



**PEOPLE**



**LEADERSHIP**



**STRATEGY**

**Business Response to Covid-19  
Considerations for Workforce Reduction  
Options**

Before taking drastic steps to reduce payroll costs, employers should consider viable, practical alternatives and work with their team to minimise the impact on all (sometimes by spreading the impact out over many).

This paper is designed to provide guidance and suggest considerations for small to medium business on how to manage the situation.

In particular, we are focusing on the range of options from Stand-Down to Redundancy and the options in between that businesses should consider as viable alternatives to such drastic measures.

Please be aware that new information is being released regularly. The information in this document is current as at 20/03/20.

Please monitor any further information releases from reputable sources and, if you need further guidance on handling these in your workplace, please contact us directly on 4765 3456 or contact Naomi Wilson or Alistair Green on [naomi@focushr.com.au](mailto:naomi@focushr.com.au) or [alistair@focushr.com.au](mailto:alistair@focushr.com.au).

# Stand-Down Legislation

Until now, all indications were that Covid-19 would not fit the prescribed reasons why an employer may be able to temporarily stand down employees without pay.

CCIQ recently released information that Covid-19 could result in a situation that meets the requirements for stand down under the Act.

## *The Legislation*

The *Fair Work Act* s.524–525 states that:

*An employer may stand down an employee during a period in which the employee cannot usefully be employed because of a number of circumstances including:*

- *industrial action (other than industrial action organised or engaged in by the employer)*
- *a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown, or*
- *a stoppage of work for any cause for which the employer cannot reasonably be held responsible.*

If an employer stands down an employee during a period in accordance with s.524 of the *Fair Work Act* then the employer is not required to make payments to the employee for that period.

Section 524 is intended to relieve an employer of the obligation to pay wages to employees who cannot be usefully employed in certain limited circumstances. Whether a particular employee can be usefully employed is a question of fact to be determined having regard to the circumstances that face the employer.

## *Considerations*

The COVID-19 outbreak could result in a situation that meets the requirements for stand down under the Act, for example where an entire section, location or operational area is required to close due to isolation of the workforce or the business' customers or where directed to close by the government.

Employers may also be able to consider standing down employees where a business has been so severely impacted by import/export restrictions resulting from COVID-19, that there is no work at all available to employees due to lack of supplies/ability to access the normal supply chains.

This is new ground for Australian business and as yet, untested in the Fair Work legal system. We expect that this will happen and there will be close scrutiny by employees, unions and the Fair Work Commission. As such, we recommend seeking advice before choosing to stand-down employees. Please [contact us](#) for further information.

Note: It is important to always check your Enterprise Agreement and Contracts of Employment as they may also include terms that impose additional requirements that an employer must meet before standing down an employee (for example requirements relating to consultation or notice).

## *When Stand-Down Would Not Apply*

There will be no right to stand down if there is useful work available for the employee to do which is within the terms of the employee's contract of employment. It need not be work the employee normally carries out.

"Usefully employed" means that the employment will result in a net benefit to the employer's business by reason of the performance of the particular work done by the employee.

It would also not apply where:

- the employee is taking approved paid leave
- the employee is refusing to work (in which case the employer may refuse to pay on other grounds)

The consequences of a stand down can be severe for an employee as the employee may be deprived of wages for a lengthy period. It can also mean losing valuable people as they are forced to look for alternative employment to meet their own financial needs.

Because of this we recommend considering alternative approaches outlined in this paper.

# Redundancy Legislation

Redundancy, in a nutshell, is when an employer either

- doesn't need an employee's job to be done by anyone; or
- becomes insolvent or bankrupt

Redundancy can happen when the business:

- introduces new technology (eg. the job can be done by a machine)
- slows down due to lower sales or production
- closes down
- relocates interstate or overseas
- restructures or reorganises because a merger or takeover happens.

## *The Legislation*

Redundancy legislation is covered in the *Fair Work Act 2009*; however employers should always check their Modern Award as some contain specific redundancy provisions. Employers with an Enterprise Agreement should also refer to the Agreement.

The legislation places requirements around:

- what a genuine redundancy is
- employee entitlements to redundancy payments and exclusions to obligations to pay redundancies (e.g. employers with less than 15 employees)
- consultation requirements for significant workforce change
- obligations to offer redeployment

In the instance of redundancy, depending on the circumstances and legislation, the employer may be liable to pay:

- notice periods for termination
- redundancy entitlements
- long service leave accrued and not yet used
- annual leave accrued and not yet used

## *Considerations*

Redundancy is far more permanent than temporary stand-down. It can also be costly due to the liabilities listed above.

If you are in a position where you believe that redundancies will be required in your business, we recommend that you seek tailored advice based on your situation. Please [contact us](#) to discuss.

## The Alternative Middle-Ground

The hope is that the impact of Covid-19 is a relatively short-lived blip on what will otherwise be a long and prosperous business history in our region.

For that reason, as well as for the heavy impact on employees of stand-down or redundancy, we believe that employers should seriously consider alternative approaches to ensure business viability and sustainability while continuing employment for their valued employees.

### *Reducing Payroll Costs Through Negotiation*

Consider other ways to reduce payroll costs:

- Reduce casual hours
- Reduce overtime
- Reduce rosters which incur penalty rates under the Award/Contract of Employment (shift work, weekends, outside ordinary hours work)
- Reducing ordinary hours

Reducing overtime, penalty hours or even ordinary hours of work should be done by agreement. This would involve consulting with your employees about the change. We recommend that communication at this level include:

- Transparency with the team on what is creating the need to reduce costs (Covid-19 causing a downturn in demand and hence revenue)
- That the focus for the business right now is sustainability, viability and protecting as many jobs as possible
- The least desirable option is needing to make roles redundant or being in a position where it is not financially viable to continue operations
- So you would like to talk to the team about what we could do as a team to minimise the impact by spreading it across the whole
- Then discuss the options available in terms of reducing overtime, changing work rosters, reducing ordinary hours, or even decreases in salary/hourly rates (as long as minimum Award conditions are met) etc
- Talk about what other measures you are putting in place, so they know they are not the only ones affected and there are measures other than payroll reduction being taken as well
- Make it clear that these are only temporary measures (including having documented time-frames and agreement expiry dates)
- Explain that you cannot force people to do this, but you would love it if this was a one-in-all-in situation so that we were all working together to support our teammates, or alternatively, you could call for volunteers who would like to reduce their hours due to personal circumstances

Once discussion is had and, hopefully, agreement reached, we recommend that this be put in writing. It is important that any steps taken are done after giving careful consideration to your workforce needs, resource requirements etc and then appropriately documented. Please [contact us](#) for assistance if required.

## *Annual Leave*

You can also discuss with employees the option of them taking leave, this will again require their mutual consent (there are only specific circumstances in which an employer can direct an employee to take leave and that involves providing notice which may not be practical in this situation).

This step won't reduce your payroll costs of course, but does reduce a payroll liability and helps to reduce unnecessary manpower if the work is simply not there to be done.

## *Considerations*

We recommend that before taking any action you check your:

- Modern Award
- Contracts of Employment
- Enterprise Agreements
- Company Policies

## *Working from Home*

### *Company Considerations*

- If you are open to employees working from home, you need to consider:
  - o Is their role suitable for work from home? (not all roles will be suitable)
  - o Setting expectations:
    - For how long will the arrangement exist?
    - Under what circumstances?
    - How will communication and connectivity be maintained?
    - How will employees be expected to report on work/be held accountable?
    - How will hours be accounted for?
    - What if their family is also at home?
    - How can you continue to provide support remotely?

### *Practical Elements*

- When an employee works from home, their home 'office' becomes their workplace and hence the business becomes responsible for safety in that workplace
- Implement a workplace self-assessment checklist of the workplace
- Implement a working from home agreement (including the considerations listed above)
- Talk to your IT provider about being set up for working from home

We have put together a working from home pack which includes the Working From Home Agreement, WHS Assessment and practical suggestions on managing connectivity and oversight for remote workers. Please [contact us](#) for assistance with this.

## Available assistance

For anything people | strategy | leadership related please contact Focus HR on 4765 3456.

There is help through the Queensland Government's Industry Recovery Package for further details information head to [www.qld.gov.au/industryrecovery](http://www.qld.gov.au/industryrecovery) or contact 13 QGOV (13 74 68).

The Coronavirus Health Information Line operates 24 hours a day, seven days a week 1800 020 080

Useful information sheets and resources for employers:

- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-about-returning-to-your-community>
- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-know-the-signs>
- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-stop-the-spread>

[Commonwealth Department of Health](#) – Coronavirus (COVID-19) health alert

[World Health Organisation](#) – Coronavirus disease (COVID-19) outbreak

[Fair Work Ombudsman](#) - Coronavirus and Australian workplace laws

[WorkCover QLD](#) – Coronavirus (COVID-19) workplace risk management