

## Five of the most frequently asked questions and answers for employers

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.

### 1. What are the options in managing the economic impact of COVID-19?

It's a balancing act, between keeping employees on, and ensuring the survivability of the business. Thankfully, there are lots of options, such as:

- a) 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. Getting it right is key, as disputes may later arise and could be costly.
- b) 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. However, getting this wrong can result in significant back-pay obligations and potential penalties.
- c) 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.

### 2. I have just employed a new employee, we have a signed an employment contract but they haven't started yet. What do I do?

You will need to take into account that there will be two issues here, one contractual and one practical. This person was employed because they would make our business better and, when life returns to normal, we will need good people. However, terminating contracts before they start, or early, can mitigate legal risk. In some cases, strict time limits will apply.

### 3. How do I determine whether my business is part of an 'essential service'?

Cutting through the constant changes and messaging is hard. In some cases, laws and legal instruments mean businesses must shut (pubs, clubs and casinos). In addition, the legal definition of 'essential' changes every day, and varies between States. These legal instruments can be hard to find, but they do exist. For many businesses, flexibility is still an option. However, there are penalties for getting it wrong.

### 4. Can I force my employees to take a pay cut or take annual leave?

Through proper consultation and agreement to vary an employee's employment contract, an employee's salary can be reduced. An employer can also permit employees to access their accrued leave, like annual or long service leave, as an alternative to redundancy.

### 5. Can I temperature test my employees to safeguard the health of my workforce?

It depends on your risk profile and what is reasonable. This will be different for nearly every business. However, for many, requiring a temperature check will be a reasonable and lawful direction.

## Employment Relations and Safety Team

For further information on how we can help you, please contact one of our team members below.



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