

BUSINESS CONTINUITY PLAN

HAPPY HR RESOURCES

Your Business and COVID-19 – FAQs surrounding your rights and obligations to your employees



During this COVID-19 pandemic, employers need to know their obligations to employees and consider what needs to be done to protect the physical and financial health of your employees and business.

The Fair Work Act 2009 provides that employers have a right to stand down employees in certain circumstances. Modern awards, enterprise agreements or employment contracts may also contain stand down provisions and generally such periods are unpaid.

WHAT IF YOUR EMPLOYEE IS UNABLE TO RETURN FROM OVERSEAS OR IS QUARANTINED?

Consider if there is any way for the employee to work remotely. This may not be possible if they are overseas and do not have access to work laptops.

Employers should choose if the employee can access their paid personal/carers leave entitlements or annual leave. Employers may decide that employees can take other paid or unpaid leave.

WHAT IF YOUR EMPLOYEE CAN'T ATTEND WORK BECAUSE THEY HAVE OR ARE SUSPECTED OF HAVING CORONA VIRUS OR THEY ARE CARING FOR SOMEONE IN THIS SITUATION?

In the first instance, consider if the employee can work from home in any capacity at all. If not, employees should use their paid personal/carer's leave entitlements. If these are exhausted, your employees might wish to consider other alternatives, such as taking annual leave or leave without pay. Happy HR recommends that employee receives a medical clearance prior to them returning to work.

WHAT IF YOUR EMPLOYEES WANT TO STAY AT HOME AS A PRECAUTION?

Employees will need to request to work from home or to take some form of paid or unpaid leave. Employers should treat these requests as you would treat other applications for this type of leave.

WHAT IS YOUR OPERATIONAL NEEDS CHANGE BECAUSE OF A DOWNTURN OR SUPPLY-CHAIN ISSUES?

The Fair Work Act stand down provisions are likely to apply, subject to any provisions in your employment arrangements, meaning that some employees may be able to be stood down without pay.

It is vital to consider whether you intend to pay your employees during any stand down. A plan to communicate this message to employees should be done before an event not during or post but before you do this you should obtain advice if uncertain of your obligations. Standing an employee down without pay when you do not have the right to may lead to Fair Work cases against you which is no ideal in the current climate.

IS IT NECESSARY TO CLOSE IS A STAFF MEMBER TESTS POSITIVE?

If an employee tests positive for COVID-19, you are not mandated to close the store but we would strongly suggest vigorous cleaning to any areas they had been in the store and everyone who had been on shift with the employee to get tested.

IF WE ARE FORCED INTO LOCKDOWN, DO I NEED TO STILL PAY MY EMPLOYEES?

The Fair Work Act stand down provisions are likely to apply, subject to any provisions in your employment arrangements, meaning that some employees may not be paid.

It is vital to consider whether or not you intend to pay your employees during any lock down. A plan to communicate this message to employees should be done before an event not during or post but before you do this you should obtain advice if uncertain of your obligations!

If the lockdown happens for your city or business, leave without pay if they don't have any leave pay left might be the only option.

WHAT ARE SOME WAYS I CAN BETTER MANAGE CASHFLOW BETTER AT THE MOMENT?

At this point in time, it is wise to look at what are your essential and non-essential spending. If they are monthly costs you can reduce or stop, we strongly suggest this.

Any services that generate a positive ROI (i.e. help you generate more income than they cost) should be kept.

Additionally, we strongly suggest continuing using the service providers who give you guidance, advice or support as these are the times you need them most. They are experts who can guide you through difficult times and ensure your business is minimising the damage of the COVID-19 pandemic. No is not the time for impulsive and misguided actions which will cost you more in the long run.

WHAT ARE SOME FAIR NEGOTIATIONS I CAN MAKE WITH MY EMPLOYEES IN REGARD TO PAY?

You may need to consider reduced hours for your employees for the short term and this conversation should happen in a constructive way as your trying to preserve the relationship with the employee while fulfilling your obligations as a Director to remain solvent. Working with people to request reduced hours is a way to maintain the employment while staying solvent.

WHAT IF I CAN'T PAY MY STAFF?

If you can't pay your staff under ASIC you could be trading while insolvent so you should immediately contact your accounting partner to look at finance options and or a way to manage the situation.

WORKING FROM HOME BEST PRACTICE

If your employees have the capacity to work from home, we strongly suggest they do due to the following reasons:

- Less chance of spread of infection
- Reduced expenses to you (power, amenities etc)
- Reduced expenses to your employees (travel costs etc)
- Ability to care for children if school is closed

Ensure your employees have everything they need if they are to work from home. Some processes may need to be flexible in this time so be open to ideas from employees that will allow productivity to stay high.

If you are not already using meeting or screen sharing software, consider things such as Skype or Zoom.

WHAT ELSE SHOULD YOU DO?

Remind employees on general hygiene precautions.

Employers should remind employees and others entering their workplaces of the importance of high personal hygiene standards which are vital to protect against the spread of infection.

Display signage reminding people to wash their hands regularly and thoroughly "clean hands protect against infection". A quick splash of water will not do the job.

You could consider installing hand sanitiser dispensers in bathrooms, meeting rooms and high pedestrian traffic areas such as reception areas.

Disclaimer: *The information is general in nature. You should consider whether the information is appropriate to your needs, and where appropriate, seek professional advice from an employment lawyer.*

Need more help surrounding how to best protect your business during the COVID-19 pandemic? Email through your query in detail to help@happyhr.com and one of our qualified HR consultants will be in touch.

At Happy HR we are here to help all Australian businesses.

Stand Down FAQs



WHAT IS A STAND DOWN?

A statutory right to stand down an employee without pay is provided by the Fair Work Act. No modern award provides for a stand down, although an enterprise agreement or contract of employment may include terms that require an employer meet additional requirements before standing down an employee, e.g. requirements relating to consultation or notice.

If an employer cannot stand down an employee under the Fair Work Act, they may be able to stand down the employee in accordance with the enterprise agreement or the contract of employment.

WHAT ARE MY OBLIGATIONS IN THE CASE OF STAND DOWN?

The Fair Work Act 2009 provides that employers have a right to stand down employees in certain circumstances.

Modern awards, enterprise agreements or employment contracts may also contain Stand Down provisions and generally such periods are unpaid.

WHAT ARE MY OBLIGATIONS AS AN EMPLOYER IN A CASE WHERE I MUST STAND DOWN MY EMPLOYEES?

Under the Fair Work Act, an employer may stand down an employee during a period in which the employee cannot be usefully employed because of one of the following circumstances:

- a stoppage of work for any cause for which the employer cannot reasonably be held responsible (COVID- 19 Pandemic, floods, fire, power failure etc)
- industrial action (other than industrial action organised or engaged in by the employer, e.g. a lockout by the employer)
- a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown

IS THERE A STAND DOWN CLAUSE IN MY CONTRACTS?

If you use our Happy HR contract, there is a clause that states:

"We reserve the right to stand you down in the event that you cannot be usefully employed because of any strike, failure of services, breakdown of machinery or for any cause for which the Company cannot reasonably be held responsible. In the event of a stand down for such reasons, we will not be required to pay you and the time for which you are stood down shall be considered as leave without pay. The stand down period does not breach the continuity of your employment for the purpose of any entitlements"

The above allows an employer to stand down.

DOES STAND DOWN AFFECT AN EMPLOYEE'S ENTITLEMENTS?

The Fair Work Act recognises a period of stand down as 'service'. This means an employee will continue to accrue entitlements to annual leave and personal/carer's leave under the National Employment Standards (NES), as well as an entitlement to a public holiday that falls on a day the employee has ordinary hours of work. Please ensure you maintain this as part of your budgets.

WHAT IF MY OPERATIONAL NEEDS CHANGE AT SHORT NOTICE?

The Fair Work Act stand down provisions are likely to apply, subject to any provisions in your employment arrangements, meaning that some employees may not be paid.

It is vital to consider if you intend to or not pay your employees during any stand down. A plan to communicate this message to employees should be done before an event not during or post but before you do this you should obtain advice if uncertain of your obligations!

AM I OBLIGATED TO PAY MY EMPLOYEES?

No as provisioned, entitlements will still accrue, but for a genuine stand down payments can stop.

HOW LONG SHOULD THE NOTICE BE FOR A STAND DOWN?

There is no fixed notice period for the Stand Down communication. However, we do encourage you to proactively communicate with employees in regards to the process of a Stand Down, likely scenarios and next steps for the business and its employees. Communication is critical.

ARE THERE OTHER RESOURCES I CAN USE?

You can refer to the Fair Work [website](#). Please also refer to our latest [blog](#) in regards to more facts re employer obligations.

Source: www.happyhr.com

© Happy HR Pty Ltd 2015 - 2020

Meeting for the reduction of hours / redundancy process



The business should conduct a business continuity plan to ensure it understands its short, medium and long-term cash position.

Understand that employees don't have to accept the reduction of hours which can mean redundancy.

If redundancy is the outcome you need to know you can cover the liability.

Also, some awards must pay redundancy even if the business had less than 15 employees, so it's vital to ensure you get the best advice before having the below conversation. You may contact www.happyhr.com to get the advice you require on this.

PURPOSE:

The company is committed to ensuring the solvency of the company and as such needs to work to cut costs in expenditure as well as human capital costs to ensure the availability of the organisation.

INSIGHTS:

Consultation about major workplace change

If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
 - i. the introduction of the changes; and
 - ii. their likely effect on employees; and
 - iii. measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

For the purposes of the discussion the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- a. their nature; and
- b. their expected effect on employees; and
- c. any other matters likely to affect employees.

Consultation about changes to rosters or hours of work applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

The employer must consult with any employees affected by the proposed change and their representatives (if any). For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

The employer must consider any views to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

DISCUSSION RE REDUCTION OF HOURS:

- 1. The business needs to change the hours due to economic reasons and it has nothing to do with the performance of yourself.
- 2. The choice is up to the employee re if they accept the reduction or not.
- 3. The business needs to reduce your hours to X per week to assist the business in remaining solvent.
- 4. Explain when the reduction in hours will commence. Usually it's the net pay period.
- 5. Give them 24 hours to decide on if they are to accept.

If it is a "Yes" and they accept a reduction in hours.

- 6. If they accept then the new hours and pay will commence on X day
- 7. You must give them a Part time contract if full time with the days and times stated in the contract with the salary with loadings and entitlements in the contract
- 8. If part time you need to alter the contract with the new days and times.
- 9. It is doubtful you will be a part-time /full-time employee to accept a casual contract as this gives no job security and its strongly advised an organisation not do this.

If it is a "NO" and they do not accept a reduction in hours.

- 10. Then if the business can't afford the continuation of employment due to economic reasons the business may not have a choice but to make the role redundant
- 11. The employee must be told what their last day will be, what the pay out figure is and what their entitlements are.
- 12. You must pay them their money in the normal pay period.

OTHER ADVICE:

- 1. Support them and or offer services for them, this will be hard for any employee
- 2. Ensure they know what the process is for Centrelink
- 3. Assist them with references
- 4. Help them with writing their CV
- 5. Is there anyone in your network that can help them?
- 6. Contact Happy HR as we have a fixed fee recruitment division which regularly assists people in finding new opportunities.

Disclaimer: *This advice is general in nature and is intended for educational purposes. For your specific circumstances please contact Happy HR. We are here to assist with mediation services, redundancy calculations or other please call 1300 730 880 or go to www.happyhr.com*

Source: www.happyhr.com

© Happy HR Pty Ltd 2015 - 2020

Policy - Working from home



Happy HR™
It's HR made happy.

DATE

PURPOSE

[CLIENT COMPANY NAME] is committed to the principle of providing its employees with flexibility in the workplace. To this end, *working from home* is allowable in some circumstances and with the approval from your manager.

Procedure for seeking approval to work from home

1. A request to work from home must be made to the relevant manager in advance of the day in question
2. The employee should provide the manager with the reason for requesting approval to work from home
3. Details of the work to be completed
4. Details of the technology (email, phone, network) available from the non- work location
5. Approval to work from home is at the discretion of the relevant manager and each request will be considered on its merits
6. If the request is approved, the employee must advise all [CLIENT COMPANY NAME] staff of their absence and the contact information during business hours

Circumstances where working from home may be approved

1. When the request adheres to [CLIENT COMPANY NAME]'s working from home procedure
2. When appropriate email and phone access is available during work hours
3. Where the employee would be able to devote 7 hours during that day to work
4. Where it would be unreasonable for the employee to return to the workplace having attended to their personal business e.g. lengthy commute, appointment in the middle of the day
5. Where an employee's workflow (as negotiated with the relevant manager) allows them to be physically absent from the workplace, but remaining effective
6. An OH&S risk report must be conducted to ensure you're working from home environment meets legislation.

Circumstances where working from home may NOT be approved

1. When the request does not adhere to [CLIENT COMPANY NAME]'s working from home procedure
2. Where the request to work from home is not made prior to the day in question
3. When appropriate email and phone access is not available during business hours
4. Where the employee is unlikely to be able to devote 7 hours during that day to work and is able to utilise other forms of leave i.e. personal leave to care for a sick family member
5. Where it would be reasonable that an employee could return to the workplace having attended to their personal business
6. Where an employee's workflow (as negotiated with the manager) does not allow them to be physically absent from the workplace
7. Your OH&S risk does not meet legislation.

Reporting Requirements	<p>Following an employee's return to the workplace, they are required to provide a report to the relevant manager on the work completed during their absence.</p> <p>These reporting requirements will assist with the management of workflow and to assess the merit of any future requests to work from home.</p>
Consequences	<p>The ability to work from home is a privilege and as such, any misuse of this arrangement can result in your manager revoking all access to it.</p>
Discipline under this policy	<p>The management team at [CLIENT COMPANY NAME] has primary responsibility for interpreting the working from home policy. This includes counselling employees whose commitment is inappropriate.</p> <p>The employee's supervisor or manager will counsel any employee whose use is not in line with this policy. Repeated violations or first violations of a serious nature could result in disciplinary action up to and including termination.</p>

Source: www.happyhr.com

© Happy HR Pty Ltd 2015 - 2020