

MANAGING PEOPLE THROUGH THE COVID-19 CRISIS



A QUICK FORMALITY

A quick formality: The contents of this document do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have

A. RESOURCES

The Fair Work Ombudsman has released specific information relating to the COVID-19 outbreak and how businesses may need to manage through this period. Their core landing page with multiple links can be found here: <https://coronavirus.fairwork.gov.au>

While lengthy, there is a good list of employer FAQ's at the end of this page: <https://employsure.com.au/blog/coronavirus/>

As we navigate these tricky circumstances, some baseline employer responsibilities still apply to us all and can be helpful in how you implement any necessary changes:

- We need to be fair, equitable and non-discriminatory in how we apply changes or decisions
- We need to consult and openly communicate with our teams about the business circumstances and proposed changes
- Wherever we can, give us much notice as practicable before the implementation of any changes to our teams
- Our national employment standards and obligations in treatment of employees, particularly in relation to end of employment, still apply

Most brewing companies would have staff covered under two main awards:

Food, Beverage & Tobacco Manufacturing Award:

http://awardviewer.fwo.gov.au/award/show/MA000073#P439_38615

Hospitality Award:

<http://awardviewer.fwo.gov.au/award/show/MA000009>

B. STANDING DOWN EMPLOYEES

To 'Stand Down' an employee means that the person remains employed during the stand down period, but can be unpaid. They will continue to accrue leave during this period, and it is not considered the same as taking unpaid leave.

This is a handy definition: <https://hradvance.com.au/resources/the-hr-explainer/stand-down>

Stand down does not usually apply to casual staff, and would be utilised mainly for permanent or fixed term contract employees.

This page provides detailed information: <https://coronavirus.fairwork.gov.au/#stand-down>

Here are some of the most pertinent points:

The employer must be able to demonstrate that:

- there is a stoppage of work
- the employees to be stood down cannot be usefully employed (which is not limited to the work an employee usually performs)
- the cause of the stoppage must also be one that the employer cannot reasonably be held responsible for.

Employers cannot generally stand down employees simply because of deterioration of business conditions or because an employee has coronavirus.

C. ADJUSTING HOURS

If you are considering reduced hours, there are a few key points to ensure a good process:

Employers need to consult employees about a change to their regular roster or ordinary hours of work under their award or enterprise agreement. In particular, employers have to:

- provide information about the change
- invite employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities)
- consider their employees' views about the impact of the change.

Awards and enterprise agreements may also set out extra rules about changing rosters or ordinary hours of work. Note, that consulting and considering views does not mean you have to have complete and unanimous agreement – but your process and discussions need to have allowed for dialogue and genuine consideration of everyone's views. Find out more here: <https://coronavirus.fairwork.gov.au/#let-employees-go-reduce-hours>

D. ADJUSTING HOURS FOR HOSPITALITY STAFF

On 24 March 2020, the Fair Work Commission made a determination varying the Hospitality Award. There is a temporary 'Schedule L' allowing for flexibility during the outbreak of coronavirus.

It applies until 30 June 2020 and enables an employer to reduce permanent employees' hours of work.

There are rules about how much they can be reduced by and the employer needs to follow consultation requirements.

Find out more here: <https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/hospitality-award-flexibility-during-the-outbreak-of-coronavirus>

NOTE: this applies specifically to hospitality staff only, and is not the same award that applies to brewers, packaging or production staff.

E. REDUCING SALARIES & REDUNDANCY

Although difficult, sometimes these steps are necessary. If you are considering these options due to the impact of COVID-19 on your business, it's important to remember:

- Reducing salaries is essentially making a variation to the employment agreement you have with that person. Because of that, you must follow due process
- Ending employment due to COVID-19 may require redundancy payments and this should be carefully factored into decision making when considering options. Small businesses of less than 15 employees may not need to provide redundancy payments, see description on last page

F. SALARY REDUCTIONS

It is best to approach this strategy with an intention to apply the reductions across the organisation, in the spirit of team work and avoiding decisions that could be viewed as discriminatory.

If you are considering this as an option, you should first explain to your employees the reasons the business needs to consider this, what other cost reduction strategies are in place and what the proposed plan is in relation to the specific number salaries will be reduced by, dates that changes would be effective and so on.

You should then allow time for employees to ask questions and get their acceptance to the idea/plan to reduce salaries. Once agreed/accepted, you should prepare letters for each employee that outline:

F. SALARY REDUCTIONS > CONTINUED

- Why the change is necessary
- The process you have been through to arrive at this point
- What the impact is on their personal salary (before and after reductions)
- The date the change is effective and how long you expect it to be in place
- Adding some supportive language and words of appreciation is important too

Should you face significant objections or disagreement from your employees, you will need to consider the risks of proceeding with salary reductions and legal advice may be necessary.

G. ENDING EMPLOYMENT

While you may need to consider redundancies due to the downturn COVID-19 has caused in the industry, your obligations to end employment under our usual standards, laws and entitlements still applies. Notably:

Under the Fair Work Act, an employee is protected from being dismissed because of a temporary absence due to illness or injury. The Fair Work Act also includes protections against being dismissed because of discrimination, a reason that is harsh, unjust or unreasonable or another protected right. These protections continue to operate in relation to employees impacted by coronavirus.

More information about how to manage redundancies effectively and what the applicable payments will be for your staff can be found here: <https://coronavirus.fairwork.gov.au/#let-employees-go-reduce-hours>

H. EMPLOYEES OF SMALL BUSINESS

A small business is one that employs fewer than 15 employees. Some small businesses don't have to pay redundancy pay when making an employee redundant.

To see if small businesses need to pay redundancy pay, select your industry in Redundancy pay and entitlements.

To figure out whether the business is a small business, count all employees employed at the time of the dismissal including:

- the employee and any other employees being terminated at that time
- regular and systematic casual employees employed by the business at the time of the redundancy (not all casual employees)
- employees of associated entities, including those based overseas.

The time of dismissal is when an employer provides an employee with their notice of termination. It doesn't matter if an employee works out their notice period or not.