

## **Morrison Creed & CR Law**

### **Cashflow Strategies & Employer Obligations Webinar (9 April 2020)**

#### **Questions & Answers**

*Disclaimer: Please note the following information is of a general nature and is current as at 9 April 2020. We recommend you engage with a legal professional to discuss your specific situation before any action is taken, to ensure this is correct and applicable for your business and scenario.*

**Q1: I've heard of some people (both essential workers, and not) being "forced" to take annual leave. Are employers allowed to do this?**

Employers can only "force" Employees to take annual leave by providing them with 14 days' notice. Employers and Employees can however reach an agreement that the Employee take annual leave.

**Q2: What's the minimum number of weeks to enforce leave on salary staff?**

You must give them at least 14 days' notice of any requirement to take annual leave, but you could mutually agree at any time for them to take annual leave.

**Q3: What is the minimum number of weeks' notice when enforcing a reduction in work hours?**

You cannot enforce a reduction in work hours without following a restructuring process. This process requires consultation before any decisions are made, and you need to take into account any notice periods in the Employee's Employment Agreement. Generally, you would be looking at least four weeks, but you should always take legal advice on your specific situation before commencing a restructuring process. You will also need to consider the declaration you made at the time of applying for the Wage Subsidy.

**Q4: If the lockdown goes longer than four weeks, what can the Employer do to get Employees to use their leave entitlement, holiday or sick leave?**

Employers can require Employees to use their annual leave if they are provided with 14 days' notice to do so. Sick leave should only be used when the Employee, or a dependent of the Employee, is sick. We suggest consulting with the Employees as to whether they would be happy to only receive the Wage Subsidy amount, with any top up to come from annual leave balances. If your Employees do not agree, you may need to look at a more formal restructuring process. You will also need to consider the declaration you made at the time of applying for the Wage Subsidy.

**Q5: If we have been paying our staff at 100% for the 4 weeks, can we drop down to just the Wage Subsidy if they extend the lockdown further or do Employees need to agree to this?**

Employees need to agree to it, unless a formal restructuring process is followed. Please refer to the previous comments regarding legal advice being sought before commencing a formal restructuring process.

**Q6: What if during this process you have discovered that two positions can be rolled into one?**

You would need to follow a restructuring process, which includes consulting with your Employees and taking into account any feedback before making a decision, and ensuring a fair selection process is followed to decide which Employee will remain employed in the new role. Always take legal advice before commencing a restructuring process.

**Q7: If my staff are being paid with the Wage Subsidy, do they get the statutory holidays on top of this?**

The Wage Subsidy is designed to assist you in paying your staff what you would normally pay them (or some lesser amount if agreed). Statutory holidays are generally paid days off work, so theoretically if they have the day off work this should not alter their pay. If however your staff are working on the public holiday, then you need to ensure you are paying them the additional half time for the hours worked on the public holiday, and provide them with a lieu day if that day is a normal working day for them.

**Q8: Do Statutory Holidays still get paid as usual when employees are on the Wage Subsidy and can the Statutory Holiday be used to make the wage up to 80%?**

Yes, statutory holidays are to be paid as usual. The Wage Subsidy is designed to assist you in meeting your wage obligations.

If your staff are working on the public holiday, then you need to ensure you are paying them the additional half time for the hours worked on the public holiday, and provide them with a lieu day if that day is a normal working day for them.

If your staff are not working on the public holiday but it would be an ordinary working day for them, you pay them their normal salary. If their normal salary has currently been agreed as being the Wage Subsidy amount, then you pay them this amount.

**Q9: I have an Employee who is at home and not working during the lockdown period, and has agreed to reduce their pay to \$585.80 per week. How do I treat payment for Good Friday and Easter Monday (being public holidays), do I need to pay them extra?**

If Friday and Monday would have been ordinary working days for the Employee prior to the lockdown, then the Employee is entitled to a paid day off work for Friday and Monday, and is entitled to be paid their "Relevant Daily Pay" for these days, being the amount the Employee would have earned on this day had they worked.

As your Employee is already not working, you are meeting your obligation to provide them with a paid day off work. If your Employee has agreed that their pay is currently \$585.80 per week, then you simply continue to pay them the sum of \$585.80 per week for the weeks on which the public holidays fall.

*Based on advice from payroll providers, Good Friday and Easter Monday should be recorded in your payroll software as a statutory holiday taken (and paid at the normal daily rate), with the remainder of the Wage Subsidy (e.g. \$585.80) paid in the same manner as the previous week – meaning the Employee is still paid the Wage Subsidy as the gross amount (e.g. \$585.80) for the relevant week.*

**Q10: If I receive the Wage Subsidy for some staff, but they are now working part time do I just part pay the subsidy to equal their normal pay?**

Some more information would be needed to answer this question. When you applied for the subsidy, you would have made a determination as to whether they worked more or less than 20 hours, and applied for the appropriate subsidy amount. You would also have made a declaration to make best endeavours not to reduce their hours/wages below 80% of normal. If your Employee's normal income before the lockdown was less than the fulltime subsidy amount, then you continue paying them 100% of their normal income. If your employees are now working less hours than they did before the lockdown because you are an essential business, but your requirements for staff have decreased, you would need to still endeavour to top them up to at least 80% of their normal income before the lockdown to comply with your obligations under the Wage Subsidy, and pass on at a minimum the full subsidy amount.