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EMPLOYMENT LAW



Ten Tips for South Australian Employers to Deal With COVID-19 Restrictions and Lockdowns

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South Australia is about to complete a seven-day lockdown to combat a recent COVID-19 outbreak over various super spreading events.

For the foreseeable future, it seems that there remains an ongoing risk of further restrictions and lockdowns. South Australian employers need to always be ready to enact business continuity plans at extremely short notice. As we saw on Tuesday, 20 July, when these restrictions or lockdowns happen, it takes effect very quickly after the announcement.

A key consideration for current continuity plans is that South Australian employers will no longer benefit from the Federal Government's JobKeeper wage subsidy scheme for current and future lockdowns. While other forms of support will be provided, the Federal Government has made it quite clear that the JobKeeper wage subsidy scheme will not be returning.

With this in mind, here are our ten "tips" for consideration when preparing your business continuity plan.

1. Vaccination

South Australian employers should consider encouraging all of their employees to receive the COVID-19 vaccination as soon as they become eligible. By doing so, employers are

reducing the risk that, if one person were to become infected with COVID-19, that multiple other staff members (as well as clients and/or customers) could become infected.

2. Travel

Regardless of whether during a period of restrictions or not, all South Australian employers should review the need for their employees to travel interstate. As has been the case with the recent Victorian lockdown, state borders can close quickly, and returning employees can have fourteen-day quarantine periods imposed upon them. If personal attendance is not required and meetings can be conducted virtually, for instance, by video conferencing software like Microsoft Teams or Zoom, then employees should be encouraged to hold those meetings virtually.

3. Flexibility

South Australian employers may wish to review their existing policies to ensure that they are able to facilitate flexible working options, such as working from work, in response to future restrictions and lockdowns.

4. Working from home

Several South Australian employers are covered by Modern Awards that have

continued overleaf...

introduced temporary measures to respond to the COVID-19 pandemic. These temporary measures include the facilitation of remote working arrangements. Our [earlier article](#)¹ discussed the remote working arrangements under the *Clerks – Private Sector Modern Award (Clerks Modern Award)*.

If employees are physically not able to attend their usual place of work because of restrictions or lockdown, but the nature of their role allows them to work remotely, then allowing employees to work remotely (i.e. from home) would allow the business operations to continue.

By taking the time to put into place options for employees to work from home (such as upgrading existing technology that allows for remote working), the transition can be seamless and productivity retained in the event of a lockdown.

5. Hours of work

An employer can reduce hours of work under these temporary measures under some Modern Awards. The Clerks Modern Award, for instance, allows for a collective agreement with employees for a temporary reduction in ordinary hours. A condition of such agreement is that at least 75% of the employees in the workplace need to approve any such agreement to reduce ordinary hours temporarily. An employer may also reach an agreement with an individual employee though such agreements need to contain more safeguards.

South Australian employers who consult with employees early about this option will be more able to quickly roll out this option when faced with restrictions or lockdowns that severely impact their ability to continue their normal business operations.

6. Duties

An employer is able to modify duties under these temporary measures under some Modern Awards. The Clerks Modern Award,

for instance, allows an employer to temporarily modify the duties of an employee in response to restrictions or a lockdown. The modified duties must be tasks which the employee is trained and qualified for.

South Australian employers should again consult with their employees early about this option.

7. Leave

Another temporary measure under Modern Awards is the introduction of greater flexibility in taking annual leave. For instance, South Australian employers covered by the Clerks Modern Award have a greater ability to request employees to take paid annual leave. Such requests in accordance with this temporary measure must be made for reasons associated with COVID-19, such as Government initiatives to slow transmission or to assist the employer in avoiding or minimising employment loss. Additionally, these temporary measures enable agreements with employees to take up to twice as much annual leave at a proportionately reduced rate.

8. Stand down (general)

South Australian employers can stand down their employees in response to restrictions or a lockdown in accordance with section 524 of the FW Act.

For instance, a restaurant that has been directed to close by enforceable government direction would be permitted to stand down their employees (assuming that there was no other useful work that they could perform from their home while the restaurant is closed).

While an employee is stood down, their rights and entitlements as an employee continue – except for that of being paid – and the stand-down period does not constitute a break in service.

Additionally, South Australian employers can stand down an employee in the event that an

¹ <https://www.dwfoxtucker.com.au/2020/04/covid-19-flexibility-comes-to-the-clerks-modern-award>

enforceable government direction prevents that particular employee from leaving their home due to a requirement that they self-isolate.

9. Stand down (enterprise agreement)

A South Australian employer may have an Enterprise Agreement that covers the employees of their business, which if it contains a term that regulates a stand down during a stoppage of work will need to be followed in a stand-down situation rather than the general stand down provision under section 524 of the FW Act (as discussed above).

10. Health

Employers should consider implementing a health and well-being scheme to assist employees who are struggling in the event of ongoing remote working arrangements or a lockdown. This could be as simple as ensuring that staff are aware of schemes that are already in place, such as Employee Assistance Schemes. It could also include a regular virtual “check-in” with employees during any period of remote working arrangements or a lockdown to make sure that they are coping and, if required, making counselling services available to employees.

Conclusion

With restrictions relating to COVID-19 continually evolving in South Australia, and the likelihood of further lockdowns, until a much greater proportion of our population becomes vaccinated against COVID-19, it is likely that employers will continue to be impacted by the implications of these restrictions for some time to come.

If you do not have a plan in place, now is the time! Businesses should put together a plan that they can quickly implement for lockdowns or when the government sets restrictions that impact businesses’ ability to carry normal operations.

Should you wish to discuss the options available to you in putting together a business continuity plan, please get in touch with our Employment Law expert Ben Duggan.



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