



Deloitte Legal employment law webinar COVID-19 labour impact – How to manage your workforce during and post lockdown

Executive summary

The coronavirus (COVID-19) and the mandated national and regional lockdowns are having an unquantifiable negative impact on businesses and individuals. Employers are required to consider how to mitigate their financial losses, whilst considering the well-being of their employees. Additionally, employers are now required to implement specific COVID-19 health and safety measures within their workplaces. It is important to keep up to date with changes in regulations and state support options, to ensure that you know your rights and obligations as an employer during this unprecedented global event.

Workforce management key themes:

1. Lockdown and remuneration

With the lift of the national lockdown, most businesses are likely to be able to commence operation again, but will need to be ready to return to shutdown or remote work depending on the level of lockdown determined by the government from time to time. Where your business is not permitted to operate on site during any particular lockdown level, you need to consider which employees are able to continue working remotely, and which will not.

While the right to remuneration is dependent on the delivery of the contracted service, you are encouraged to support your staff to the extent reasonably possible. This includes the options of applying paid annual leave, advancing bonuses, or reducing pay where a full salary is not feasible. Where none of these are viable options, the business (or parts thereof) may temporarily shutdown, effectively suspending affected employment contracts.

To the extent that you implement reduced pay, or suspend pay altogether, you should assist affected employees to access the relevant state benefits available to them.

2. State support

In order to assist both employers and employees during this national crisis, the state has made available certain benefits to mitigate the adverse financial impact on both parties.

For employers, this includes the Employment Tax Incentive (encouraging youth employment), income tax relief (both in respect of PAYE as well as corporate income tax), and suspension of Skills Development Levy contributions. For employees, this takes the form of various Unemployment Insurance Fund benefits, such as those for reduced working time and the Temporary Employer / Employee Relief Scheme (TERS).

3. Remote work

With staff working remotely, your business should consider adapting human resource policies to better accommodate and structure such alternate working methods, including possible amendment to performance measurement indicators, and extension of probation periods.

You should also determine alternate structures for remote discipline where in person hearings are not possible. In any disciplinary process to be followed, reasonable accommodation must be made, and at all times the principles of fairness maintained.

4. Return to operation

As most businesses are now permitted to return to operation, and staff return to your worksite, you will need to adequately prepare your work environment. You are required to provide a safe working environment that is free of serious recognised hazards, to the extent reasonably practicable. This includes COVID-19 specific measures, such as conducting a risk assessment and preparing a work safety plan, preventing concentration of workforce and ensuring social distancing, providing personal protection equipment (e.g. masks and gloves), screening employees, ensuring cleaning and ventilation of premises, and training staff on such safety measures to prevent the spread of the virus.

In the event of an employee falling ill, provide him/her with available paid sick leave, and assist him/her to apply for any applicable top up payments through the Unemployment Insurance Fund, or a claim under the Compensation for Occupational Injuries and Diseases Fund.

Ensure that any newly introduced policies or practices are not discriminatory on any unfair basis, and that any personal information collected about employees (including their health) is maintained with the care required by law. Medical screening and testing (such as temperature checks) may be implemented.

5. Restructuring

Some businesses may have suffered such financial harm that they have no option but to downsize. Others may have found that they have been able to function well with their employees working remotely, and through the use of technology have evolved or reinvented their way of operating, and thus wish to formally restructure to align with this new way of working. Either way, this may call for the need to downsize the staff complement or change the way you operate.

Amendment to any employment terms must be implemented through consultation with affected staff. Retrenchment should be utilised as a last resort, and must be implemented through strict legal process. Alternatives such as temporarily lay-offs and reduced pay should be considered. But if

you do end up retrenching, assist the affected staff to apply for available Unemployment Insurance Fund benefits.

6. In closing

There will not be a “back to business” in the COVID-19 context. You will have to prepare your work sites to be safe environments for your staff and visitors, you will have to monitor your staff for infection. Additionally, your business must be ready for fluctuating levels of lockdown, which may require you to move from site to remote work and back again.

We urge you to consider the wellbeing of your staff, and ensure you assist them to access those state benefits which may be available to them, as we all weather this unprecedented and devastating world event.

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