

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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UPDATE 12 | COVID-19 Employment Law

How are the current rules under COVID-19 employment law different to the rules that usually apply?

COVID-19 Employment Law

What happened to your employment contracts when we went into lockdown? In this episode Ben Thompson of Employment Hero will walk you the changes that currently apply.

Here is what we learned but please listen in as Ben explains all this much better than we ever could.

To listen while you drive, walk or work, just access the episode through a free podcast app on your mobile phone.

Changes

Not everything changed. Your basic rights as an employee or contractor remain. Your basic rights as an employer remain. More stayed the same than changed.

JobKeeper

If your business qualifies for the JobKeeper, you have more flexibility under the Fair Work Act, such as standing down employees or reducing their hours. You are eligible for the Jobkeeper if your GST turnover drops by 30% or more compared to the same period last year. For more information about the Jobkeeper, [click here](#).

Extra Powers

If you qualify for the Jobkeeper scheme and reasonably believe that this will save employees' jobs, then you can – giving at least 3 days notice:

- 1 – Stand down eligible employees who cannot be usefully employed as a result of COVID-19 or government initiatives to slow its transmission;
- 2 – Reduce their hours without their express consent;
- 3 – Change their duties and work location if it is safe, within the employee's skill and competency, and reasonably within the scope of the business, without their express consent; and
- 4 – Agree with an eligible employee to change their work days or take annual leave (provided the employee keeps two weeks of annual leave).

These extra powers only apply until 27 September 2020.

Stand Down

The Fair Work Act allows you to stand your employees down without pay, when you can't usefully employ an employee and there is a stoppage of work for which you cannot reasonably be held responsible.

If there is a government order to close your business, then this is easy, but you would still need to consider whether your employees could work otherwise, for example from home.

If there is no government directive to close shop, then things get more complicated. A decline in customers or a general deterioration in business conditions is usually not enough to qualify for the stand down provisions.

The Fair Work Act stand down provisions don't apply if an enterprise agreement or contract already provides a stand down provision. If this is the case, then the terms of the stand down clauses in the enterprise agreement or contract apply.

The Fair Work Act stand down provisions will also not apply while an employee is on paid or unpaid leave or an authorised absence.

A stand down means that the employee is still employed, but still accrues annual leave, sick leave and other leave entitlements during the stand down.

Termination

You can dismiss an employee if their position has become redundant. But you first need to consider other employment options within your business. If there are none, then you can end the contract.

You need to give notice or pay in lieu of notice. And you need to pay out any accrued employee entitlements (notably annual leave and long service leave) as well as redundancy pay.

Redundancy pay depends on years of service. If you have less than 15 employees, then there is no redundancy pay. Casual employees don't receive redundancy pay either. But your enterprise agreement or your contract can stipulate something else.

Make sure you dot the i's and cross the t's on this one. Unfair dismissal claims before the Fair Work Commission are expensive.

If you can't pay redundancy pay because things are too tough right now, then you can apply to the Fair Work Commission to reduce the redundancy pay you would otherwise have to pay, possibly to nil.

If your business goes into liquidation or bankruptcy and you can't pay, your employees can apply to the Fair Entitlements Guarantee (FEG) Scheme.

Hours

During normal times you can't change an employee's hours unless they are casual or consent to the change. But now you probably can.

Recent changes allow you to vary your employees' hours during the crisis.

Where

Your employees are required to comply with lawful and reasonable directions from you.

If you ask them to work from home, then they have to as long as this is lawful and reasonable given your obligations under work health and safety legislation or government guidance.

If you want them to come in, they have to as long as your directions are lawful and reasonable. Alternatively, they can access their leave entitlements.

Sick or Carers Leave

Your permanent employees are entitled to sick and carers leave, just as usual. COVID-19 is no different. They can access their accrued sick or carers leave when sick, but you can request a medical certificate. You can't terminate an employee while on sick leave, unless they have been sick for 3 months or longer or for 3 months or more in a 12 month period.

MORE

[Employment Law Before COVID-19](#)

[JobKeeper Alternative Test](#)

[Commercial Tenancies Code](#)

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