make some of your employees redundant. At law, a genuine redundancy will arise if:

- the employer decides that it no longer wishes the job an employee has been performing to be done by anyone;
- this decision is not due to any personal act or default of the employee;
- it leads to the termination of the employee's employment.
- An employer needs show it has a valid reason and had considered other alternatives to this action.
- As soon as an "in-principle" decision is made you must consult with the employee/s.
- Definition of a "Small Business"

See our "Redundancy letter" template

- <https://bit.ly/2KgS3nD>

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JobKeeper Payments – (30/50% reduction in business)

What is it:

- Businesses receive \$1,500 a fortnight per employee for the next six months.
- Paid through the Tax system by ATO.
- Includes businesses structured through companies, partnerships, trusts and sole traders. Employers will be required to pass on the full \$1,500 a fortnight, before tax, to eligible employees.
- Eligible full-time, part-time & long term Casual employees employed as at 1 March 2020, including those who have been stood down.
- Maximum 6 months 30 March to 27 Sept. (paid in arrears) comm. 1st week May.
- **Retrenched** workers can be rehired to qualify for the payment.
- An employee will only be eligible to receive this payment from one employer.
- Eligible employees include Australian residents, New Zealand citizens in Australia who hold a subclass 444 special category visa, and migrants who are eligible for JobKeeper Payment or Youth Allowance (Other).
- Self-employed individuals are also eligible to receive the JobKeeper payment.

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JobKeeper Payments

The wage condition:

- The JobKeeper Scheme will ensure that eligible employees receive a gross payment (i.e., before tax) of at least \$1,500 per fortnight for the duration of the scheme. Employers are able to pay eligible employees more than this amount, based on the employees' usual pay arrangements **i.e. a wage subsidy**.
- The minimum \$1,500 (before tax) payment requirement will operate as follows:
 - a) If an employee has been receiving *at least* \$1,500 in gross salary income per fortnight since 30 March 2020, they will continue to receive their regular income according to their prevailing workplace arrangements. In this case, the JobKeeper Payment will effectively subsidise the first \$1,500 of the employee's gross fortnightly salary income.
 - b) If an employee has been receiving *less than* \$1,500 in gross salary income per fortnight since 30 March 2020, the employer must pay the employee a 'top-up' payment to ensure the employee has been paid at least \$1,500 per fortnight to be eligible to receive the JobKeeper Payment. This means some employees will receive more than their ordinary salary and wages derived from the employer.

JobKeeper Payments

The wage condition:

- c) If an employee has been stood down without pay after 1 March 2020 their employer must pay the employee a minimum gross fortnightly salary income of \$1,500 from 30 March 2020, to be eligible to receive the JobKeeper Payment in respect of the employee.
- d) If an employee was employed on 1 March 2020, has subsequently ceased employment with their employer, and then has been re-engaged by the same employer, the employer must pay the employee a minimum gross fortnightly salary of \$1,500 under the JobKeeper Scheme.
- Note: the minimum payment must be made by the last day of the fortnight. However, the ATO has already exercised its discretion to allow employers to make the minimum payment for the first two fortnights by the end of April 2020. Going forward, the minimum payment will need to be strictly made by the end of the relevant fortnight.

JobKeeper Payments

FWA - JobKeeper enabling directions

- Under these amendments, an employer will be able to provide the following directions to the employee (provided the employee is initially consulted and the directions are not unreasonable in the circumstances):
 - a) A 'stand down' direction, which can be a direction for the employee to not work on particular days, to work for a lesser period or to work a reduced number of hours.
- Can only be given if the employee cannot be usefully employed for the employee's normal days or hours during the period the employer is eligible to receive JobKeeper Payments for the employee, because of:
 - changes to the business (e.g., less patronage and/or the closure of stores) attributable to the Coronavirus pandemic; or
 - government initiatives to slow down the transmission of the Coronavirus.
- During this period, still required to pay the employee the fortnightly value of the JobKeeper Payment (i.e., \$1,500 per fortnight). Furthermore, cannot reduce the employee's hourly base rate of pay, meaning the total amount payable to an employee in respect of a fortnight is either:
 - the amount of the JobKeeper Payment for the employee; or
 - if a greater amount is payable to the employee for the performance of work during the fortnight, that amount (i.e., in full).

JobKeeper Payments

FWA - JobKeeper enabling directions

- b) A direction about the duties to be performed by the employee that are within the employee's skill and competency.
 - Again, such a direction cannot reduce the employee's hourly base rate of pay.
- c) A direction for the employee to work at a location that is different from the employee's normal place of work (including the employee's home).
 - This direction can only be given if, amongst other things, the new work location does not require the employee to travel a distance that is unreasonable in the circumstances (where the location is not the employee's home).

JobKeeper Payments

FWA – Employment Agreements

- Furthermore, in addition to the JobKeeper enabling directions (discussed above) the amendments to the *Fair Work Act 2009* will also generally allow an employer and its employees to enter into agreements relating to their ongoing employment.
- Specifically, an employer (during the period that they are entitled to the JobKeeper Payment for an employee) can make a request to the employee (and the employee cannot unreasonably refuse) for the employee to agree to:
 - perform their duties on different days or at different times (without a reduction in the employee's working hours); and/or
 - take annual leave (including at half pay) that will not result in the employee having a balance of paid annual leave of fewer than two weeks.

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JobKeeper Payments

How do these Fair Work changes affect an employee's existing terms and conditions of employment?

- The above amendments have the effect of temporarily modifying T's & C's to the extent specified in the relevant direction to, or agreement with, an employee. What this basically means is that the terms and conditions of an employee's employment beyond the scope of the above JobKeeper-related amendments will not be affected.
- Furthermore, if no such direction or agreement is made under the JobKeeper Scheme, an employee's existing rights and obligations (which may be governed by the *Fair Work Act 2009*, a fair work instrument, a contract of employment or transitional instrument) continue to apply.

JobKeeper Payments

Who Qualifies:

Businesses with a turnover below \$1 billion must have had or will have at least a 30% reduction in their turnover due to the effect of COVID-19) / or 50% if over \$1 Billion.

How to apply:

Eligible businesses, including not-for-profits, charities and self-employed individuals, will need to register an intention to apply on the ATO's website, here: <https://www.ato.gov.au/Job-keeper-payment/>

If your business has not already done so, we encourage you to register as soon as possible.

See our complimentary "JobKeeper Confirmation letter" for employees template

- <https://bit.ly/2ytwxJW>

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When its all over

Great HR opportunities:

- Introduce / re-introduce Employment Contracts and HR Policies to ensure future compliance and protections
- On board / induction to set workplace rules / requirements
- Set performance criteria and how these will be measured and managed

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HR Packs

Coronavirus Management

- Management Guide
- Pandemic policy
- Working from home policy
- <https://bit.ly/3bky6sb>

Staff Utilization and Stand down

- Management guide
- Agreement to reduce hours template
- Stand down letter template
- Redundancy letter template
- <https://bit.ly/3bldArj>

HR Essentials Packs – 3 levels & include:

- **Employment contracts**
- **HR policies and procedures**
 - Leave
 - Alcohol and drugs
 - Social media
 - Performance management
 - Issue resolution
 - etc.
- **Forms and letters templates**
 - Warnings / terminations
 - etc.
 - <https://bit.ly/2zdzSwX>

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