

# Article

## EMPLOYMENT LAW

### Re-establishing Your Business During a Pandemic

By Patrick Walsh

As the various State and Federal Governments start to unwind the lockdown measures imposed to suppress the spread of SARS-CoV-2 in Australia, businesses are trying to grapple with trying to operate effectively while abiding by the remaining lockdown measures applicable to their business.

Hospitality businesses, perhaps more than any other sector, have found it particularly difficult to continue trading under measures taken by governments to reduce physical interactions between people.

Now that hospitality businesses are able to welcome back patrons (albeit while maintaining strict limits on the number of persons allowed inside their premises), here are five legal issues that business ought to bear in mind.

#### Do I have to reopen?

There may be a variety of reasons that, notwithstanding Government directives allowing businesses to reopen with conditions on the manner in which they operate,

businesses elect not to reopen at this stage. A common example is a business that has elected to perform capital works during a stand-down period.

In determining whether a business can continue the stand-down of its workforce, it is important to remember that:

1. the cause of the stoppage for work must be one for which the employer cannot reasonably be held responsible; and
2. the affected employees cannot be usefully employed.

Generally, businesses will need to consider whether a continued stand-down can be justified on the basis of the applicable Government directive(s) in place at the time or some other circumstance beyond the control of the business (such as an inability to secure necessary supplies).

#### Directing employees back to work

The Federal Government's JobKeeper program has ensured

that a significant number of businesses retained their employees, even if the employees were stood down.

Subject to any flexibility arrangements that have been put in place, receipt of the JobKeeper subsidy does not change the underlying conditions of an employee's employment. This means that employers can direct employees to work their contracted hours (if they are part-time or full-time) and any **reasonable** additional hours. Whether such a request is unreasonable will depend on the particular circumstances, but some things to consider are:

- safety of the relevant employee (e.g. fatigue);
- notice given;
- the employee's personal circumstances; and
- the needs of the business.

Employers should take into account the same circumstances in determining what shifts to offer to casual employees. Failing to undertake casual shifts

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that are not unreasonable can be grounds for termination of employment, but it's important that the employee's personal circumstances are taken into account as these may have changed significantly since the start of the pandemic.

### Safety of employees and customers

Businesses will need to be mindful of their obligation to remove or minimise risks to health and safety. Employees using public transport may be at increased risk of contracting SARS-CoV-2 during peak periods. Consider staggering the start-finish time of employees to allow them to travel during no-peak periods.

It's also important to consider what PPE might be useful in your premises to reduce the risk of transmission. These can include physical barriers, masks, and sanitiser. At this time there is no vaccine for SARS-CoV-2, and so the best way to minimise the risk of transmission is to reduce the number of interactions between employees and customers, introduce barriers to transmission, and increase the distance between employees and customers. Consider also temperature checks to reduce the risk of symptomatic customers inside your premises.

If any of your employees have previously developed CoVID-19, you should ensure that you have records of the relevant employee's negative test(s) as evidence that they have recovered from the infection. Furthermore, consideration should be given to temperature checks of all employees prior to the commencement of a shift.

Businesses should also emphasise the importance of employees not attending work if they are ill at this time.

### Visas

The Federal Government has made some changes to the work visa system in light of the issues created by the pandemic.

Businesses should run up to date checks on the Visa Entitlement Verification Online (VEVO) system to ensure that any employees on a work visa remain entitled to perform work for the business.

Those operating a business in regional areas who need to source labour from interstate should turn their mind to how employees can comply with a requirement to quarantine for 14 days if directed to do so.



[MORE INFO](#)

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