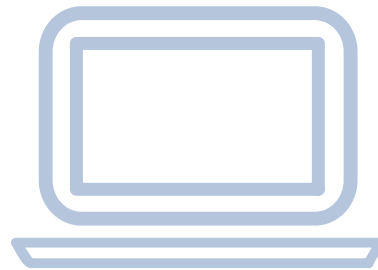


INFORMATION FOR BUSINESSES FACING OPERATING PROBLEMS IN A COVID-19 ENVIRONMENT

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Many employers are considering whether they can change employees' working arrangements during the COVID-19 pandemic.

So we've put together this brief guide to assist but please remember it is general information only*.

**Contact us today for
legal advice tailored to
your circumstances.**

*It is not legal advice and should not be relied upon as such. Always get professional legal advice relevant to your circumstances.

Can an employer call for a business shutdown?

Often businesses require employees to take accrued annual leave when the business shuts down, for example, over the Christmas/New Year period. For award-covered employees, 4 – 8 weeks' notice may be required before such a shutdown. For award/agreement free employees, a reasonable period of notice will be required, generally near 4 – 8 weeks' notice.

Employees without sufficient paid leave accrued may have to take unpaid leave for the remainder of the shutdown period.

Shutdowns are not intended to be indefinite, and it is unlikely that a shutdown period more than 1-2 weeks would be considered reasonable.

If a longer period is required, or a reasonable period of notice cannot be provided, refer to the "stand down" information opposite.

Can an employer "stand down" employees?

The **Fair Work Act 2009 (Cth)** (the Act) provides a general power to 'stand down' employees without pay in very limited circumstances. If an employment agreement or enterprise agreement contains terms about standing down employees, those terms will override the Act.

Under the Act, employees can be stood down if the employee cannot be usefully employed because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible.

An employer must be able to prove a 'stoppage of work' and that the employer cannot reasonably be held responsible for the stoppage.

An employer may be entitled to stand down employees if:

- (a) the business is prevented from operating by government directive;
- (b) suppliers of the business cannot provide stock so that the business has no stock;
- (c) access to the business premises is restricted or prevented by a third party; and/or
- (d) there is a high risk of virus transmission and the business cannot remain operational.

Are employees paid for leave while stood down?

Employees may access accrued annual or long service leave. If an employee falls ill during a period of stand down, the employee may access personal leave with proof of illness.

Employees will continue to accrue entitlements under the Act, including annual leave, personal leave and redundancy entitlements. Long service leave accrual whilst stood down is determined by the applicable legislation.

If an employee wishes to resign after being stood down, the employee will have to provide the usual period of notice. While the employee's usual statutory entitlements will need to be paid out on termination (e.g. accrued but untaken annual leave), the employee will not need to be paid for any part of the notice period that overlaps with the stand down period.



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Can employers ask employees to work from home?

It may be possible to avoid the need to shut down all or part of the business if employees can work from home. Changes may need to be made to their duties to enable them to effectively work from home. It is a good idea to consult with employees before substantially changing their duties.

If there is no other alternative, an employer may direct an employee to work from home.

Where the employee is working from home, employers have an obligation to provide a safe working environment. Self-assessment checklists are often used to ensure that employees can safely perform their duties from home together with a work-from-home policy.

Can an employer ask an employee to take paid leave?

Where employees are highly engaged, they may be willing to take periods of paid or unpaid leave to reduce employment costs whilst avoiding significant cuts to staff. Where agreement cannot be reached, it may be necessary to direct employees to take leave.

Sometimes, employees may be directed to take annual leave if the employee has accrued a large amount of leave. For most employees under a modern award, employees must have 8 weeks of annual leave accrued before they can be directed to take annual leave and must be given at least 8 weeks' notice. Generally, award employees may only be directed to take leave if the employee has at least 6 weeks' accrued leave remaining after the period of directed leave. Award terms should be checked.

For award-free employees, a direction to take leave must be "reasonable".



Can an employer ask an employee to take long service leave?

Before directing employees to take long service leave or seeking to otherwise alter long service leave arrangements, the relevant legislation should be checked for requirements.

Can an employer ask an employee to take unpaid leave?

Unless they have been stood down, employees cannot be directed to take unpaid leave. An employee may agree to take unpaid leave, but this should be confirmed in a written agreement.