

FACT SHEET - REDUCING HOURS AND STAND-DOWNS

Reducing your employee's hours

Mutual Agreement required

Any variation to an employment contract can only be done by mutual agreement. Contracts cannot be changed unilaterally by one party to the contract. Employees are within their rights to rely on their contract and compel an employer to continue to provide them with their contracted hours.

IF you do reach mutual agreement then also check if your contract or agreement for any clauses such as

Where economic conditions are such that existing hours of work cannot be sustained by the employer, the employer will consult with the employee to determine mutually acceptable arrangements to overcome the problem. Where the problem cannot be resolved by negotiation the employer may reduce the hours of work and pay by giving 7 days' notice, in writing.

Because if it does then you **MUST** give the 7 days in writing before the variation or you may be in breach of contract. You can of course ask for agreement to vary the clause in the contract. Any agreement **MUST** be in writing and signed by the employee for future clarity on what was agreed

Caution - Dismissal

An employee may be able to argue that they were 'dismissed' in certain circumstances if their employer sought to force the employee to reduce their contracted hours. This could have various consequences, including potential unfair dismissal or breach of contract claims. So, make sure you get agreement. *By having a very clear, authentic and sincere conversation about the current situation we envisage that most employees will be willing to have reduced hours in lieu of facing redundancy. Unsure of what to say email us paulette@freshhrinsights.com.au*

Reducing hours of work due to the current Coronavirus (COVID-19)

During this unprecedented time many employers are seeking to reduce hours of work of employees in an attempt to avoid potential redundancies. A temporary reduction in employee hours could be beneficial to both employers and employees in these circumstances.

It is important to highlight the difference between temporary and permanent reductions in hours. If as an employer, you seek to reduce hours of work on a permanent basis you may well be triggering redundancy of employment and all of the processes associated with this move.

Options to reduce hours of work

Obtain agreement for employees to take unpaid leave

An employer may be to obtain the agreement of employees to take unpaid leave for a set period of time. When asking employees to take unpaid leave, the employer may explain that agreement is being sought to attempt to avert redundancies.

- a. Ensure you keep procedure and ask employees who agree to the unpaid leave to submit unpaid leave forms to the employer; or
- b. alternatively document the agreement to take unpaid leave in writing. The agreement should clearly state how long the agreement will last, including start and end dates (*although this is unknown at this stage so add a clause in for that*). The employer may seek to make clear to employees at this time that they will be paid out of their original rate of pay if they are later made redundant.

Obtain agreement from employees to accept part time contractual variations

Another option is to obtain agreement from employees to vary their employment contracts to part time arrangements.

As an employer you will need to ensure that the contractual changes are appropriately documented and recorded. As an Employer you need to be aware that such a change cannot be undone without agreement from employees and some employees may later refuse to return to their original working hours.

Under the current circumstance's employee would rather have part-time hours than no hours but stay honest and when things do return increase hours again but always have the conversations and check in on how everyone is feeling.

Leave accruals

Where employees agree to temporarily reduce their hours of work it may impact their leave entitlements.

For example, under the Fair Work Act 2009 annual leave accrues based on service. If an employee's hours of work and service are reduced, then their leave accruals may be reduced too.

To avoid disputes on this issue, we suggest that employers seek to address how leave will accrue before the employee's hours of work are reduced. For example, an employer may agree to accrue leave according to the employee's original hours while they are on unpaid leave. (*preferred to maintain loyalty and commitment in these difficult times*) Alternatively, an employer may clarify that the employee will only accrue leave according to their reduced ordinary hours.

STAND DOWNS

An employer may stand down an employee during a period in which the employee cannot usefully be employed because of a number of circumstances including:

- industrial action (other than industrial action organised or engaged in by the employer)
- a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown, or
- ***a stoppage of work for any cause for which the employer cannot reasonably be held responsible.***

Payments during a period of stand down

If an employer stands down an employee during a period in accordance with s.524 of the Fair Work Act, then the employer is not required to make payments to the employee for that period.

Section 524 is intended to relieve an employer of the obligation to pay wages to employees who cannot be usefully employed in certain limited circumstances.

The consequences of a stand down can be severe for an employee as the employee may be deprived of wages for a lengthy period. Whether a particular employee can be usefully employed is a question of fact to be determined having regard to the circumstances that face the employer.

Stand down under terms of enterprise agreement or contract of employment

An employer may not stand down an employee under s.524 of the Fair Work Act if:

- an enterprise agreement, or a contract of employment, applies to the employer and the employee, and
- the agreement or contract provides for the employer to stand down the employee during the relevant period if the employee cannot usefully be employed during that period because of industrial action (other than industrial action organised by the employer), or a breakdown of machinery or stoppage of work for which the employer cannot reasonably be held responsible .

Note: An enterprise agreement or a contract of employment may also include terms that impose additional requirements that an employer must meet before standing down an employee (for example requirements relating to consultation or notice).

If the terms of an enterprise agreement or contract of employment provide for the standing down of employees, then the employer will generally need to rely upon the terms of the enterprise agreement or contract of employment to effect a stand down of an employee.

For further advice or support please contact the team at Fresh HR Insights – we are currently running consultations at \$250+GST* for 1.5hr which includes templates for stand-down, reduced hours/ wages and if needed redundancy.

Book a time to discuss by sending an email to paulette@freshhrinsights.com.au

**Our offer of a FREE 60minute consultation no-longer includes previously sent templates due to overwhelming demand. As you will appreciate, we are a business and also need to survive. As much as we want to help, we also have a family to look after.*