



**A HR compliance
checklist for
Australian workplaces
in a COVID-19 world**



HR professionals and business leaders find themselves in uncharted waters as they navigate the changes that COVID-19 has forced upon organisations around the world.

Their key priority is to look after employees. Today, this mission involves a new challenge: honouring workplace compliance laws that are constantly shifting amidst the global turbulence.

Unfortunately, many Australian organisations struggle to abide by workplace regulations – even at the best of times.

In March 2020, the Fair Work Ombudsman [released findings](#) from its national audit of 1,217 businesses. Surprisingly, nearly half of all respondents failed to adhere to the basics of workplace compliance laws (such as paying staff correctly).

Fair Work inspectors issued: 24 on-the-spot fines totalling \$32,980 in penalties; 457 contravention letters; 56 formal cautions; and 47 compliance notices. Organisations that breach HR compliance regulations – whether deliberately or inadvertently – face fines, legal expenses, increased employee turnover and brand damage.

Throw a health pandemic into the mix, and the job for HR professionals becomes notably more challenging.

However, while staying on top of regulation changes is difficult, there's no excuse for non-compliance.

This checklist is for business leaders who want to protect their employees and avoid penalties by meeting all compliance obligations.

For ease of use, we've broken this checklist into several key sections, each of which addresses a specific focus area. Below is a summary of these sections:

1. Employment laws in Australia
2. Returning to the workplace
3. Working from home (when possible to do so)
4. Payment and leave entitlements
5. Changes to working hours, location or duties
6. Standing down employees or ending employment

Employment laws in Australia

A critical first step is to familiarise yourself with the various laws which govern and safeguard workplaces across Australia.

Do you know what award or agreement (if any) applies to your business?

Yes No

Find your [award](#).

Search for registered agreements [here](#).

Do you know if your industry has been affected by temporary changes to workplace laws during the coronavirus?

Yes No

Find out [here](#).

Have you established a task force that monitors COVID-19 news and relevant government policies?

Yes No

Are you aware that it's unlawful to discriminate against employees for raising health and safety concerns?

Yes No

More information about workers' rights [here](#).

Did you know that you can't force employees to download or use the COVIDSafe app?

Yes No

Have you read and understood the general policies that fall under the Fair Work Act 2009?

Yes

No

Most employers in Australia must honour the Fair Work Act, which covers minimum employment laws. Even outside of a global pandemic, businesses must be aware of requirements under the Fair Work Act, in order to meet their obligations to employees.

Please take the time to read the following information:

[National Employment standards \(NES\)](#): The NES are 10 minimum employment standards that apply to all employees relating to areas such as requests for flexible work arrangements, leave entitlements, and more.

[Awards and agreements](#): These set out the minimum wages and conditions for a particular job (which must be considered in addition to the NES).

[National minimum wage](#): This determines how much workers must be paid as a minimum if your industry isn't covered by a specific award or agreement.

[Employment contracts](#): A record of the employee's terms and conditions. A contract must honour the minimum conditions set out in the NES, as well as the relevant award or agreement.

Returning to the workplace

For businesses that are able to return to the workplace, there are several key areas to be across.

Do you have the latest information about COVID-19 restrictions that may prevent workers from returning to the workplace?

Yes

No

For further information relating to your state or territory, read more:

[NSW](#) | [Victoria](#) | [Queensland](#) | [South Australia](#) | [Western Australia](#)
[Tasmania](#) | [Northern Territory](#) | [Australian Capital Territory](#)

Have you conducted a [WHS risk assessment](#) for your workplace?

Yes No

Do you have a plan to keep your workplace safe and healthy?

Yes No

Tip: This [online toolkit](#) is helping businesses to make their workplace safe during COVID-19. Check out this [planning tool](#) if you require further assistance with developing a plan.

Do you regularly review this plan so that it's updated as government regulations and requirements change?

Yes No

Are you advising employees about work-related travel based on the latest advice for your region?

Yes No

For further information on your state or territory, read more:

[ACT](#) | [NSW](#) | [Northern Territory](#) | [Queensland](#) | [South Australia](#)
[Tasmania](#) | [Victoria](#) | [Western Australia](#)

Do you know if your employees are required to wear face masks in the workplace, based on the latest guidelines for your region?

Yes No

Have you directed employees to stay away from work and seek urgent medical advice, if they have symptoms of coronavirus?

Yes No

Mental health resources for employees:

Beyond Blue [dedicated coronavirus website](#)

24-hour counselling hotline with trained mental health professionals (1800 512 348)

Further reading:

Mental health tips for [business owners, leaders and managers](#)

[Other ways](#) to support employees during the coronavirus pandemic

Have you organised alternative working arrangements for employees who cannot come to the office, or prefer not to (if it is safe and practical for the individual to work remotely)?

Yes

No

Are you staggering the start and finish times for employees who are returning to the workplace?

Yes

No

Have you implemented formal processes for communicating information with workplace-based staff and tracking their morale?

Yes

No

Working from home (when possible to do so)

Employers must also ensure the wellbeing and safety of remote working employees is considered. Here's what to look out for.

Do you know if your workplace is affected by enforceable government directions that require employees to work from home?

Yes

No

Are you aware that employees have the right to request flexible work arrangements in certain circumstances?

Yes

No

Have you checked if there are any rules about working from home in any relevant workplace awards that apply to your workplace?

Yes

No

Did you know that workplace health and safety laws also apply to remote employees?

Yes

No

Have you checked if employees are working in a safe environment at home?

Yes

No

Tip: Ask employees directly or request photographs and videos of their set-up, to make sure it meets health and safety requirements.

Have you advised employees on how to set up a safe home office environment?

Yes No

More information [here](#).

Have you asked workers to complete a [workstation self-assessment checklist](#) to ensure they're following good ergonomic practices?

Yes No

If you're concerned about the set-up of an employee's environment, have you considered engaging the services of a health and safety professional to assess the risk and provide guidance?

Yes No

Have you asked remote workers to notify management of any incidents, injuries, hazards or changes in circumstances?

Yes No

Will you allow employees to borrow equipment from the office, when it is reasonable to do so?

Yes No

Are you communicating with remote staff on a regular basis?

Yes No

Tip: It's a good idea to appoint a dedicated "contact person" who remote workers can talk to.

Have you been recording the hours that each employee works remotely?

Yes

No

Are you providing access to mental health support services?

Yes

No

Are you aware that you can set up alternative arrangements for employees experiencing domestic violence?

Yes

No

Note: The Fair Work Act states that impacted employees can:

- Take unpaid domestic violence leave
- Request flexible arrangements
- Apply for sick or carers leave

Read more [here](#).

Have you implemented formal processes for communicating with remote staff and monitoring their morale?

Yes

No

Payment and leave entitlements

Fair pay and access to leave entitlements are fundamental to the employer-employee relationship. Here are some areas to look out for.

Are you aware of the leave entitlements in the awards (if any) that apply to your employees?

Yes

No

Do you know if extended unpaid pandemic leave has been applied to your industry, based on applicable awards?

Yes

No

Find out [here](#).

Note: Full-time, part-time and casual employees covered by certain awards can access up to two weeks of unpaid pandemic leave if they're following a government direction or they need to self-isolate.

Did you know that even employees on the JobKeeper scheme can apply for extended pandemic leave, if their award has been changed to accommodate this?

Yes

No

Do you have processes in place for employees to apply for leave?

Yes

No

If you're in Queensland and Victoria, have you applied for one-off hardship payments for workers who don't have access to paid sick leave?

Yes

No

[Queensland government hardship payment COVID-19](#)

[Victoria Coronavirus worker support payment](#)

Is your business covered by an award variation that temporarily allows staff to take annual leave at half pay?

Yes No

Note: The employer and employee must both agree in writing, and a record must be kept.

Payment entitlements:

Are you paying workers according to rates determined by the award for your industry (if there is one)?

Yes No

If your business isn't covered by an award or agreement, are you paying employees the national minimum wage (at the very least)?

Yes No

If this isn't the case, you're breaching Australian employment law and may face severe penalties.

Did you know that employees who are working from home must be paid their normal pay?

Yes No

Do you pay workers the correct penalty rates if they work on weekends, nights or public holidays (as determined by the relevant award or agreement)?

Yes No

Do you maintain accurate records of employee leave entitlements and pay slips?

Yes No

Have you checked if your business qualifies for the JobKeeper wage subsidy?

Yes No

If so, have you nominated eligible employees for the JobKeeper scheme?

Yes No

Changes to working hours, location or duties

COVID-19 has forced many businesses to alter their normal operations. It's important to stay across workplace laws relating to hours worked, location of the workplace and duties undertaken to ensure compliance standards do not slip.

Is your business covered by an award or agreement that's impacted by temporary changes to workplace laws during coronavirus?

Yes No

Check the awards [here](#).

Find a registered agreement [here](#).

Are you aware that you may have more flexibility to change employees' hours or duties under temporary changes to your award or agreement?

Yes No

Did you know that businesses that are covered by an enterprise agreement can apply to the Fair Work Commission to temporarily alter their agreement, so they have more flexibility in these challenging times?

Yes

No

Did you know that businesses that qualify for the JobKeeper scheme may seek to change the usual duties, location or hours of work for a qualifying employee (but only in certain conditions)?

Yes

No

Did you know that employees who qualify for the JobKeeper scheme are required to comply with JobKeeper enabling directions?

Yes

No

If you're asking employees to comply with a JobKeeper enabling direction, have you ensured the **new duties** are:

- Safe?
- Within the scope of your business operations?
- Within the skill set of the employee?

Yes

No

More information [here](#).

If you're asking employees to comply with a JobKeeper enabling direction, have you ensured the **new location** is:

- Suitable for their duties and relevant to business operations?
- Reasonably located (so they don't have to travel far)?
- A safe working environment?

Yes

No

If you're asking employees to comply with a JobKeeper enabling direction, have you ensured their **new working hours** are:

- Safe for employees?
- Within the scope of business operations?
- Enough (not an overall reduction of usual work hours)?

Yes

No

Have you adequately prepared the employee for the JobKeeper enabling direction, as per government requirements?

1. Notify the employee in writing at least 3 days before giving the direction (unless the employee agrees to a shorter timeframe)
2. Talk to the employee about the proposed changes
3. Keep a written record of the discussion
4. Deliver the JobKeeper enabling direction in writing to the employee

Yes

No

Do you believe this JobKeeper enabling direction is necessary to continue employing one or more workers?

Yes

No

Note: You cannot ask employees to change their usual duties, location or working hours if you don't believe this is necessary.

Have you considered any caring responsibilities your employee has, before giving them a JobKeeper enabling direction?

Yes

No

Are you aware that you can't reduce an employee's base pay rate while they're following a direction to change usual duties?

Yes

No

Did you know that you must pay employees more if the temporary new duties attract a higher base pay rate (as determined by the applicable award or enterprise agreement)?

 Yes No

Note: [The Pay Calculator](#) helps employers to determine base pay rates and other allowances.

Are you aware that employees and employers can apply to the Fair Work Commission to deal with [JobKeeper disputes](#)?

 Yes No

Did you know that it's possible for employers to take disciplinary action against employees who turn down a request that's legal and reasonable?

 Yes No

Standing down employees or ending employment

In addition to the emotional, difficult decisions that might have to be made, there are various compliance obligations that employers must follow when standing down employees or ending employment arrangements. Here's what needs to be considered.

Are you aware of the circumstances that allow you to [stand down employees during the pandemic](#)?

 Yes No

There are a number of justifiable reasons, including:

- An enforceable government direction has resulted in the closure of your business
- A lack of supply has caused a stoppage of work (and the business isn't responsible)
- Temporary JobKeeper arrangements enabling stand down directions

Did you know that organisations generally aren't permitted to stand down employees who have COVID-19?

Yes No

Have you referred to this [template letter](#) for standing down employees who aren't on the JobKeeper scheme?

Yes No

If you're standing down an employee on the JobKeeper scheme, have you referred to this [template letter](#) and followed these directions?

1. Notify the employee in writing at least 3 days before giving the direction (unless the employee agrees to a shorter timeframe)
2. Talk to the employee about the proposed changes
3. Keep a written record of the discussion
4. Deliver the JobKeeper enabling direction in writing to the employee

Yes No

Did you know that employees who have been stood down under the Fair Work Act are not entitled to paid carers, sick or compassionate leave?

Yes No

Note: This is the current legislation, but an appeal of this decision is set to be heard by the Federal Court of Australia.

Please refer to [this checklist](#) before standing down employees.

Do you maintain accurate records of employee leave entitlements and pay slips?

Yes No

Note: It's important to consider if alternative working arrangements can be arranged, or if it's possible to temporarily change duties or hours of work. Paid leave or government financial support may be another option.

Did you know that employees who have been unlawfully dismissed without pay may be able to recover their wages?

Yes No

If you're dismissing an employee, have you communicated this decision with them?

Yes No

Have you checked the National Employment Standards and any relevant award, agreement or contract before dismissing an employee?

Yes No

Have you used [this tool](#) to calculate staff entitlements for when employment ends?

Yes No

Have you checked the minimum notice period for [dismissal](#) or [resignation](#) under the relevant award?

Yes No

If your business isn't covered by a specific award or agreement, have you checked the [termination](#) and redundancy guidelines under the National Employment Standards (NES)?

Yes No

Have you [downloaded this guide](#) for having difficult conversations with employees in the workplace?

Yes No

How can ELMO help?

HR legislation is constantly shifting as governments strive to protect their citizens from the global pandemic. It's never been more important for managers to follow the latest developments in this area, and comply with official advice.

ELMO's cloud-based HR & Payroll software delivers automatic alerts and updates to legislation changes, employment contracts, policies and procedures. In addition, ELMO's [Course Library](#) offers over 400 eLearning courses, many of which focus on compliance issues.

ELMO's integrated, end-to-end suite of HR solutions **cover all stages of an employee's lifecycle** with an organisation: recruitment, onboarding, payroll, rostering, time & attendance, learning & development, performance management and more.

Our dedicated [COVID-19 resources hub](#) contains articles, eBooks, presentations and other tools to help you manage your workforce during these challenging times. In addition, our [HR compliance eBook](#) expands upon the information contained in this checklist and provides a comprehensive overview of workplace compliance.

For further information about how ELMO can help your organisation, [contact us](#).



Disclaimer: Please note that the information contained in this guide and checklist is not all-inclusive and is intended for general information purposes only. It does not constitute legal or other advice. Always seek professional legal advice.