



Confronting Critical Human Resource Issues during COVID-19 Managers, Workers and the Law

SMEs are concerned with many business issues during this COVID crisis and the impact on the workforce is a key issue.

Employers should engage in clear COMMUNICATION, show COMPASSION and work in COLLABORATION with their employees to determine the best options.

The dramatic change in the circumstances of the business, e.g. loss of revenue, may require cutting operating expenses which will undoubtedly include staff costs. This will be especially tough if you have many hard working and loyal employees.

Transparency in Communication

- In handling employee communication regarding the difficult decisions being made, it is important to be as honest and transparent as possible.
- Transparency is about providing clarity around why certain decisions were taken; what were the options available under the circumstances and what led to these specific choices?
- It is important to get employee input to ensure better agreement, understanding and ownership of decisions.
- Don't just present decisions, present proposals that "are under active consideration" and finalize decisions after employee input.

Treating Employees with Compassion

This is a time when the exercise of Compassion is critical. Compassion involves taking into consideration matters such as: length of time with the company; age and stage; their personal circumstances with respect to alternative sources of income, number of dependents, likelihood of having personal savings; and/or are they sick or do they have to take care of someone who is?



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While not required by any law, the following may be considered as acts of compassion under the current COVID circumstances

- If you are closing the business completely, consider where there might be parting gifts to ease the burden such as food or inventory in the company's supply.
- If your employees are working remotely, as the utility bill of the business decreases, take into consideration the increased utility usage of employees at home and provide subsidies, where possible.
- If the business is still operative, consider the possibility of providing worker transportation to and from work (even just for the health vulnerable if not for everyone) as our public transportation system is an area where it might be difficult to remain socially distant.
- Where possible, consider earlier opening and closing hours during the period of curfew so workers can be home in time.
- Where possible, consider paying employees on reduced pay earlier than you normally would.
- Consider providing adequate PPE (personal protective equipment) on the job for staff who come into direct contact with the public, vulnerable staff or staff who live with and care for vulnerable people.
- If the business can afford it, consider putting in place an arrangement where those who have been laid off can apply for exceptional help in grave necessity-based situations, including medicinal need.



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Category of Workers

- Business owners will also need to consider the various categories of workers;
- Are your workers full time employees, part-time/temporary employees, seasonal workers, casual workers, independent contractors;
- Each category will have different legal considerations and obligations for e.g. the provisions for redundancy and lay-off apply to employees and not independent contractors;
- The statutory obligations are generally in regard to employees.

In trying to reduce workforce costs, SMEs might consider:

- The possibility of shared work where more persons are kept on with reduced hours;
- If some of your staff members (e.g. elderly) might be high risk for COVID, they should be encouraged to work from home where possible;
- For workers who are at or near minimum wage, effort should be made to keep them on as long as possible.

As we think about managing the workforce, in addition to communication, compassion and collaboration, we must consider questions of available resources and the law.

Employers should educate themselves fully on what their options are during this time.



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LAY-OFF VS. REDUNDANCY

- The terms lay-off and redundancy are NOT the same under Jamaican law.
- Employers may exercise their right to lay-off employees without pay to help the business through this difficult period.
- A lay-off is a temporary suspension of employment for a maximum duration of 120 days.
- A lay-off may continue past 120 days if the affected employee agrees.
- Employees who are “laid-off” are still considered employees.
- If the lay-off period extends over 120 days, the employee has the right to ask to be made redundant and receive a redundancy payment once they have been employed for a period of 104 continuous weeks (approximately 2 years). This must be done in writing to the employer.
- If the employer then makes an offer in writing to renew the contract of employment or to re-engage the employee under a new contract and the employee unreasonably refuses the offer, no redundancy is payable.
- The formula for redundancy payment is generally 2 weeks pay for every year up to the 10th year of employment and 3 weeks pay for each year from the 11th year onward.
- Redundancy should be a last resort as this can be a significant expense to a business.
- For a Redundancy payment to be applicable there must be a "Redundancy situation" as defined in law and it must be done in consultation with the affected employees



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SICK LEAVE & VACATION LEAVE DURING COVID-19

- An employer is obligated to protect the workplace and everyone in it.
- An employer can send an employee home if they come into work sick and is not required to pay that employee for that day if he/she has exhausted their sick days.
- An employer cannot compel an employee to take vacation.
- Employers can however discuss with employees any interest they may have in using their vacation where normal Sick Leave and any additional Sick leave provisions are exhausted.
- If an employee is placed under mandatory quarantine or isolation but they are still well enough to work, employers should consider remote work where possible.
- If remote work is not possible for the quarantined employee, the employer should consider giving the employee an extended paid sick leave if they can afford it, however the employer is under no legal obligation to do so.

THINKING ABOUT REMOTE WORK

- Currently, there is no law in place that provides clear guidance on working remotely.
- However, a remote work policy is an excellent way to deal with a quarantine if your type of business can support having your employees work remotely.
- If an employee is approved to work remotely then the employee is not on leave and should not be asked to use any type of leave; and therefore should be paid in full.



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When implementing remote work, consider whether your employees:

- Have access to the materials they need to carry out their job including adequate internet or data plan;
- Check in with their supervisor daily or twice a day to ensure productivity is maintained;
- Use appropriate work from home tools such as Asana or Slack to facilitate team collaboration.
- Should be reminded about Company confidentiality

THINKING ABOUT FLEXI-TIME

- SME's who do not operate a type of businesses that can survive on remote work should consider implementing flexi-time.
- Flexi-time is an arrangement whereby an employer and employee agree a “flexible” work schedule which is a schedule outside of the traditional working hours.

Renegotiation of Salaries requires collaboration with the employee.

- The law does not allow for an employer to make changes to an employee's salary or the terms of the employee's contract without that employee's consent.
- Through an open discussion about the post COVID business situation, some employees might agree to a temporary adjustment to their salary and/or a variation of work hours. Any such changes to contract should be documented in writing and ideally have the signature of the impacted employee for the record
- Note that even if the employer and employee agree on a reduced salary, that reduced salary should not be below minimum wage which is \$7,000.00 per 40 hour work week.



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APPLICABLE CARE PROGRAM BENEFITS FOR YOUR EMPLOYEES

The government has implemented a fiscal stimulus in response to COVID-19 called the **CARE (COVID Allocation of Resources for Employees)** programme. Under this programme there are a number of grants employees can benefit from including:

- **SET CASH** - This programme will be available to employees from any sector who lost their employment after March 10 and before June 30 and earn below the income tax threshold of \$1.5 million. They can receive \$9,000 grant per fortnight, paid monthly up to a maximum of \$54,000 spread equally over April, May and June
- **BEST CASH** – For Tourism Related Businesses. Businesses who qualify will receive \$9,000 per fortnight for April, May and June for each employee under the income tax threshold of \$1.5 million who is retained for employment. The business must be licensed with the Jamaica Tourist Board.

Note that currently the above benefits only apply to businesses who are registered and make statutory payments (taxes) for their employees.

Applications can be made via the CARE portal <https://www.wecare.gov.jm/>.



RESOURCES

Employment Termination and Redundancy Payments Act

<https://moj.gov.jm/sites/default/files/laws/Employment%20%28Termination%2C%20etc.%29%20Act.pdf>

Holidays with Pay Act

<https://moj.gov.jm/sites/default/files/laws/Holidays%20with%20Pay%20Act%20LN%20189%20of%2073.pdf>

Human Resource Management Association of Jamaica (HRMAJ)

<https://www.hrmaj.org/>

Ministry of Finance & the Public Service COVID-19 Allocation of Resources for Employees (CARE) Programme

<https://www.wecare.gov.jm/>