

## Positioning your workforce for post Covid success

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In the current climate many businesses have experienced a reduction in revenue and need to reduce operating costs. Administrative expenses make up a significant portion of operating costs, however, staff are the lifeblood of any business and are often the key to success. We set out steps that can be taken to preserve staff while reducing costs, and what to consider if restructuring is an unavoidable next step.

### Options to explore before a restructure

While you cannot make unilateral changes to employment terms and conditions, an employer should consider the following range of options from passive steps (requiring voluntary engagement from employees) through to active steps (where the employer takes direct action):

- **Annual leave:** A high annual leave balance is a costly expense. Encourage employees to use their annual leave and try to reach agreement with them. Failing agreement, you can direct accrued leave to be taken on 14 days' notice. Employees also cannot be directed to take unpaid leave
- **Recruitment freeze:** Focus on the talent you have instead of hiring new staff. Upskill staff through training to ensure they can cover a range of positions
- **Internal redeployment:** Consult with staff about redeployment from one part of your business to another that has more work. This has the added benefit of increasing the number of cross-skilled employees, which in turn increases the agility and resilience of your business
- **Flexible working packages:** Seek and obtain agreement on a reduction in working hours specified in the employment agreement. Ask for a reduction in daily/weekly hours or an 8-day fortnight, for example. A formal flexible working policy can be introduced to encourage staff to voluntarily take reduced hours
- **Leave purchasing arrangements:** Consider a policy enabling staff members to buy extra leave with their salary reduced accordingly for the remainder of the year to 'pay off' the leave
- **Actively manage retirements:** If there are individuals who have already indicated they are thinking of retirement it is an appropriate time to work with them to formalise their plans and timeframe
- **Freeze or delay remuneration:** Delaying this year's round of pay adjustments and leaving employees on their current wage for the time-being may be appropriate if the business could not sustain an increase in wage costs. Check your contract wording provides pay rises are discretionary
- **Enforce an 8/9 day fortnight:** Enter into consultation with staff to reduce working hours and a corresponding pro-rata reduction in salaries. We recommend this step be taken for a set period of time, rather than indefinitely
- **Furlough:** Consider putting your staff's employment in 'hibernation'. Furloughs can last for varying periods of time during which the employee does not accrue further entitlements under the employment agreement (such as annual leave, pay steps, sick leave and superannuation) but service with the company will be treated as continuous at the end of the furlough period. Staff can quit the agreement during the furlough period
- **Voluntary redundancy:** You can offer your staff the option to take voluntary redundancy. A redundancy package may be attractive to some workers.

### Considerations for a restructure

If you are unable to achieve a sufficient reduction in operating costs for the business to survive with current staffing levels, you may need to consider a restructuring proposal. You must have genuine business reasons in order to disestablish a role.

In some instances, the employment agreement may set out a process to be followed in the event of a restructure. In addition, an employer has an obligation of good faith which requires, among other things, openness, frankness, transparency and fairness. If you terminate employment by reason of redundancy the Court will inquire whether that action is what a fair and reasonable employer could have done in the all the circumstances at the time the dismissal occurred, if your actions were justified and if the

process of consultation was fair.

As a rule, the essential steps required to meet your obligations include:

- **Notification:** Affected employee(s) should be given a proposal document setting out your proposed changes and an explanation for the change. Include the selection criteria for new roles or reduced roles and a clear timeframe for the process
- **Consultation:** Enter into a period of consultation so that affected persons can provide their feedback on the restructuring proposal. Consultation involves the statement of a proposal not yet finally decided on, listening to what others have to say, considering their responses, and then deciding what will be done. Section 4(1A)(c) of the Employment Relations Act requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employees' employment, to provide potentially affected employees with access to **relevant** information and an opportunity to comment on that information
- **Selection:** Consult and be transparent with employees about any selection process, the selection criteria and weightings. Consider the feedback provided and make decisions about the structure and the selection for redundancy or filling new positions. Keep good notes of the selection process detailing how you reached your decision(s)
- **Redeployment:** If a new position is created you need to have good reasons not to appoint an employee who will otherwise be made redundant into that new role
- **Implementation:** Notify affected employees in writing of your decision on the final structure. Include the feedback that was considered and explain why the final structure was chosen. Make sure you incorporate contractual notice periods when terminating the employment of staff.

In a post Covid environment many businesses will need to reduce administrative costs. Your employees will continue to be your most valuable asset and there are several cost saving measures that might be considered before you rethink your organisational structure. Where restructuring is unavoidable it is essential to act in good faith and with genuine reasons.

[Click here to download our helpful resource that will guide you through the steps of restructuring.](#)

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