



**REDFERN & FINDLAY**  
ATTORNEYS

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**Employment challenges during the national lockdown, categorisation of operational requirements and working capabilities.**

**The importance of communication with employees critical.**

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**Revised operations and assessment of staff working capabilities**

1. For many schools, the period of lockdown came after schools had closed.
2. As a consequence, staff were already on school holidays and/or annual leave at the time of the commencement of the lockdown. Opportunity to categorise the nature of the time being spent on lockdown was not there. It is worth assessing the situation now in order to determine how staff within the school environment will be treated.
3. We have identified 3 principle categories of staff:
  - 3.1. Academic staff
  - 3.2. Administrative Staff/ Support Staff
  - 3.3. Operations Staff
4. Given that schools will not be fully operational for some time, it is necessary to determine the needs of the revised operation and the working capabilities of staff. This will then assist to determine the pay regime that should be implemented per category of staff.
5. We have further identified 3 levels of working capabilities within each category of staff :
  - 5.1. Working full time;
  - 5.2. Reduced working hours; or
  - 5.3. Not working at all.

6. Determining whether staff are required to work full time, reduced time, or not at all, is directly related to the lockdown, the nature of the revised operations and whether staff are able to perform any of their work remotely.
7. It is our advice that the School looks at its revised operation and operational needs, and conducts an analysis in terms of the staff and skills required. Staff can then be categorised into the different groupings of working full time, reduced time or not at all.
8. Having determined the operational requirements and the working capabilities of staff, the School then needs to determine how this time will be treated and remunerated, in order to determine which pay regime should be implemented effectively by the school.
9. Careful consideration should be given to applying the broad principle of “no work, no pay”. As difficult as this is, with the uncertainty of the duration of the period for which schools may not be fully operational, such a decision could be financially critical for the School. On the assumption that this principle will be applied, the School needs to consider how best to:
  - 9.1. Engage with staff to inform them of the approach the School is taking as a result of the lockdown and its extension, and the categorisation of operational and working capabilities applicable to their situation; and
  - 9.2. Whether there are methods available to assist staff in achieving their monthly salary, or some form of payment.
10. Available options include:
  - 10.1. Utilisation of annual leave to compensate for time not worked.
  - 10.2. The possibility of negotiating a leave advance, where staff have exhausted their annual leave or do have annual leave available to them.
  - 10.3. The possibility of receiving a loan from the School.
  - 10.4. Paying for actual hours worked, thereby resulting in reduced salaries.
  - 10.5. Making provisions for the continuation of employee benefits, while suspending salary payments.
  - 10.6. A pension / provident fund holiday.

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11. It will be important to be consistent in the application of the categorisation of operational and working capabilities and the justification of payment to staff during lockdown. The challenge is that different categories of staff may have different needs.
12. It is assumed that the majority of academic staff will continue to work full time where they are involved in online teaching. Many senior support staff are equipped to work from home and consequently, would also qualify for full time work. However, equally so, there will be sports coaches, lab technicians, academic support staff, administrative assistants, housemothers, matrons and other operational staff whose services are not required and who cannot work during this time.
13. A challenge is likely to present itself where certain staff enquire why they are receiving less than their full salaries, or in fact no salary as they are not working. It is important that any such concerns are addressed with the staff.
14. Accordingly, it will be important that schools will be able to objectively justify who will work and who will not, and to apply these principles consistently.

#### **Communication with staff critical**

15. We cannot stress enough the importance of active communication with employees regarding the abovementioned issues, and in particular:
  - 15.1. the treatment and payment of remuneration for the period 27 March to 16 April 2020;
  - 15.2. the treatment and payment of remuneration for the period 17 April to 30 April 2020;
  - 15.3. the uncertainty currently faced by all schools during this time; and
  - 15.4. any further adjustments to the School calendar or changes to the curriculum that may impact on the School operation and their continued employment.
16. It is important to communicate decisions made with employees and at the same time, ensure that employees understand that the situation and accordingly any decisions, may be subject to change and will be adapted depending on the change in circumstances.

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We hope that this will be of assistance to you and your organisation during this national crisis. Please do not hesitate to contact our offices should you require any further assistance.

Yours faithfully

*Derek*



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