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The current Covid-19 pandemic is an unprecedented public health emergency, causing great destruction and disruption to all areas of life. This is especially so in the post-secondary college sector, including English, Business and VET colleges.

It is likely that some post-secondary colleges will attempt some radical measures in an attempt to keep businesses viable, but members should be aware that their legal entitlements remain largely the same as before, including that:

- Award pay rates and conditions cannot be unilaterally reduced;
- Enterprise Agreement pay rates and conditions cannot be unilaterally reduced;
- Ongoing (permanent) employees are entitled to retain their existing status.

Australian governments have put together a suite of measures to mitigate the worse economic effects of the crisis, and most of these should apply to most employers in the post-secondary college sector.

JobKeeper allowance

The JobKeeper allowance passed through the Federal Parliament on 8 April, and it is basically a subsidy to employers to keep existing employees in work.

The highlights include:

- The subsidy is worth \$1500 per fortnight, and is required to be passed on to employees in full. It is payable from 30 March, 2020.
- To be eligible, employers must be able to show that their turnover has fallen/will fall by at least 30% (if their turnover is under \$1 billion) or by 50% (if their turnover is over \$1 billion).
- Eligible employees can be a full time or part-time employee, or a casual employed on a regular and systematic basis for at least 12 months as at 1 March, 2020. Employees must be an Australian citizen or Permanent Resident.
- More details can be found here: https://treasury.gov.au/sites/default/files/2020-04/JobKeeper_frequently_asked_questions.pdf

JobSeeker allowance

In March, the Federal Government rolled the existing NewStart payment (along with several other welfare payments) into a new benefit called JobSeeker, and a short-term increase in the payment was applied for the next six months.

The highlights include:

- The weekly payment is \$550, a big increase from the previous NewStart payment (this will revert back in September).
- The payment has been extended to: permanent employees who are stood down or lose their employment; sole traders; the self-employed; casual workers; and contract workers (income and asset tests still apply).
- Centrelink will streamline application processes and wait periods.
- Job seeking requirements have been relaxed.

Award Changes

There have been two changes made to the Award providing you with the right to:

- two weeks of unpaid Covid-19 leave, and
- access your annual leave at half pay (and so it lasts for twice as long).

Changes to the Fair Work Act

The Federal Government has made temporary changes to *Fair Work Act*, which allow employers eligible for the Jobkeeper payments to lawfully change workers' hours, days, duties and location and to stand employees down.

The changes to the Act will be problematic, but do have the following safeguards:

- Strictly time-limited for six months.
- Apply only to employers eligible for the JobKeeper payment (so you will be paid at least \$1500 per fortnight, regardless);
- Protect the rate of pay for workers ensuring they are properly paid for all work undertaken at the legal hourly rate of pay, not artificially capped at the \$1500/fortnight wage subsidy;
- Allow variation in working conditions only after consultation and in many cases requires the agreement of employees; and
- Allow any dispute to be arbitrated by the Fair Work Commission "to ensure reasonableness and fairness."

Stand down

If your employer is not eligible for the Jobkeeper scheme, they may still be able to stand you down. However, there are rules in the Fair Work Act that limit this:

- Employers can only stand down where there is a "stoppage of work" (not a mere downturn). They must exhaust all possibilities for redeploying staff into other roles.
- If staff would prefer to use up leave, we would consider it unreasonable for an employer to refuse a request to do this first – they don't need the staff to work and the staff are entitled to the leave.
- Staff ARE entitled to paid leave (including personal leave) during a period of stand-down. They cease being stood down just for any period of paid leave.
- There is probably not a requirement to consult (major change), but the Commission can arbitrate disputes about stand down and employers will have to show that they exhausted all alternatives first.
- Any alternative work must at least be of some benefit to the employer, or at least not be a burden to them.

- Stand-down counts as service for most entitlements such as personal and annual leave (FWA s.22(2)), but not for long service leave.

We strongly suggest that you:

- Request that a stay be put on any stand-down until discussions can be held to ascertain what alternatives might be workable
- Request discussions and propose as many alternative work suggestions as you can think of in writing. It's good to be a bit flexible and state your flexibility in your emails to the employer
- If you prefer to use up any annual or long-service leave entitlements, state this as an option.

Requests to take Paid Leave or Leave Without Pay

A number of employers have tried to compel employees to take Leave Without Pay or use up any annual leave or long service leave. Here is what you need to know:

- Employers cannot compel employees to take **LWOP**
- Generally, LWOP does not count as service
- Staff cannot be compelled to take **Annual Leave**. There are exceptions in the Award for "excessive accruals" (more than 8 weeks' unused leave) and similar arrangements in some EBAs – you need to check the Award or Agreement.
- Employers cannot cash out Annual leave, except by agreement.
- An employer may direct employee to take long service leave under limited circumstances.
- We consider LWOP to be the least attractive option – however, if you agree to take LWOP, make sure you have a specified return date in writing.

Redundancy

Some employers are considering redundancies. You should be aware that:

- The employer must comply with stringent consultation requirements before moving on any redundancy.
- The employer must "no longer want the job the employee is doing to be done by anyone".
- If an employee is stood down, agrees to a pay cut, cut in hours etc. this may affect any redundancy payment if it becomes inevitable later.
- If an employee is stood down and gets alternative work, the employer may be able to avoid paying them redundancy once the pandemic is under control.
- Seek advice from your union if redundancy is suggested.

Pay Cuts (including deferring agreed pay rises) OR Variations to Hours

Other employers are proposing pay cuts:

- Any pay rate currently paid to you forms part of your contract of employment, even if it is not in writing.
- If pay rates are set under an EBA or Award, they are also a legal right under that instrument.
- Employers cannot unilaterally reduce pay rates.
 - To avoid a breach of contract, the employer would need a signed (or otherwise clear) agreement from each employee to reduce their pay rate.

- To avoid a breach of an Agreement, the employer would need to get agreement from the majority of employees and apply to the FWC for a variation.
- The employer cannot pay you below the minimum Award rate for your classification under any circumstances.
- The employer cannot change an ongoing or sessional employees hours of work without the employee's consent (unless under the Jobkeeper scheme – if you are receiving Jobkeeper and the employer tries to cut your hours, call the Union).
- If the employer wants to change the regular roster or hours of work of employees, it must consult with the employees before doing so.
- **DO NOT** sign any document purporting to vary your employment without the advice of the union. Especially now, as your employer may be eligible to the JobKeeper scheme. If you are an ongoing or sessional employee, your employer cannot force you to agree to pay cuts and must have your consent.

In unity

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General Secretary



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