



COVID-19 impacts in the workplace

I have fielded a lot of calls and enquiries from employers and employees over the last few days relating to leave and other employee entitlements. The Covid 19 virus creates a situation for employers that will necessarily require reductions in staff levels or indeed temporary suspension of trading ie shutting the doors. With this in mind I provide the following information.

The Fair Work Act and the Industrial Relations Act make provision for an employer to stand down an employee during periods in which the employee cannot usefully be employed for reasons that the employer cannot reasonably be held responsible. There is little doubt that Covid 19 would provide reason for a stand down of employees.

An employer can terminate any employee's employment if, for operational or other reasons, the employee's position becomes redundant. A redundancy is when an employer does not need an employee's job to be done by anyone. That redundancy will, in the situation of Covid 19 virus affecting the employer's ability to continue to trade, be regarded as a genuine redundancy and would not be an unfair dismissal.

Under the Long Service Leave Act (NSW) an employer can, subject to some very limited exceptions that will probably not apply during the current Covid 19 virus situation, direct any employee to take accrued long service leave. An employer's ability to direct or force any employee to take unused annual leave is normally dealt with in the relevant award, employment instrument or the contract of employment. A direction to take annual leave is likely to be regarded as reasonable if an employee has excessive annual leave or if the employer's business is being shut down for a period due to circumstances beyond the employer's control – such as lack of trade due to the Covid 19 virus.

If a government direction or order that is legally enforceable prevents an employee from working then the employer is not required to pay that employee unless there are other unpaid leave entitlements that the employee can take.

If an employee is sick with Covid 19 virus, or an employee's family member is sick with Covid 19 virus requiring the employee's care, then the employee can take accrued paid sick leave. In most other circumstances where an employee simply wishes to avoid coming to work because of a risk of contracting Covid19 virus it is likely that sick leave would not be payable.

Until and unless there is an enforceable government direction requiring people to stay at home my team and I will be coming to work, continuing to work on our clients cases and will always be available for advice in relation to new enquiries. We are discouraging active face-to-face appointments or personal attendances at our office but can be reached by email or phone.