

Important information for Private Practices regarding impacts of COVID-19

This compilation of information contains general advice about matters related to workplace relations in your practice. For specific legal or financial advice, please contact your lawyer or accountant. If you have specific questions regarding workplace relations matters, please contact us so we can assist you.

If you would like advice from our Corporate partners, **HWL Ebsworth** Lawyers or **William Buck** Chartered Accountants and Advisors, we can arrange a referral for a free consultation.

**Please note, the COVID-19 situation is continually evolving, as such the information contained in this newsletter is current as at 3 April 2020.*

Workplace Health and Safety

On 30 March 2020, the Australian Health Protection Principal Committee (AHPPC) on the advice of the Communicable Diseases Network Australia (CDNA) considered provisions for essential workers who are considered to be most at risk of acquiring COVID-19 and at higher risk of serious illness if they become unwell.

AHPPC recommended that where vulnerable workers undertake essential work, a risk assessment must be undertaken. Risk needs to be assessed and mitigated with consideration of the characteristics of the worker, the workplace and the work. This includes ensuring vulnerable people are redeployed to non-customer based roles where possible. **Where risk cannot be appropriately mitigated, employers and employees should consider alternate arrangements to accommodate a workplace absence.**

AHPPC recommends that special provisions apply to essential workers who are at higher risk of serious illness and, where the risk cannot be sufficiently mitigated, should not work in high risk setting.

Fair Work Commission to vary a number of Modern Awards

The Fair Work Commission (FWC) has moved on its own initiative to vary a number of modern awards as the coronavirus crisis continues.

The **Health Professionals and Support Services Award 2010** and **Nurses Award 2010** are both listed as Awards that the FWC proposes to vary.

The changes proposed will:

1. Provide all employees (including full-time, part-time and casual employees) with a new entitlement of up to 2 weeks' unpaid pandemic leave; and
2. Provide for employees by agreement with their employer to take twice the amount of their accrued annual leave at half pay.

This independent action by the FWC does not preclude other applications to vary modern awards, and the FWC has encouraged parties to discuss consent applications, like those made to vary the Hospitality, Clerks and Restaurant awards.

Government stimulus measures

The Government has announced business viability supports that are accessible for medical practices. The AMA's proposal to support the viability of General Practice resulted in Health Minister Hunt announcing the doubling of the bulk billing incentive for GPs and an expansion of the Practice Incentive Program. General practices that remain open during the pandemic will have their next two Practice Incentive Program Quality Improvement (PIPQI) payments doubled.

Other viability supports that may assist you include:

JobKeeper Payment

This new wage subsidy plan announced by the Federal Government on Monday, 30 March 2020, will provide a much needed lifeline to Australian businesses and workers, however, we recommend that you resist pressure to hastily change existing COVID-19 staffing arrangements until the plan's fine print is confirmed by Parliament.

The wage subsidy plan provides eligible employers a flat rate subsidy of \$1,500 per fortnight for existing, stood down and re-hired employees for the next 6 months.

Before acting too quickly to change existing staffing arrangements, please bear in mind that:

- the wage subsidy plan will not be legislated for at least another couple of weeks, meaning that employers risk implementing changes, or agreeing to implement changes, before legislative conditions and restrictions are confirmed; and
- **the usual laws of employment apply**, despite the unprecedented nature of this package.

Boosting Cash Flow for Employers

This program provides eligible businesses with \$100,000 to cover rent, bills, and employee wages.

Coronavirus SME Guarantee Scheme

This scheme supports loans to small businesses.

Our corporate partner, William Buck, recently hosted a webinar about the COVID-19 Stimulus measures, and has provided a number of fact sheets with information about what assistance you may be eligible to receive.

Link to William Buck – COVID-19 Stimulus Measures Webinar

https://drive.google.com/drive/folders/10A3RpYzJ1IH0lwWqK7DeN_1X7QCtYdCg

More information about all of these measures is available on the AMA website:

<https://ama.com.au/article/latest-information-covid-19#D9>

Stand Down and Redundancy

You may be inclined to stand down employees in light of the generous safety net afforded by the new wage subsidy plan. However, you **must not** stand down employees unless you have a basis to do so under either:

- the Fair Work Act (**FW Act**); or
- provisions in any applicable Enterprise Agreement or employment contract.

Importantly, you must only stand down employees, under the FW Act, during a period in which the employee cannot be "usefully employed" because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible. **Stand down must remain a measure of last resort.**

The use of stand down provisions by employers in circumstances similar to the COVID-19 outbreak is untested by the Courts and open to challenge by employees. In particular, employees with an ordinary salary higher than \$1,500 a fortnight may still challenge the decision to stand them down to recover the difference between the \$1,500 and their ordinary salary.

An employee who can be "usefully employed" must not be stood down. Any unreasonable refusal to perform ordinary duties by an employee may give rise to a breach of contract, which may give the employer the right to withhold wages. Therefore, employers must make it clear to employees that if there is work for them to do it must be done, unless they have a reasonable excuse (such as needing to take personal or carers' leave).

Employers must keep in mind the usual laws affecting employment when selecting employees, or groups of employees, including by ensuring that selection of eligible employees:

- is not based on a protected attribute (ie. race, sex, family commitments, disability or age), which could give rise to a breach of discrimination laws; and
- could not give rise to complaints of adverse action if an employer decides not to nominate the employee to receive the JobKeeper Payment.

Changing terms and conditions of employment in light of the JobKeeper Payment

If you cannot afford to pay the difference between the JobKeeper Payment and ordinary hours, you may wish to consider reducing the employee's ordinary hours and wages so that they only receive the JobKeeper Payment. Please be aware that the usual laws affecting employment will apply. This means that:

- any reduction of working hours and pay may be subject to terms set out in a Modern Award or employment contract;
- at least in the first instance, you should seek agreement from the employee before making this change; and
- you should exercise caution in unilaterally changing an employee's terms and conditions, as a substantial change may be construed by a Court as a redundancy situation, where the employee will be entitled to a redundancy payment.

Nominating casual employees

You should speak with us before nominating eligible casual employees to receive the JobKeeper Payment.

There may be a risk that nominating 'long term' casuals for the JobKeeper Payment could later be construed as evidence of a permanent relationship, which could expose you to potential misclassification claims, which may result in liability for back-payments for unpaid employee entitlements.

You should not be discouraged from nominating 'long term' casuals for the JobKeeper Payment, as the misclassification risk may be managed by clarifying the nature of the relationship when first communicating the decision to nominate the casual employee for the wage subsidy. We can assist you by drafting this communication for your casual employees, so please contact us for this support.

Please contact us for advice before you take any steps to stand down or terminate your staff due to the impacts of COVID-19, as we can provide you with advice to ensure you take steps that comply with your employer obligations.

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****The information contained in this document is current as at 3 April 2020.***