

## **STAND DOWN FACT SHEET – NSW 18 DECEMBER 2020**

### *Background:*

In light of the escalating COVID-19 situation in New South Wales, this fact sheet has been prepared outlining a step by step guide to ‘standing down’ your staff in the event that there is a Government Directive issued mandating businesses to close down for a period of time, either in a particular area in New South Wales, or across all of New South Wales entirely. **Please note that you will not be able to legally ‘stand down’ your staff if there has NOT been a Government Directive issued to this effect. As such, this fact sheet has been prepared in anticipation of the escalating situation.**

### *Stand Downs:*

In the absence of a ‘stand down’ period contained in an enterprise agreement or a contract of employment, employers may rely on the ‘stand down’ provision contained in section 524 of the *Fair Work Act 2009* (Cth).

Section 524 of the Act provides that employers may stand down an employee as a result of industrial action, a breakdown of machinery or equipment, or a **stoppage of work for any cause for which the employer cannot reasonably be held responsible**. A restaurant and/or café may stand down the business by relying on this provision as a result of a Government Directive.

Generally, stand downs are a last resort as employees are generally not paid during the period of stand down. Employers, however, may wish to arrange with their employees to take annual leave and/or long service entitlements, in full or part, during this period. This may already be the case for you if you have already made such arrangements due to the Christmas shut down period. If your business is

receiving the JobKeeper 2.0 subsidy, all eligible employees can continue receiving the JobKeeper subsidy during the stand down period at their appropriate tier level.

It is important to note that employees who are stood down will **remain employees of that employer**. As such, employees have not had their employment contract terminated by way of dismissal or a redundancy.