**Business is not currently subject to an enforceable government directive to close**

Under the *Fair Work Act 2009*, an employee can only be stood down without pay if they cannot be usefully employed because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible.

Employers should take care not to apply temporary stand-down actions as a substitute for a permanent redundancy situation where the employer no longer wants the job to be done by anybody.

Whether the option of standing down employees is available in circumstances relating to coronavirus is very ‘fact dependent’ and an employer should exercise this option cautiously. The employer must be able to demonstrate that:

* there is a stoppage of work
* the employees to be stood down cannot usefully be employed (which is not limited to the work an employee usually performs)
* the cause of the stoppage must also be one for which the employer cannot reasonably be held responsible.

Stand downs are likely to be closely scrutinised and can be challenged by an employee or union in the Fair Work Commission if not implemented strictly in accordance with legal obligations. If an employer unlawfully stands down employees without pay, the employees will likely be able to recover unpaid wages.

This Check sheet is a template example and aims to assist employers in implementing a lawful stand down process. Any decisions to stand-down staff should be made on the particular conditions at each work site.

Additional elements can be added to the Check Sheet, however the points included in this example should be considered the minimum level of evaluation that should be considered.

**Scenario**

The business is significantly stressed or in danger of being inoperable due to unforeseen external conditions that are not in the control of the employer.

**Evaluation process**

1. **The employer makes a level of assessment as to the capacity of the business to continue operating at its current and projected levels. This includes workflow, risk, financial and staffing analysis. It may be decided that the business can keep operating, but at a much reduced level with much reduced staff.**

Some relevant business operational indicators useful in the analysis could include, but are not limited to:

* The number and type of repair orders completed by employees in the past 14 days compared to the number of repair orders in a 14 day period last year or six months ago
* The number of vehicles sold by an employee in the past 14 days compared to the number of vehicles sold in a 14 day period last year or six months ago
* Labour hours sold per similar employee in the past 14 days compared to in a 14 day period last year or six months ago
* Number of work orders/recorded bookings for the next 7 days
* Costs of and capacity to implement mandated consumer health and Occupational Health and Safety COVID-19 measures
* Staffing level that is necessary to support the reduced workload
* Outstanding leave entitlements of each employee
* Identity and number of employees who are on Maternity, extended Personal, and Workers Compensation leave

1. **Outcomes regarding the business viability are established and this includes any potential stand-down actions that may be required in staffing**
2. **Employer establishes employee objective selection criteria for delivering the best sustainable business outcomes (who are the best sales staff according to sales figures, who are the most productive and most skilled trades people, who are the most multiskilled and flexible employees).** Employers need to observe and comply with existing discrimination laws.
3. **The employer engages with staff who is not selected for delivering the best business outcomes to determine the level of flexibility that individual staff members may be able to provide to the employer**

* willingness to become a part-time employee
* willingness to engage in short term job role changes (willingness to be redeployed to work in different roles in a different part/department of the business)
* willingness to utilise accrued Annual Leave and/or Long Service leave
* volunteering to go on Unpaid Leave, to get another job temporarily, or utilise social security payments

1. **Employer to generate and issue** **documentation of the evaluation process in the form of individual letters confirming the negotiated outcomes**
2. **If sufficient employee reductions have not been achieved in this process the employer should**

* identify staff to be stood-down by application of objective selection criteria
* hold individual meetings with employee to be stand down
* offer any employer support resources that are ordinarily available to the employees

1. **Employees who have been stood down should be provided with a fixed period for stand-down, but advised that it may be extended if conditions do or do not change**
2. **Employers should continue regular contact with stood-down employers and should take all reasonable care in making observations on their health and wellbeing**

**DISCLAIMER: This document is a guideline only, and does not constitute legal advice. Specific advice should be obtained in relation to each individual scenario.**