

Implementing changes in your workforce

When looking at staffing changes, due to stores closing down or moving location, you need to take steps to get ahead of the curve and work with your staff through these changes.

There are a number of ways you can approach this from physically moving staff to going through the redundancy route. No matter which option you choose, it is important that you are aware of the best practice way to implement each process.

Below are three common ways you can implement changes in the workforce:

Direction to move location

The first option is to move your staff to a new site. If the number of physical stores are diminishing or closing down for refurbishments, this is often a practical solution. However, whether you can lawfully direct a staff member to move will depend on the express terms of the employee's employment contract.

The lawfulness of the direction is based on whether the employment contract has a provision that states that an employee may be directed to work at another store. If this is a case it will be considered a lawful direction.

However, the direction must be reasonable. In assessing the reasonableness of a request to relocate, an employer must look at the personal circumstances of the employee. This includes factors like the distance between stores, the effect on travel time, access to public transport, whether the employee drives and personal or carer responsibilities which may negatively affect the employee. If, upon consideration of all these circumstances, the direction is deemed to be reasonable the employee is obligated to follow.

Agreement to change roles or location

There is not always the option to direct an employee to move stores or position. Though, there may be an option to vary the employment contract by having the employee agree move into a new role. Any contract variation will require agreement between the employee and the employer.

This will often be the result of a negotiation process between the business and the worker to come to a solution that is mutual agreeable to both parties. However, if an agreement cannot be reached then you may need to look at the next option.

Redundancy

If the position is no longer required to be performed by anyone, the position becomes redundant. To qualify as a genuine redundancy, the business must consider all reasonable options for redeployment, and consult the employee through the redundancy process.

Ultimately deciding the best way to approach each situation can be a difficult decision. This is where our telephone advisory service comes in to help you not only assess your options but guide you through the best practice process to reduce any risks to your business.

To get immediate advice on the best practice way to deal with this situation please contact the VANA Employment Relations Team on (03) 8540 7000.

How to engage a part-time employee

A common myth exists within the retail industry around part-time workers. Many hold the belief that part-time employees are contracted to work a minimum number of hours with a maximum of 38 hours per week before receiving an overtime penalty.

However, the General Retail Industry Award has very strict guidelines on the terms of which a part-time employee should be hired. These include stating in writing:

- The hours worked each day;
- Which days of the week the employee will work;
- The actual starting and finishing times each day;
- That any variation will be in writing;
- The minimum daily engagement will be three hours; and
- The times of taking and duration of the meal breaks.

These hours and days stated in the agreement then constitute the ordinary hours for this particular employee. This means that any time worked outside these hours would actually be overtime and attract the overtime payment.

As a result a retailer may have a worker who is actually working overtime hours every week and not even know about it! This also means that the business owner will be in breach of the *General Retail Industry Award* and the employee may bring an underpayment claim!

Therefore you need to ensure you take time to identify any part-time employees in your workforce and ensure that their agreement is in line with the specific provisions of *General Retail Industry Award*. Otherwise you may be putting yourself or your business at risk!

For more information on part-time in the workplace please contact the VANA Employment Relations Team on (03) 8540 7000.

The importance of consultation during a redundancy.

Whether you are going through a redundancy to reduce costs or due to a store closure you must know your obligations around making a position redundant.

There are essentially 3 tests which need to be met to satisfy the conditions of a “genuine redundancy”. These include:

1. You no longer require the person's job to be performed by anyone because of changes in the operational requirements;
2. You have consulted with employees affected about the redundancy; and
3. It would not have been reasonable in all the circumstances for the employee to be redeployed.

However, employers may find themselves faced with an unfair dismissal claim if they don't enter into genuine consultation.

Under the *General Retail Industry Award 2010*, employers must consult with employees about major workplace change. Major workplace change includes, however is no way limited to, the restructuring of jobs and changes in the size of the workforce.

Often we find employers who are considering a redundancy asking for the minimum length of time for consultation. Unfortunately, there is no black and white answer to this. Employers must ensure that they follow a proper process when considering a redundancy and ensure they enter genuine consultation with employees affected. At a minimum, consultation involves discussing:

- What has led to the changes in operational requirements;
- The nature of the changes and how this affects the employee; and
- Whether the employee can be reasonably redeployed elsewhere within the business.

Genuine consideration must also be given to matters raised by the employee (or their representative) during discussions before continuing with the proposed redundancy.

What is the risk if you don't? If an employer does not enter into genuine consultation with the Award-covered employee, they risk an unfair dismissal claim on the basis the redundancy was not a case of genuine redundancy.

To discuss your obligations further please contact the VANA Employment Relations Team on (03) 8540 7000.

