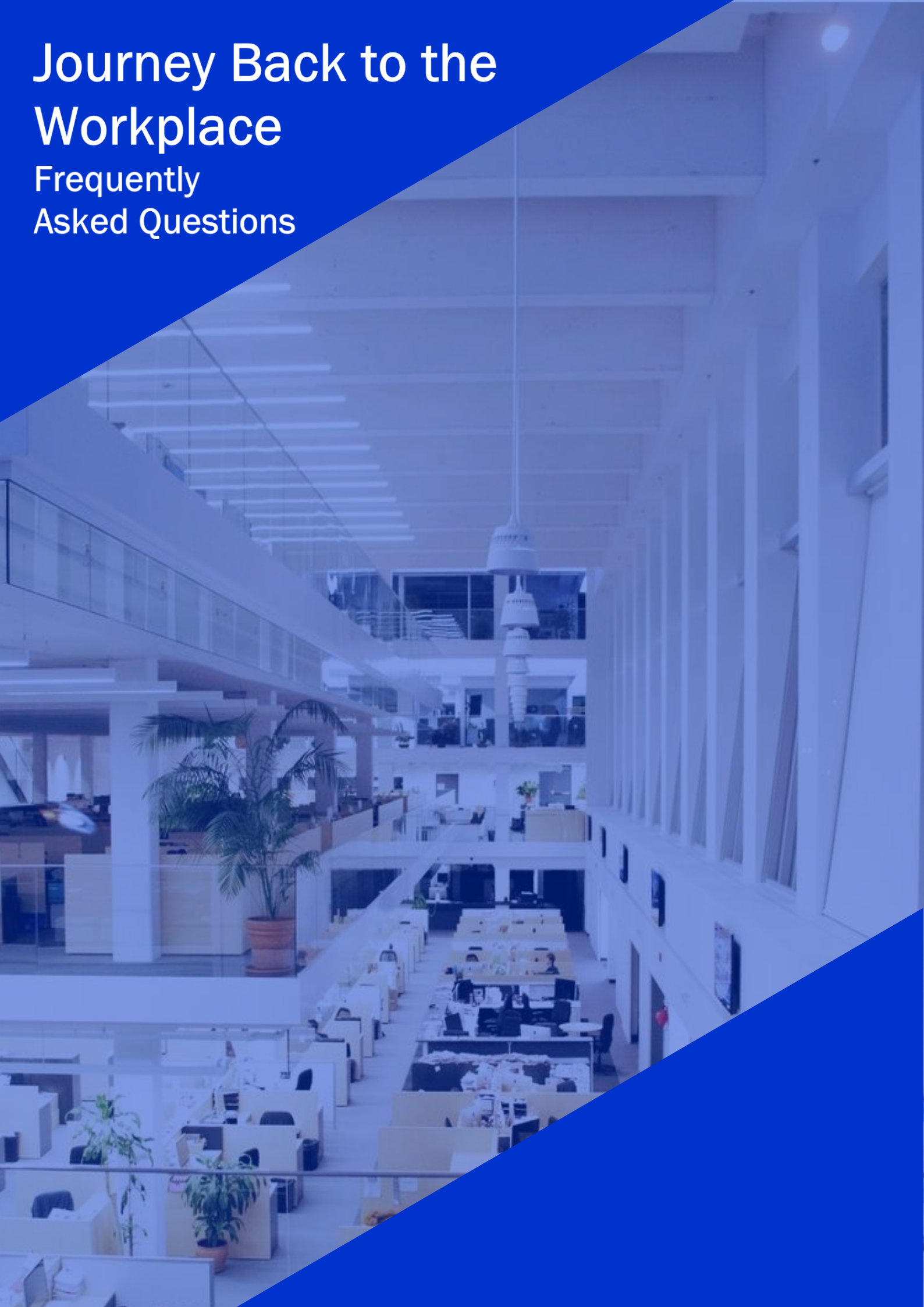


Journey Back to the Workplace

Frequently
Asked Questions



Frequently Asked Questions

The Journey Back to the Workplace



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The Journey Back to the Workplace Health & Safety



Health and Safety

1. Are there any specific health and safety risk assessments I will need to complete?

Under the Return to Work Safely Protocols you will need to conduct a Covid-19 specific risk assessment which underlines the risks specific to the workplace to enable an organisation to then set out appropriate preventative and protective measures that can be put in place to minimise those risks.

2. Will I need to update my Safety Statement?

Yes, it is essential that you update your Safety Statement with information relating to any Covid-19 risk assessments and measures and controls taken by the organisation.

3. What do I do about Employees with individual risk factors such as older workers or those with underlying medical conditions?

Employees must take advice from their Doctors and employers must take account of any risks that have been identified for these groups from the risk assessment in order to address any preventative or protective measures set out.

4. How can I ensure that I do everything within my control to reduce the spread of COVID-19 in the workplace?

It is essential that employers abide by a comprehensive Covid-19 Response Plan which should set out all measures and controls being implemented as well as the organisations appointment of a Lead Worker Representative who ensures and oversees the implementation of the plan. It is also of paramount importance that all actions under the Return to Work Safely Protocols have been implemented including the development of a Suspected Case Plan, completion of Return to Work forms, Induction training, First Aid Responder training, Lead Worker training all of which will assist in reducing the spread of Covid-19 in the workplace.

5. How should we protect our staff who are in customer facing roles?

Protective and preventative measures and controls identified through risk assessments and contained within the Covid-19 Response plan will support the protection of staff who are in customer facing roles. This includes but is not limited to:

- Maintaining physical distancing in accordance with government guidelines;
- Providing hand sanitisers at entry/exit points;

- Installing physical barriers and clear markings to ensure that contact between workers and customers is kept to a minimum and to ensure that queues do not form between customers as they wait to be served;
- Implementing a cleaning regime to ensure that contact points for workers and customers are kept visibly cleaned at all times;
- Displaying the advice on the COVID-19 measures in visible locations to ensure that customers are also adhering to what is required;
- Provision of PPE where required.

6. What PPE should an Employer provide?

PPE (including face masks) is relevant to the risk so this must be assessed through a Covid-19 specific risk assessment. Face masks would be required for those that cannot maintain the 2-metre physical distance i.e. first aiders intervening and/or suspected case employees.

7. Where an organisation only has a small number of staff most of whom will continue to work remotely, is it necessary to implement all measures under the Protocols where only one or two staff members may return to the office?

All elements of the protocol must be in place prior to opening (including return to work forms) even where only a small number of employees intend to return. Under Section 11 of the Safety, Health and Welfare Act, 2005 employers must be able to respond to emergencies (such as suspected Covid-19 case), therefore it is necessary to implement all measures under the Protocols regardless of numbers.

8. Is the requirement to wait for 72 hours to dispose of waste only in the case of a suspected case or is it for all waste?

In line with the Protocols any waste (including PPE, gloves, masks etc.,) used by anyone in the Organisation such should be kept for 72 hours and then disposed of in line with the guidelines set out.

9. What are your options if an employee is refusing to return to work, even if you have taken all the appropriate measures because they have vulnerable family members?

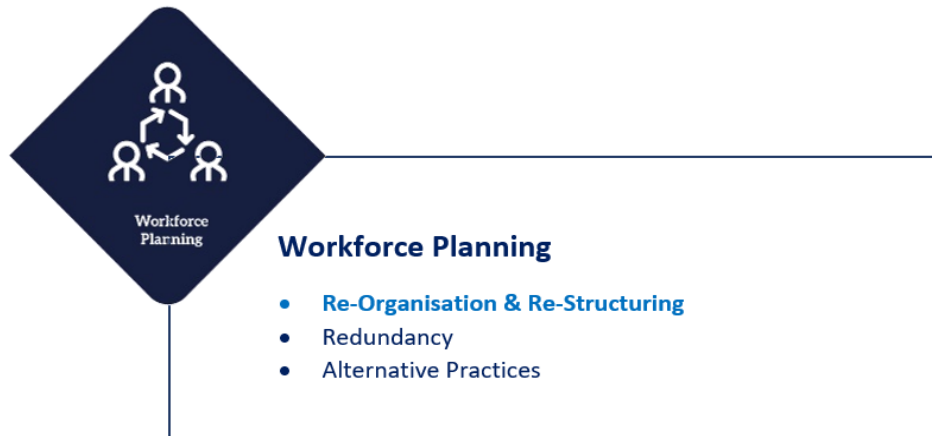
As an employer you need to assess the risk in terms of an employee affected in this manner returning to work. While all measures may be taken further measures may be necessary in ensuring the health, safety and welfare of those involved. This could include consideration around additional measures, such as their work location and moving the individual to a different floor or separate office, if available, or staggered or flexible work times so the employee can work in isolation or indeed considerations on continued remote working. While this is a difficult situation and it is important to understand the specific individual circumstances involving an employee of this type employers must in the first instance engage, understand and then respond in a practical and reasonable way.

10. Is it important to split your staff into teams, for example, team A and B in order to have the different teams working on different days to ensure continuity of business in the event that an employee contracts Covid-19?

Under the Covid-19 Response Plan an employer must assess the risks of having all members of staff in the one environment at the same time. Measures and controls may be introduced that would align to a hybrid form of work practice which could include staggered opening and closing times or part remote working and part office-based working. This would ensure continuity of service in the event that a suspected case arises. It is important for employers to ensure that they consult and engage with employees in relation to any changes of work practices or terms and conditions impacted by staggered working times owing to Health and Safety reasons.

The Journey Back to the Workplace

Workforce Planning



Re-Organisation and Re-Structuring

1. What is re-organisation & re-structuring process?

It is a process of workforce planning that ensures the correct organisational structure is in place with the required skills and experience thus enabling an organisations strategy to be effectively delivered.

2. What are the benefits of re-organisation and re-structuring?

- Allows for a collective focus on identifying the current needs of your organisation and the market in which you are operating.
- Identifies the specific skillset required to operate in the current climate making better use of talent.
- Rationalises efficiencies of your service offering to improve service delivery.

3. What steps should be taken in a re-organisation and re-structuring framework?

The first step of a reorganisation and restructuring framework is to plan the approach to be taken, gather the data relevant to the process, analyse what this means for your organisations and develop and implement an action plan.

4. What is the necessary information required in planning a re-organisation and re-structuring framework?

It is essential that employers identify the key challenges faced by the organisation, both internally and externally, and from that, draw the essential components that will impact those areas. This means that an employer will need to gather information on the workforce to understand what skills and experience they currently have, what challenges have presented themselves in terms of working practices and what efficiencies are to be gained. Other essential data required relates to the financial information and market demographics in the community and voluntary sector which will assist the understanding of the current and future needs of the organisation.

5. What is the main objective in analysing the data gathered?

Ultimately an organisation will need to assess the data to understand the position of the organisational objectives and what direction they need to move in. This analysis will assist in redefining what priorities are emerging or what priorities have to be re-shaped in order to manoeuvre the current climate. Once an organisation has full sight on the current and future status then an understanding of the skills and experience gaps will emerge so that a plan can then be developed to resize the workforce and align to newly emerged priorities.

6. How does an organisation determine the impact on the workforce?

HR professionals must assess the impact on the workforce by posing the following questions:

- what are the skills necessary in furtherance of the organisational objectives while still maintaining the mission and vision of the organisation?
- what efficiencies could be gained from a restructuring of the organisation's resources?
- what are the necessary changes to work practices that will align the workforce to present and future needs?

7. Does a re-organisation and re-structuring process equate to redundancies?

No, not necessarily. In resizing your organisation through a re-structuring and re-organising framework, a business is seeking to align the current workforce and skills to the organisational priorities. Another way of looking at this is the identification of skills necessary to promote the strategic intent of an organisation which could include the pursuit of a talent agenda and upskilling of the workforce.

8. What are the associated risks with a re-structuring and re-organisation framework?

There are a number of risks that come from an implementation of this type of framework, but employee relations and industrial relations risks would predominantly feature. All of these can be mitigated through successful onboarding of staff by being transparent with communications, establishing employee/ manager committees at certain points in the plan and having meaningful engagement with those who may be impacted.

9. How do you implement changes of this nature?

HR will play an integral role in onboarding the workforce to the re-organisation and re-structuring framework or indeed in engaging and consulting with Unions. It is essential that HR engage in procedurally correct practices to mitigate the risks from an employment law, employee relations and industrial relations perspective. The onboarding process taken, will act as a signal to the success or failure of the implementation stage itself so HR must ensure consistency and best practice at all times.

10. Is a review process necessary to a re-organisation and re-structuring process?

To successfully embed changes to your workforce it is vital to include a review process that will ensure objectives are being met while still maintaining the mission and vision of the organisation. Regular reviews should be a prerequisite in examining the actions taken in order to understand and embed the results. Where regular reviews take place, any new challenges will be identified which will in turn prompt responses that are solutions focused, to continue with the embedding. The review process may also drive realignment in the achievement of working in the new normal thus creating a workforce that is resilient and flexible, working to the right size, in the right manner, at the right cost and with agility.

The Journey Back to the Workplace

Workforce Planning



Redundancy

1. What is the first step of redundancy under workforce planning?

The first step of any redundancy process is to establish the organisation's case by first understanding the driving force behind this type of process. This could stem from financial limitations due to funding restrictions, reorganisation and restructuring requirements or changes to service delivery. An examination of the organisation's needs, the impact of changing market demographics and the financial position of an organisation will support the establishment of an organisational (business) case relating to any proposals that places employee(s) at risk of redundancy.

2. How does an organisation mitigate challenges to a business case?

It is of paramount importance that the substantive nature of an organisation's business case is considered, genuine and built on solid facts and figures to mitigate against any risk of challenge in a third-party forum.

3. What makes a redundancy genuine?

A genuine redundancy is taken to exist where one of the following arise:

- The employer ceases to carry on the business of the organisation for which the employee was employed or ceases to carry on the business of the organisation at the same place where the employee was employed.
- The work for which the employee was employed has ceased or the requirement to perform that work has reduced.
- The employer has decided to carry on the organisation with fewer or no employees. Work may be reallocated to other employees.
- The work which the employee performed is to be performed in a different way and the employee is no longer qualified to undertake the work.
- The employee's work is to be undertaken by another person who is sufficiently qualified and capable to undertake other work for which the employee is not sufficiently qualified or trained.

4. What is a collective redundancy as opposed to an ordinary redundancy?

A collective redundancy generally means a large-scale redundancy. At the very minimum, there must be at least 20 people employed, with at least 5 of them being made redundant. This can rise to an entire workforce of hundreds of people being made redundant.

The applicable legislation, the Protection of Employment Acts, 1977-2014, requires that both the Minister for Employment Affairs and Social Protection and employees' representatives should be informed and consulted at least 30 days in advance of people being made redundant.

5. What are the employer obligations in a collective redundancy situation?

When an employer proposes to implement collective redundancies they must, under the Protection of Employment Act 1977 (as amended):

- Give the Minister written notification of their proposals at the earliest opportunity and at least 30 days before the first dismissal takes effect.
- The Act also provides that an employer contemplating collective redundancies must, with a view to reaching an agreement, similarly consult the representatives of affected employees not later than 30 days before the first dismissal takes effect.

6. What is a reasonable alternative to redundancy?

If an employee refuses a reasonable offer of alternative work, they may lose their entitlement to a redundancy payment. What is reasonable depends on the facts of each case. In general, alternatives which involve a loss of status or a lessening of the terms and conditions of employment would not be considered reasonable. Furthermore, an employee may be justified in refusing an offer that involves travelling an unreasonable distance to work.

7. What happens when different working conditions are offered?

As a general rule, where the terms and conditions offered are different from those of the existing job, the offer must be of "suitable employment" for that employee. Otherwise a redundancy situation would transpire i.e. where there is a material deterioration in the terms and conditions of employment.

8. How are employees selected for redundancy?

It is essential to ensure that the procedures used for selection of redundancy are transparent, objective and fair. If the organisation has used an agreed selection procedure or has used a specific one in past redundancy situations, the employer will need to have a specific reason in departing from this agreed selection procedure or custom. To fairly select an employee(s) role for redundancy, the employer should first establish which position/positions may become redundant. Having established that certain positions may no longer be required, employees of that category must be considered against the criteria for selection.

Although a redundancy situation exists, an employee may have grounds for complaint if the manner of the selection for redundancy was unfair so particular attention should be given to grounds of discrimination under the Employment Equality Acts or any protected grounds such as pregnancy.

9. Can an employee be made redundant while on maternity Leave or on additional maternity leave?

No. Notice of Redundancy cannot issue when a person is on Maternity Leave or indeed on Additional Maternity Leave.



10. What is the position regarding the redundancy rights of Part-Time Workers?

The Redundancy Payments Acts 1967-2014 secured the rights of part-time workers to a statutory redundancy payment through amending insurability requirements for redundancy, to bring them into line with the Social Welfare Acts and the Protection of Employees (Part-Time Work) Act 2001. This is in line with the provision of the 2001 Act which states that part-time Employees cannot be treated in a less favourable manner than comparable full-time Employees in relation to conditions of employment. In particular, there is recognition for the rights of workers to statutory redundancy in the following cases – (a) casual employment, (b) subsidiary employment (where a person depends on another employment for his/her livelihood) and (c) employment of inconsiderable extent i.e. very low wage.



The Journey Back to the Workplace

Workforce Planning



Alternative Practices

1. What are the main considerations of alternative practices under workforce planning?

The primary consideration is that employers cannot unilaterally impose changes to an individual's terms and conditions so contractual arrangements and changes of a major or fundamental nature should be examined in the first instance, prior to seeking to implement any alternative practices. Another consideration is the '*Employer Value Proposition*' in the retention of staff, which is an important factor in determining which alternative practice will support any changes stemming from workforce planning, thus ensuring the organisation is not only fit for current but future purpose.

2. What is the meaning of alternative practices under workforce planning?

There are different approaches that can be taken under workforce planning that will support the business/ organisational case in order to implement change. These include implementing layoffs, placing employees on short time or reducing the working hours or working days.

3. How should an employer first approach the examination of alternative practices under workforce planning?

The first step in realising alternative practices of workforce planning is to identify the key challenges faced by the Organisation, both internally and externally, such as information on the workforce to understand what skills and experience they currently have, what challenges have presented themselves in terms of working practices and what financial implications will impede the progress of organisational objectives in the short and medium term.

4. How important is a business/organisational case in implementing alternative practices?

Establishment of a business/organisational case is essential in order to implement any changes to terms and conditions. Transparent communication on what is driving the need for change will assist the onboarding of staff and will support the mitigation of risks.

5. What is the best approach in implementing any major, non-administrative or changes of a fundamental nature?

An employer must seek to consult with an employee with a view to reaching agreement prior to implementing any proposed changes, practical steps include:

- Selecting employees through fair and reasonable means.
- Arranging a meeting to explain the rationale of any proposed changes.
- Seeking and considering the views of affected Employees in response to the proposals.
- Examining all alternatives where and if proposed.
- Seeking agreement from the employee and providing a reasonable period of notice before the changes take effect.
- Putting the proposed changes in writing, citing the nature and duration of the change and outlining how it will impact on terms and conditions, such as service and remuneration.
- All written notification of changes must be provided within one month of the changes taking effect in accordance with the Terms of Employment (Information) Act, 1994.

6. What are the necessary steps to affect a lay off or apply short time?

For an employer to consider whether or not to apply a lay off or short time situation, there must be a reasonable belief that the situation is temporary by nature. Next it is necessary for there to exist an express or implied term and condition that lay-off or short time can apply. This means that the employees' contract of employment should contain a clause explicitly providing for lay off without pay or short time with reduced pay. Where no such clause exists, there should be an implied right to place an employee on lay off without pay or short time on reduced pay. This means that an employer should be able to demonstrate a custom and practice in the applicability of lay off or short time.

Where neither an express nor implied right exists, the employer must consult with the employee and seek their agreement to apply a period of lay-off or short time. To do otherwise could expose the employer to a breach of contract and/ or claim under the Payment of Wages Act, 1991. It is worth noting at this point that where neither an express or implied right exists and the Employee refuses to agree to a period of lay off or short time then this could result in the employee being put at risk of redundancy. Expert advice should be sought if this situation arises.

7. How should an employer select an employee for layoff or short time?

In any situation of lay off and/ or short time an Employer must always act in a reasonable manner and therefore fair and objective selection procedures should apply. Where the entire business is temporarily being closed and presumably all employees are to be affected by lay off a selection process will not necessarily be used.

However, where short time or lay off is being applied to only some employees. Employers should exercise care when selecting employees for lay-off or short-time, apply objective selection criteria and be mindful of not discriminating, directly or indirectly, against employees on any of the nine grounds prohibited by the Employment Equality Acts 1998-2015.

8. What approach should be taken if a reduction in hours is being considered under alternative practices?

An employee's working hours are a core term and condition of employment which cannot be unilaterally changed without agreement from the employee. Recognising the fact that continuity plans may necessitate a reduction in working hours means that employers may have to have those difficult conversations in order to preserve the business.

A reduction in working hours can be proposed in any amount, however, employers should be aware that a reduction of 50% or more in working hours is considered short time which can lead to a request for redundancy in certain situations.



9. We are in the process of reinstating some employees who were placed on temporary layoff, what process should we use?

As the restrictions begin to ease many employers will face the same decisions when it comes to re-engaging employees who were placed on temporary layoff owing to the impact of Covid-19. The statutory provision of placing an Employee on temporary layoff is detailed in the Redundancy Payments Act, 1967 and as such any decision to select one employee over another must only be made in a fair and transparent manner. Employers should first look at the requirements of the business and then assess the necessary skills and experience as well as other selection criteria necessary to fill the business requirement to assist with fair selection procedures. All decisions relating to the selection process should be recorded and this record should be maintained. As much notice as possible should also be provided to the employees affected and written communication should detail the return to work date as well as all measures being taken by the employer to align with the government's Return to Work Safely Protocol.

10. Where an employer has already implemented layoffs and the employer seeks to reinstate some Employees to the workforce, what can be done to mitigate challenges of returning one employee back to the workplace before another?

It is of paramount importance that an employer seeks to address the matter promptly, arranging a meeting (virtually) with the employee to discuss the matter and to explain the procedures that were applied in the selection process and how this was balanced with the needs of the business. Where an employee remains dissatisfied with the matter the employer should advise the employee of the next steps that can be taken in the form of a grievance and explain what is involved in this process. If the employee would like to further this complaint, the employer should the employee has been provided with a copy of the grievance procedure.



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