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Australian Government

Fair Work
OMBUDSMAN

Best Practice Guide Consultation & cooperation in the workplace



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Working at best practice

Best practice is about developing and implementing effective consultation mechanisms which encourage cooperation and engagement of employees and management. In some instances, consultation is not a choice, but required by law.

There are significant benefits associated with implementing and maintaining a culture of consultation and cooperation in the workplace. Businesses working to best practice recognise the benefits of regularly seeking opinions and views from employees, whether that be through consultation with individuals, groups or unions, or a mixture of all three.

This is because employee awareness of, and involvement in, decision-making regularly leads to:

- more productive workplaces as a result of greater cooperation and collaboration

- better and more informed decision making and successful implementation of ideas

- attraction and retention of skilled and positive staff

- workplaces that are better able to cope with change

- minimisation of employer/employee disputes

- minimisation of employee claims against the employer.

All modern awards contain consultation provisions, and the *Fair Work Act 2009* (FW Act) requires that consultation provisions are set out in all enterprise agreements. In addition, the FW Act requires employers to consult with employees in other situations, whether or not a modern award or enterprise agreement applies.

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Best Practice Guide

Consultation & cooperation in the workplace

This Best Practice Guide explains the various advantages and requirements to consult in the workplace, including:

- advantages of working at best practice

- where employers intend to make significant changes at the workplace

- where employers intend to dismiss more than 15 employees at once

- workplace health and safety

- when employees request flexible working arrangements

- when this happens in the context of good faith bargaining.

It also provides practical suggestions for ways to introduce a more participatory and cooperative culture at your workplace.

This guide illustrates best practice when it comes to consultation and cooperation in the workplace. For specific information regarding your minimum legal obligations, contact the organisations listed under the 'For more information' section at the end of this guide.

Why work at best practice?

Consultation generally – best practice employers

Successful change involves consultation and cooperation with all parties involved, including managers, employees and any employee representatives.

In addition to any matters where consultation is mandatory, employers should consult with their employees on workplace issues that may impact on the welfare and productivity of employees. As a matter of best practice, consideration should be given to the value that consultation could add to any business decision making. Consultation can identify opportunities, assist decision making and help ensure any new ideas work effectively in practice.

Consultation may take the form of:

- establishment of employer/employee (and employee representative) committees

- regular staff meetings and communication with employees

- regular performance and training reviews

- regular written communications such as newsletters

- encouragement of employee feedback on business and administrative decisions.

These practices may be implemented through administrative structures, company policies, enterprise agreements, or - where appropriate - may be set out in employees' contracts of employment.

When consulting in the workplace, remember to respect everybody's opinions and backgrounds. Depending on your workplace, you may need to take into account cultural and language differences and make sure that everybody understands the consultation process.

Consultation regarding workplace change

Modern awards

Every modern award contains a standard consultation clause dealing with the requirement for employers to consult with employees and their representatives where the employer intends to implement significant changes at the workplace. The clause requires consultation where an employer has made a decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees.

In these cases:

- employers must notify employees and their representatives who may be affected by the proposed changes

- employers must discuss the changes with the affected employees and their representatives, and provide information in writing to them, as soon as practicable after a definite decision has been made about:
 - the nature of the changes
 - effects the changes are likely to have on employees, and
 - measures to prevent or reduce the adverse effects of such changes on employees

- employers must then give prompt consideration to matters raised by the employees and their representatives in relation to the changes.

While an employer must give consideration to the matters raised by the employees, an employer does not have to obtain the consent of employees or their representatives to implement changes to the business. However, best practice employers understand that achieving real and sustainable workplace change is best realised by cooperative and open change management processes.

Employers with employees that are regulated by modern awards, enterprise agreements or other industrial instruments should be aware of, and familiarise themselves with, the dispute resolution procedure set out in their relevant award, enterprise agreement or industrial instrument.

Enterprise agreements

When making an enterprise agreement, the FW Act requires the parties to include a consultation term. Enterprise agreements lodged with the Fair Work Commission without such a clause will be taken to have included the 'model consultation term' as a term of the agreement. This term is set out in the *Fair Work Regulations 2009* and a link is available at the 'For more information' section at the end of this guide.

Parties are not required to use the model consultation term if the parties have agreed to a different consultative procedure to be set out in the agreement. However, the FW Act states that a consultation term in an enterprise agreement must:

- require the employer or employers to which the agreement applies, to consult with employees about major workplace changes that are likely to have a significant effect on the employees, *and*

- allow for the representation of those employees for the purposes of that consultation.

A person representing the employees could include an elected employee or a representative from a union.

Consultation regarding termination of employment

In addition to any consultation term under an award, enterprise agreement or industrial instrument, the FW Act provides that an employer must consult with a union regarding dismissals in certain circumstances. Consultation must take place with the union(s) whose members are affected by the decision where an employer has decided to dismiss 15 or more employees (but before the dismissal occurs) for all or any of the following reasons:

- economic

- technological

- structural or similar reasons.

This requirement applies even if no award or enterprise agreement applies to the employees.

The Fair Work Commission can make orders requiring compliance with this requirement if there is non-compliance and the employer can be reasonably expected to know that one or more of the employees affected by the decision are members of a union. If employees are not members of a union the employer is not obliged to inform a relevant union, however there may be benefit for the business in doing so to assist the re-employment of the affected employees elsewhere.

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Consultation & cooperation in the workplace



Consultation in practice

This flowchart sets out a recommended step by step approach for best practice consultation.

Stage 1

Provide information to employees about:

- what is being considered
- the process for consideration
- how a final decision will be made and who will be involved in making the decision.

Stage 2

Consult by:

- communicating business needs and priorities (use a mixture of team meetings, newsletters, emails or intranet site)
- seek views and opinions from affected employees, either individually or through their representatives (team or individual meetings, online intranet forum, surveys). Encourage a two-way flow of information
- review and improve strategies for communication flow of ideas and information.

Stage 3

Review and implementation:

- consider information and ideas obtained and assess against business requirements
- record any decisions made and the reasons why
- communicate decision and reasons why back to employees and representatives
- implement change
- invite feedback on the process to improve the next consultation process.

Consultation regarding occupational health and safety

Employers should also be aware that they may have additional consultation duties with employees on health, safety and welfare issues in the workplace under state or territory occupational health and safety laws. An employer working at best practice will routinely consult with its employees on these important matters.

Other situations

The FW Act sets out other situations where an employer must engage with its employees or their representatives including:

- when bargaining in good faith in the context of negotiating the terms of an enterprise agreement (see Best Practice Guide No 11 'Improving workplace productivity in bargaining')

- where an employee requests flexible working conditions under the National Employment Standards (as a result of the employee's carer's responsibilities)

- under provisions for flexible working arrangements set out in a relevant modern award, or

- in the course of negotiating an individual flexibility arrangement under an enterprise agreement (see Best Practice Guide No 3 'Use of individual flexibility arrangements').

Checklist for consultation best practice

Employers should consult with their employees and in some instances, the employees' union, where one of the following circumstances has arisen:

- ✓ employers intend to make significant changes at the workplace

- ✓ employers intend to dismiss more than 15 employees at one time for reasons of economic, technological, structural or similar nature

- ✓ in relation to workplace health and safety

- ✓ employees request flexible working arrangements

- ✓ in the context of good faith bargaining for an enterprise agreement.

In the above circumstances, employers should consult with their employees in accordance with the relevant procedure. This may be set out in:

- ✓ the FW Act

- ✓ a modern award

- ✓ an enterprise agreement or other industrial instrument

- ✓ the employer's company policies

- ✓ state or territory occupational health and safety laws.

For more information

Fair Work Ombudsman

13 13 94
www.fairwork.gov.au

Fair Work Commission

1300 799 675
www.fwc.gov.au

Occupational health and safety in your state or territory

ACT Work Safety
Commissioner
(02) 6207 3000
www.worksafety.act.gov.au

WorkCover NSW
13 10 50
www.workcover.nsw.gov.au

NT WorkSafe
1800 019 115
www.worksafe.nt.gov.au

Queensland Workplace Health
and Safety
1300 369 915
[www.deir.qld.gov.au/
workplace/index.htm](http://www.deir.qld.gov.au/workplace/index.htm)

SafeWork SA
1300 365 255
www.safework.sa.gov.au

WorkCover Tasmania
1300 776 572 (from within Tas)
(03) 6233 5343 (from outside
Tas)
www.workcover.tas.gov.au

WorkSafe Victoria
1800 136 089
www.workcover.vic.gov.au

WorkSafe Western Australia
1300 307 877
www.commerce.wa.gov.au/WorkSafe

Fair Work Regulations 2009
Schedule 2.3
model consultation term

Acronyms used in this guide

FW Act *Fair Work Act 2009*

NES National Employment Standards

Disclaimer

Fair Work Ombudsman is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. It is your responsibility to comply with workplace laws that apply to you. The information contained in this publication is: general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and not legal advice. Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. Produced December 2012. FWOBPG2a.01.

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