

MEDIA RELEASE

Alternative working arrangements will help reduce redundancies, but are employers seeking proper consent?

Business leaders cautioned against implementing changed working conditions without necessary consultation

23, April 2009 – With an increasing number of businesses considering the option of implementing varied working arrangements for employees in the current economic downturn, as an alternative to cutting staff, they must consider the importance of seeking consent from staff in order to avoid breach of contract claims according to Harmers Workplace Lawyers.

Joydeep Hor, Managing Partner of Harmers Workplace Lawyers, said, “I’m hearing more and more from employers that flexible workplace arrangements are proving their business case as business leaders and senior management begin to realise the benefits over having to make people redundant.”

Mr Hor said that certain industries such as transport and logistics, as well as professional services firms such as law firms and property consultancies are looking at implementing alternative working arrangements as many of their clients cut expenditure.

“Alternatives to redundancies can take a number of different forms in relation to changes to employees’ working arrangements. Examples of what I’m seeing businesses implement include: nine day fortnights; a requirement for employees to take their annual leave once they reach a certain threshold; salary and recruiting freezes, and redeployment of staff to other areas of the business,” said Mr Hor.

However, he cautioned employers against implementing alternative working arrangements without consulting the affected employees.

Mr Hor said, “Central to the issue of changing working arrangements is the notion of consent. Employers can’t just decide one day that changing working conditions makes good business sense, and then turn to their employees the next day to say ‘this is what is happening’.

“When an employee’s working arrangements are altered, it is effectively an alteration of their employment contract, and therefore requires the consent of the employee. Without this consent the employer exposes themselves to litigation, as well as potentially harming employee trust and morale,” said Mr Hor.

Mr Hor said that honesty and transparency when communicating any potential changes are critical if employee morale is to be maintained. He also said that employers should see flexible working arrangements as an opportunity to build trust with their employees.

“Apart from the obvious financial benefits to a company, offering employees flexible working arrangements gives employers a chance to show their staff how much they value them. The employer is essentially saying to its staff, ‘We don’t want to make any redundancies. We are so committed to retaining you that we are willing to take a flexible approach to do so’. Employers may be surprised that some employees, particularly those wishing to spend more time with family or those considering undertaking further study or travel, will be very open to the proposal,” said Mr Hor.

Mr Hor said that in most smaller workplaces, consent must be sought on a one-on-one basis with each individual employee. However, if employees are represented by a union, consideration needs to be given to consultation with unions also.

He said, “Those employers with good working relationships with unions will often find that union endorsement will help speed up the employee consent process. Either way, an appropriate amount of time must be given to employees for them to adjust to any changes. The idea of working a 4-day week or 9-day fortnight can take a substantial mind-shift, particularly for many full-time employees who’ve never known anything different.

“What I’m also seeing is that many employers are happy to preserve employees’ full time entitlements, even though they may agree to reduced working hours or days, so that in the event that the role is ultimately made redundant, the employee doesn’t lose out further. This is another way of building trust with your employees, and increasing morale of your workforce in a climate of uncertainty,” concluded Mr Hor.

Ends

Note to editors:

About Harmers Workplace Lawyers

Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia’s leading employment and industrial law firms, with offices in Sydney, Melbourne and Brisbane. The firm has been awarded Australasian Legal Business’s ‘employment specialist firm of the year’ for the past three years running.

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