

ALTERNATIVES TO REDUNDANCY

In these pressing times, it is very easy for businesses to automatically think that making employees redundant will solve many of their problems. On proper consideration, there may not be a need to panic and take such drastic steps. Redundancies will also have negative flow on affects for the rest of the business, not just the employees who may be made redundant.

There are a number of other steps that can be taken to soften the expense blow for businesses.

Reduced Hours/Days or Reduced Salary.

One possible option to consider is offering employees the ability to work reduced hours or reduced days for a proportional lower salary. Given the emerging trend of work/life balance and flexibility in the workplace, this option may prove to be attractive for some employees. It may also give employees the security of still being employed. Care still needs to be taken to ensure that the business needs and demands from its customers can still be met.

Sometimes limitations may need to be imposed, for example for how long will the arrangement be in place and what aspects will trigger a return back to normal hours/salary.

Cashing Out Annual Leave or Long Service Leave

The Workplace Relations Act 1996 (**Act**) provides an entitlement for the cashing out of annual leave.

Given Workchoices has now been abolished, and Rudd's Forward with Fairness regime comes into play in the coming months, businesses need to be mindful of their timing with any cashing out offers.

Cashing out under Forward with Fairness is more limiting and requires an employee to maintain a minimum of 4 weeks annual leave, after any cashing out has been agreed to and paid.

Generally, the cashing out of long service leave is not permitted. Further, any cashing out proposal will need the agreement from the employee in writing.

Alternatively, it may be worthwhile having any employees who have long-service leave already

owing to them, to take that leave now, rather than them being absent from work for an extended period of time when the economy picks up.

In New South Wales, the Industrial Relations Act permits a person who is taking parental leave, to utilise all or part of their long service leave during the parental leave period.

Cashing out provisions can differ in each state and this may present some difficulty to nationally based businesses.

Summary

Businesses might also wish to consider a mix of both such as combining some cashing out now, with some taking of that leave now so as to reduce the company's leave liabilities. The reasons for offering certain employees one or more of these alternatives also needs to be for genuine business reasons, rather than anything else.

Negotiations with employee's need to be thoroughly documented and unless the ability to impose such alternative arrangements are provided for in the employee's contract, the alternatives can only be imposed by agreement from the employees affected.

As with any of these alternatives, employee engagement, understanding of the process and the communication of the genuine business reasons for offering such alternatives is crucial. Failure to manage this process carefully can lead to your business being exposed to either a discrimination claim or unlawful termination claim.

Retaining your employees in the long term will also save your business in recruitment expenses, recruitment lead-time and training costs later on.

When the economy picks up and business needs increase, these alternatives will allow your business to retain your good employees who will help you regather your business in the upturn.

If you would like any further information on this topic, please contact Ilona Teremi on 8239 6503 or ilona.teremi@kreissonlegal.com.au

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