



# Managing the Workplace Relations Impacts of COVID-19

Guidance for businesses  
in the context of COVID-19

**April 2020**

[KPMG.com/au](https://www.kpmg.com/au)

# Why does Workplace Relations matter right now?

**Businesses across the economy are experiencing disruption to their normal operations as a result of the COVID-19 pandemic, with supply chains and markets impacted within Australia and across the world. These impacts vary across businesses, resulting in a range of responses and workplace relations considerations.**

Making major changes in the workplace that will impact your people can be a complicated exercise and specialist advice is recommended before you make these decisions.

Workplace laws may determine what you can and can't do in response to your circumstances and industrial instruments (e.g. awards and enterprise agreements) typically set out rules about how you need to consult and what flexibility might be available to you to adapt. You also need to be aware of what obligations you have committed to in your employees' contracts of employment.

While you will need to identify and consider the rules that apply to you in your specific circumstances, we have provided some general guidance on what things to look out for as you answer common questions such as:

- When can I stand employees down?
- When do the rules in my awards and enterprise agreements require me to consult about changes that will impact my employees?
- When do I need to reach agreement with my employees before I can make changes?
- What if the rules in my awards and enterprise agreements don't give me the flexibility to make the changes I need to put in place now and possibly in the future?
- How do I maintain engagement and a strong relationship with my employees during this period of uncertainty?

We hope this guidance assists you in navigating the challenges you are encountering now while supporting you in preparing for the future.

Scott Gartrell



Executive Director , Workplace Relations  
Advisory  
People & Change  
KPMG

# Your unique scenario will drive different workplace relations considerations

**In this unprecedented time, businesses are finding themselves in a range of differing scenarios.**

For each scenario, there are a series of related workplace relations considerations and options for change. It is critical that businesses not only look at their immediate response to the current crisis e.g. stand downs, changes to rosters and access to paid leave, but also consider what this will mean in the medium to long term in respect to your future operating models and workforce structures.

Maintaining an effective relationship with your people is more important than ever. This current disruption will change the way we work not only in the immediate term but ongoing.

What near term options are being considered by some businesses in the scenarios below?	STANDDOWN	REDUNDANCY AS LAST RESORT	CHANGES TO ROSTERS AND HOURS	ACCESS TO PAID LEAVE	REDUCTION TO HOURS AND/OR PAY	CHANGES TO WORK LOCATION	CHANGE TO OPERATING MODEL/STRUCTURE	IMPLEMENT NEW TECHNOLOGY	ENGAGING FLEXIBLE LABOUR
<p><b>A shutdown of the business and cessation of work.</b></p> <p>In some cases, government restrictions in relation to non-essential services have seen businesses close their doors to customers. They are left wondering whether the shutdown is likely to be temporary or ongoing.</p>	●	●		●					
<p><b>A slow down in work due to changes in customer demand.</b></p> <p>As people adhere to guidance to stay at home in an effort to contain the spread of COVID-19, we are seeing a slowing of economic activity in some sectors. This is impacting the availability of work — leaving some businesses searching for options to balance business sustainability and the continued employment of their workforce.</p>		●	●	●	●	●	●		

# Your unique scenario will drive different workplace relations considerations

What options are being considered by some businesses in the scenarios below?	STANDOWN	REDUNDANCY AS LAST RESORT	CHANGES TO ROSTERS AND HOURS	ACCESS TO PAID LEAVE	REDUCTION TO HOURS AND/OR PAY	CHANGES TO WORK LOCATIONS	CHANGE TO OPERATING MODEL/STRUCTURE	IMPLEMENT NEW TECHNOLOGY	ENGAGING FLEXIBLE LABOUR
<p><b>A continuation of work but in a different location, including the home.</b> With government guidance encouraging working from home, many businesses are exploring ways to make this happen, taking into account safety, employee caring responsibilities and the need to sustain performance and effective communication.</p>			●		●	●	●	●	
<p><b>A continuation of work with changed customer behaviours that are impacting business performance.</b> Some businesses are experiencing continued demand from customers facing hardship, creating risk and impacts for revenue. This is driving a need to find efficiencies, including through changes to structure and operating models.</p>		●	●	●	●	●	●		
<p><b>An increase in demand creating resourcing challenges.</b> Some businesses are experiencing an increase in demand due to the rapid shift in customer needs and priorities. Some businesses are looking at options to temporarily adjust and scale up in response.</p>			●			●	●	●	●
<p><b>A continuation of work but in a different form and with a changed product/service offering.</b> Some businesses are adjusting their focus and operating models in response to the challenges that confront them. In pivoting their offerings they are considering the workforce structure needed to support their new operating models.</p>		●	●			●	●	●	●

# Standing down employees during temporary shutdown

**Many businesses are facing the prospect of not being able to operate in whole or in part, due to the COVID-19 pandemic with the government announcing further restrictions on non-essential services.**

**In the event that a business needs to temporarily shut down there are some key things to keep in mind. It is important to note that standing down employees is not a right that businesses have in all circumstances.**

In the context of the current COVID-19 challenges and as a starting point, there are two key questions to ask before standing down employees.

1.

Can the affected employees perform useful work?

2.

Is there a stoppage of work for which you can't reasonably be held responsible?

If you answered ***no*** to these questions, then the ability to stand employees down may be possible.

The Fair Work Ombudsman issued guidance on 20 March 2020, which provides the following examples of when an employer may be able to stand down employees:

- If there is “an enforceable government order or direction requiring the business to close (which means there is no work at all for the employees to do, even from another location)”.
- “If a large proportion of the workforce was required to self-quarantine with the result that no useful work was able to be performed in the business by the remaining employees/workforce”.

Employees who have been stood down will still accrue leave and service as normal during this period. You may wish to consider options for ‘top up pay’ taking into account the recent federal government announcement regarding the JobKeeper Payment that may be made available to employees in these circumstances. Eligibility criteria applies for both employers and employees and you should contact the Australian Taxation Office for more information.

**It is important that you check your industrial instrument/s** (i.e. your enterprise agreement/s) which may contain provisions governing the conditions required for stand downs and the process to be followed. These terms will typically be more specific than the general stand down provisions in the *Fair Work Act 2009* (Cth) and may override these rules.

# Redundancy

**Businesses that have shut down, experienced reduced demand or pivoted services may be considering whether this is a temporary or ongoing state. If an assessment is made that changes will need to be ongoing, role redundancy may be an option under consideration. Redundancy is not a decision that should be made lightly and below are some things to consider before making this decision.**

## Key considerations:

- **Talent retention:** Terminating an employee's employment may result in loss of talent and may be costly if employees are paid redundancy and notice payments only to be re-engaged when the business opens.
- **Taxation and government payments:** There may be potential issues around the taxation treatment of the termination payment and questions around whether the redundancy is genuine if work recommences and employees are re-employed. There may also be implications for access to government payments. For more information, the Australian Taxation Office and Services Australia should be contacted.
- **Consultation:** If you decide redundancy is the best option, before making this decision, it is important that you comply with the consultation provision in your industrial instrument/s (i.e. awards or enterprise agreements). Failure to do this may result in unfair dismissal claims and liability. Importantly, a redundancy will not generally be considered 'genuine' if the meeting takes place after a decision is made or employees are made redundant with no opportunity for input.

## Consider strategies to mitigate negative impacts on your people.

Before making any roles redundant you should also consider strategies to mitigate negative impacts on your people such as, referral to outplacement services, an employment agency and/or recruiters, Services Australia, employee assistance programs (EAP) and counselling.

If a decision is made at a later date (following consultation) to end employment, also keep in mind that redundancy and notice requirements will apply in accordance with your industrial instruments (i.e. awards and enterprise agreement/s), contracts and binding policies, and/or the National Employment Standards in the *Fair Work Act 2009* (Cth) (as applicable).

It is recommended you get specialist advice before implementing redundancies.

Given the long term implications of making employees redundant, this should be considered as a last resort option and alternatives explored.

# Exploring other options



Many businesses and industries are considering alternative options to meet the challenges they are facing, while trying to keep their people employed. Before implementing any of these options you will need to take into account any requirements imposed by legislation or applicable modern award and/or enterprise agreement provisions.

Examples include:

## Changes to rosters and hours of work:

Changes to rosters and working hours may be considered. Where industrial instruments (i.e. awards or enterprise agreements) are in place, rules will typically apply about when, and how, you need to consult with your people before implementing changes. Obligations and commitments around working hours in employment contracts should also be considered.

**Access to paid leave:** As an alternative to stand down and redundancy, you may wish to explore options for accessing accrued annual and long service leave. In limited circumstances you may be able to direct the taking of annual leave, e.g. where an employee is award/enterprise agreement free and the direction is reasonable or where there

are arrangements for this in an industrial instrument (i.e. award/enterprise agreement).

**Reduction in working hours/pay:** Options such as reductions in hours or pay would generally have to be agreed with impacted employees. It is important that employees are not coerced or pressured to agree to these changes.

**Changes to work location:** Employees may be requested to work from a different location, including their home. Again the rules in any applicable industrial instruments (i.e. awards or enterprise agreements) should be considered.

Employers, unions and industry bodies are also working collaboratively to secure increased flexibility in industrial instruments to make it easier to implement changes. Recent examples include:



## Clerks – Private Sector Award 2010

Amended to allow more flexibility, such as the ability to change ordinary hours, the way employees work, more options for taking leave and more flexibility when working from home.



## Hospitality Industry (General) Award 2010

A special COVID-19 flexibility schedule has been inserted and it expires in three months. The variation allows ordinary hours to be reduced, employees to work across classifications and duties, and provides more options for taking leave.



## Supply chains

A union and large logistics firm have varied their enterprise agreement to facilitate temporary redeployment of employees in severely affected sectors to industries with ongoing work, while maintaining their terms and conditions.

# Changes to operating models and workforce structures

## Pivoting services

We are already seeing cases where some industries have adjusted their focus and operating models in response to the challenges that confront them.

Examples include:

- *Cleaning*: transferring employees from cleaning businesses that may be shut down to those businesses that remain open and now need additional, more detailed cleaning.
- *Education and VET*: moving to online and home learning.
- *Freight and logistics*: adapting to changes in operations and increased demand in some sectors such as food production and distribution and reduced demands in other industries, like hospitality and tourism.

- *Alcohol distilleries*: commencing the production of hand sanitiser as bars close and demand in this household product intensifies.

These changes may not only trigger obligations to consult under your industrial instruments (i.e. awards and enterprise agreements), but may also have implications for current roles and employees resulting in a need for retraining, redeployment into new roles and associated impacts for role classification and pay if an employee takes on new work activities.

## Flexible labour

Some businesses are experiencing an increase in demand due to the rapid shift in customer needs and priorities. Some businesses are looking at options to temporarily adjust and scale up to meet unprecedented demand.

## Medium and longer term impacts

Once businesses adapt to deal with the immediate concerns, they will need to consider the longer term impacts on ways of working and the need for transformation once the COVID-19 crisis is over. For example, you may realise that:

Customer demands and expectations have changed with impacts for the 'human facing' elements of business delivery



There are opportunities to provide more virtual, on-demand services in the future.



There are opportunities to have more permanent agile working environments.



You will need to consider how to retain flexibility in industrial instruments to deal with these medium-longer term transitions. You will need to refresh or develop enterprise agreement strategies to optimise **flexibility during the current circumstances and potentially beyond.**

# Maintaining agility through enterprise bargaining

**While some business goes on, there are questions around what implications arise when renewing an enterprise agreement in this environment.**

Businesses are considering how the landscape has changed and what they can do to ensure they achieve an enterprise agreement that meets their future needs during a time of uncertainty.

There are key questions you should be asking:

- ✓ How can we achieve and preserve the agility we need to navigate market/business volatility?
- ✓ How should we manage employee and union concerns around job security and maintain productive employee engagement?
- ✓ How might considerations around sustainability impact terms and wage outcomes?
- ✓ How should we engage with our workforce during these challenging times and what communication channels can we use to negotiate with representatives?

- allowing for employee adaptability, including movement of employees across classification structures.

You should also consider ways to ensure employment costs are sustainable during a time of considerable uncertainty such as introducing a review clause in the Enterprise Agreement that might apply when there are sudden, unplanned or unexpected events to specific markets or across the economy.

The review clause might:

- allow you to re-engage with your employees and/or their union to scale wages/hours to reflect the state of the business, enabling changes to work location or the nature of work performed;
- enable certain responses such as the ability to direct the taking of leave, provision for access to leave on half pay or the ability to access future leave entitlements; and
- provide for the ability to scale up operations quickly by employing additional labour, changing or adding additional shifts/rosters.

## Strategic considerations

When negotiating new enterprise agreement terms, it is important that you develop an enterprise bargaining strategy that considers the current and future needs of your organisation to adapt and ensure business sustainability.

Some things to consider when looking to build agility into an enterprise agreement include:

- the ability for you to maintain flexibility in setting rosters and ordinary hours;
- having a range of different options for the taking of leave, including the ability for you, as the employer, to direct employees to take leave in certain circumstances;
- allowing for ways to quickly reach agreement with employees to adapt to changing circumstances;

# Maintaining a direct relationship with your people

**Maintaining employee engagement will be critical during this period of disruption and as businesses make changes to the workforce and ways of working in response.**

There is a need to reset your workplace relations and workforce communications approach by reviewing and pressure testing your crisis communications strategy and developing a targeted plan that connects and engages with each of your people.

It is important that they know what the business impacts of COVID-19 are, how this impacts them and what you are doing to try and mitigate adverse impacts.

## Key questions

- ✓ How do we augment our traditional models of engagement and communication to meet our changing ways of working?
- ✓ With more staff working remotely or from home:
  - How do we maintain productivity and motivation?
  - How do we leverage digital tools to maintain connectivity and engagement?
  - How will we approach our enterprise agreement negotiations?
  - How do we communicate expectations regarding working time, performance and work health and safety?
- ✓ How do we engage and communicate with a diverse cohort of employees?
- ✓ How do we pre-empt and manage underlying employee grievances and discontent that may not be coming to the surface?
- ✓ How do we prioritise employee wellbeing, ensuring our employees physical, mental and emotional health and safety is a paramount?
- ✓ How do we equip our managers and front line supervisors to be able to manage during times of dislocation, uncertainty and disruption?

# KPMG Contacts

KPMG's Workplace Relations Advisory team will draw on their deep workplace relations, employee engagement insight and cross sector experience to work collaboratively with you



**Scott Gartrell**  
Executive Director  
KPMG Australia  
E: [sgartrell@kpmg.com.au](mailto:sgartrell@kpmg.com.au)



**Nina Spiccia**  
Director  
KPMG Australia  
E: [nspiccia@kpmg.com.au](mailto:nspiccia@kpmg.com.au)



**Alana Matheson**  
Associate Director  
KPMG Australia  
E: [amatheson@kpmg.com.au](mailto:amatheson@kpmg.com.au)