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Human Resources Challenges in the face of Covid-19

JobKeeper

1. Coronavirus Economic Response Package Omnibus (Measures No.2) Bill 2020, passed 8 April 2020
2. Changes to *Fair Work Act* 2009 (Cth) to enable flexibility to employers in areas of:
 - a) hours of work
 - b) days worked
 - c) location of work
 - d) use of accrued annual leave

On the basis the employer is eligible for JobKeeper assistance

JobKeeper Eligibility for Business

1. Payments to be made for up to 6 months for each eligible employee on the books since 1 March 2020
2. \$1,500 per fortnight per eligible employee before tax – to be passed onto the employee
3. Paid via ATO
4. Commencing May 2020
5. Backdated to 30 March 2020
6. Eligibility requirements:
 - a) < \$1 billion turnover: >30% reduction in turnover compared with the same period last year
 - b) > \$1 billion: >50% reduction in turnover compared with the same period last year

JobKeeper – the 30%

1. Turnover reduced, or likely to be reduced, by at least 30%
2. Turnover = GST turnover as reported on BAS statements
3. Includes all Australian taxable supplies and GST supplies, not input taxed supplies
4. Period – usual GST reporting period for the business
5. ATO to decide on eligibility for entities operating for less than a year, or with unusual turnover due to external circumstances
6. Eligible employers include partnerships, trusts, sole traders, companies and not-for-profit entities

JobKeeper Eligibility for Employees

1. Full time
2. Part time
3. Stood down employees, after being reinstated
4. Casual employees 16yrs+ and employed regularly for more than 12 months, as at 1 March 2020
5. Self-employed

JobKeeper – payment process

1. Employers must pay employees before being reimbursed
2. Reimbursements monthly in arrears
3. Make payments through usual payroll and report to ATO via Single Touch Payroll
4. \$1,500 minimum before PAYG withholding per fortnight from 30 March 2020
 - a) top up payments for unpaid employees
 - b) employer is reimbursed a maximum of \$1,500 per fortnight regardless of whether usual pay is more

JobKeeper - Superannuation

1. Employer's obligations unchanged if:
 - a) employee's usual pay >\$1,500
 - b) Employee continues to be paid >\$1,500 per fortnight

If wages are increased to meet the \$1,500 per fortnight minimum there is no obligation for the employer to increase superannuation payments for any gap

JobKeeper – Vary Hours of Work

JobKeeper enabling directions allow change of hours without employee consent, if the employee cannot be usefully employed for usual days / hours due to COVID-19

Overriding obligation to act reasonably

Directions include:

- a) Not to work on usual day/days;
- b) Work for a lesser period on usual day/days; or
- c) Work reduced hours

JobKeeper – Vary work type, location and day

1. Type of work
 - a) outside position description as long as employee adequately qualified to perform duties safely
2. Location of work
 - a) Work from home, or
 - b) Different location
 - c) Social distancing rules must be adhered to, and
 - d) Travel required must be reasonable
3. Workdays
 - a) Request for change
 - b) Employee not to *unreasonably* refuse

JobKeeper – Leave, entitlements and rates of pay

1. Annual leave

- a) Employer may request employee take accrued annual leave
- b) Full or half pay, as long as employee will be left with 2 weeks annual leave
- c) Can be used to top up reduced hours
- d) Employee not able to unreasonably refuse request

2. Entitlements

- a) Leave to be accrued as per normal/usual hours of work
- b) Full time accrues at full time rate regardless of whether hours reduced

3. Hourly rates of pay

- a) Rate cannot be varied
- b) Usual rate paid for hours worked, or higher pay if duties require

Non JobKeeper - Awards

1. Issues are fluid – Fair Work continually updating commentary and Awards
2. Always check relevant Awards before action
3. Different Awards and therefore different ‘rules’ for different industries

Non JobKeeper – Stand Down

1. Provisions under the *Fair Work Act*
2. Must be a *stoppage* of work, not just a reduction in work load
3. Employee unable to be usefully employed in the business
4. Examples:
 - a) A Business has closed because of enforceable government direction* relating to non-essential services
 - b) A business has a large portion of their workforce in self quarantine and remaining employees cannot be usefully employed
 - c) A business experiences a stoppage of work due to lack of supply, for which the employer cannot be held responsible
5. Not legally required to make payments to employees
6. Employees should have option to take any accrued paid leave (annual / LSL)
7. Remainder to be taken as unpaid leave

Non JobKeeper – Stand Down

1. Employment entitlements to accrue whilst on stand down
2. Stand down employees able to return to their positions when the business resumes operation
3. Penalties for incorrectly enacting stand down provisions
 - a) Issued by Fair Work
 - b) Potential claim from employees for usual pay for the stand down period because there was not legally a stand down period
5. If no *stoppage of work* - employee consent required to reduce hours, or possible redundancies

Non JobKeeper – Varying hours

1. Check relevant Award to see if consultation with employees required
2. Health Professional and Support Services Award (Award) requires consultation to change regular roster or ordinary hours
3. Consultation - the employer must:
 - a) Provide information to employees and their representatives, regarding the change (e.g. nature, commencement)
 - b) Ask for employee and representative feed back about how the change will impact them personally (including on family/ caring responsibilities)
4. Ask employees if they would volunteer to change – part of the process
5. Document agreed changes via variation of employment contract letter

Non JobKeeper – Employee consent not provided

1. What if no consent to reduced Hours?
 - a) position no longer required due to and during COVID-19 outbreak
 - b) redundancy
 - c) termination notice and redundancy pay required

2. No consent to taking leave:
 - a) encourage, or
 - b) depending on Award or Enterprise Agreement, and c) where there is excessive leave accrual
 - c) consult Award for minimum retention of leave and notice period

Health and Safety

1. Employers obliged to ensure the health and safety of employees
2. COVID-19 Policy to include:
 - a) When to stay away from the workplace
 - b) What action to take if they become unwell
 - c) What symptoms to be concerned about
 - d) Quarantine
 - e) Working from home
 - f) Close contact
 - g) Employees with COVID-19 and
 - h) Safety

Health and Safety

Employers to provide information to all employees, contract staff including domestic and cleaning staff regarding procedures to prevent the spread:

- a) Allow workers to work from home where possible
- b) Physical distancing – 1.5m

<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/how-to-protect-yourself-and-others-from-coronavirus-covid-19/social-distancing-for-coronavirus-covid-19>

- c) Hand washing and practising good hygiene

https://www.who.int/gpsc/5may/How_To_HandWash_Poster.pdf?ua=1

<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/how-to-protect-yourself-and-others-from-coronavirus-covid-19/good-hygiene-for-coronavirus-covid-19%5d>

- d) How to spot symptoms and ensure infected workers do not attend the workplace <https://www.health.gov.au/resources/apps-and-tools/healthdirect-coronavirus-covid-19-symptom-checker>

- e) Ensure the workplace is regularly cleaned and disinfected

<https://www.health.gov.au/sites/default/files/documents/2020/03/environmental-cleaning-and-disinfection-principles-for-covid-19.pdf>

- f) Signs and posters to remind those in the workplace

<https://www.safeworkaustralia.gov.au/doc/signage-and-posters-covid-19>

Health and Safety

Safe Work Checklist:

https://www.safeworkaustralia.gov.au/sites/default/files/2020-04/workplace_checklist_covid-19_0.pdf

Health and Safety – Self Quarantine

1. Employees should not attend the workplace and self quarantine for 14 days if they have:
 - a) Arrived in Australia after midnight 15 March 2020
 - b) Been in close contact with confirmed case of COVID-19
 - c) Have contracted COVID-19
 - d) Been issued with enforceable government order / direction

Policies should also include direction to self quarantine if an employee has a fever or respiratory symptoms

Health and Safety – Close Contact

1. Living in the same household / setting (including boarding school, hostel etc.)
2. Direct contact with body fluids or laboratory specimens of a confirmed case
3. Being in the same room for 2 hours or more
4. Face-to-face contact for more than 15 minutes (e.g. car, elevator, public transport)
5. Employee should urgently see a doctor for testing if symptoms appear within 14 days of close contact with a confirmed case

Health and Safety – must quarantine and can work from home

1. Employer can decide which employees work from home (full or part days)
 - a) Must be reasonable
 - b) Take into account employees' positions and needs of the business
 - c) Current government recommendation to work from home if possible
 - d) Employers to provide IT support and guidelines to employees
 - e) Employers to provide safety checklist

<https://www.comcare.gov.au/about/forms-publications/documents/publications/safety/working-from-home-checklist.pdf>

2. Guidelines for tasks may include –
 - a) employees working from home must do so safely
 - b) Submit a timesheet for each day worked
 - c) Email their manager at the start of each day with planned work activities
 - d) Email their manager at the end of each day with work achieved
 - e) Be available and contactable during business hours to perform work, confer with colleagues/managers

Health and Safety – must quarantine but cannot work from home

1. Employees who must self quarantine and *the business reasonably considers cannot work from home* may use
 - a) accrued paid leave (AL / LSL)
 - b) unpaid leave
 - c) JobKeeper payments if the business qualifies

2. Employees who must self quarantine and unable to work from home because
 - a) Of their position
 - b) Not enough work to perform from home
 - c) Are well but forced into quarantine

Do not have the automatic right to use paid sick leave entitlements. Consider right to pandemic leave (unpaid).

Health and Safety – employees with COVID-19

1. Full and part time employees
 - a) can take paid sick leave if they are sick or
 - b) take carer's leave if they are caring for a family member and
 - c) can take unpaid carer's leave if no accrued sick or carer's leave left

2. Casual employees can
 - a) take unpaid leave if they are sick or need to care for a family member

3. Employees employed by businesses that qualify for JobKeeper will be entitled to the JobKeeper payment if they contract COVID-19

Health and Safety – employees with COVID-19 - Procedure

Safe Work – visual procedure

https://www.safeworkaustralia.gov.au/sites/default/files/2020-04/Infographic-Suspected-or-Confirmed-Cases-COVID_19.pdf

1. If an employee is diagnosed with COVID-19
 - a) employee to be immediately isolated
 - b) authorities to be notified
 - c) employer must immediately notify its workforce
 - d) enquire as to who the infected employee had been in close contact with while at work
 - e) employer will need to notify any close contacts
 - f) directions to self-isolate
 - g) rigorous clean using PPE
2. Employers have a duty to ensure employees are provided with a safe system of work.
3. Employers have discretion to close business if they deem it unsafe for their workers
4. Stoppage of work = stand down

Health and Safety – patients - suspected cases

Employees to have clearly document procedure including measures such as

- a) Immediately providing the patient with a surgical mask and ensuring they put it on correctly
- b) Direct them to a single room, regardless of whether respiratory symptoms present
- c) If first contact with a healthcare provider, contact local public health unit or state/territory communicable disease branch regarding the need for testing
- d) Perform hand hygiene and use gown, gloves surgical mask and eye protection (safety glasses / face shield)

Health and Safety – Vulnerable workers

Vulnerable people likely to be at a higher risk of serious illness include:

- a) Aboriginal and Torres Strait Islander people >50 yrs with one or more chronic medical conditions
- b) People >65 with chronic medical conditions
- c) People >70
- d) People with compromised immune systems

Employers should conduct a risk assessment checklist in relation to each vulnerable worker to ensure a safe workplace

Health and Safety – Employee refusing to attend work

The employee's concerns could be legitimate if:

- a) Following advice or directives issued by the government or a health authority/agency
- b) Is in an at risk category of people, as per Department of Health guidelines
- c) Evidence the employee is at risk of being exposed – the onus is on the employer to demonstrate adequate procedures implemented
- d) Employee's concerns are not addressed by their employer
- e) An employee's work requires travel – onus on the employer to verify the travel is safe; or if a ban has been issued the employer cannot force the employee to travel

If the directive to attend work is lawful and reasonable and unlikely to be a risk, the employer is not required to pay an employee who refuses to attend (depending on Award/Agreement). May have option for disciplinary action.

Health and Safety – Personal Protective Equipment (PPE)

1. For general population, not required if healthy
2. Health care workers are required to wear PPE if caring for COVID-19 patients, or those of suspected of having COVID-19
3. Customer service staff and public officials not usually required
4. All staff to practice social distancing and good hygiene

Health and Safety – Mental health

1. Maintain regular communication with employees including via virtual team meetings
2. Advise teams to stay as connected as possible
3. Keep staff up to date about your business' response
4. Make sure your staff are aware of support available (e.g. EAP)
5. Check in with any employees you may be concerned about

<https://www.headsup.org.au/supporting-others/starting-a-conversation>

6. Be mindful of disruption to your employees family life – come to an agreement regarding hours
7. Beyond Blue 24/7 free service – 1300 22 4636 or via daily web chat (during 3pm – 12am)

<https://www.beyondblue.org.au/about-us/contact-us>