



*Friday*  
**Workplace Briefing**

with Andrew Douglas and Karen Luu

## Disclaimer

This webinar is intended for guidance purposes only on the considerations to which a business should have regard in managing their workplace issues.

This guidance is not a substitute for legal advice which is tailored to the specific circumstances of your business.

## This week

- COVID/JobKeeper:
  - Abandonment of Employment case,
  - Reduction of redundancy payments
  - JobKeeper “work when you like” termination
- Part 2: Managing RTW in a post-COVID world - Consultation
- Inherent requirements and wrongful termination
- Case study: Fit for work
- When a casual is not a casual
- Safety as an industrial tool: Unlawful industrial action

## COVID19 / JobKeeper

- Abandonment of Employment - what is it (repudiation)?
  - *Ah Shan v Shamrock*
  - Self-isolate, negative test required and missed calls and texts
  - Termination by email
- S.119/120 Redundancy reduction - when? Alternative employment or financial incapacity
  - *ASG Maintenance v Lord*
  - 2 alternatives 4 and 2.5 hrs, project mechanic
  - Was acceptable – reduced to 7 weeks
- Work when I like on JobKeeper
  - *Howard-Colla v Bloom Bar*
  - No face to face, did not understand impact

# Managing RTW in a post-COVID world

## Part 2: Consultation

- Legislation OHS/Award/EA
- Award - definite decision – evidence
  - COVID Plan
  - RTW Plan
  - Risk Assessment
- Consultation under Award and OHS - what is required - individual, group and representatives, in writing
- Guiding hand - policy and alternatives of contracting IFA and common law

# Employment Law – Health

- Fitness for Work
  - *Neeteson-Lemkes v Jetstar*
  - *Boags v Button*
  - Three tests
- Inherent requirements of the job?
- Monitor health
- *MacQueen v Nyrstar*
  - Cardiac arrest, blood lead levels and heavy work
  - Assessor required building of physical resilience, which was ignored
  - Job description

## Case Study

Gavin is a Maintenance Fitter at Good-As-Gold Foundry (GAGF). They had many conveyer belts taking gold bearing ore for extraction.

Gavin was required to remove ore at times to undertake maintenance on the belts. He was 56 years old, in poor physical condition (very overweight) and had recently had a small heart attack at home.

When he returned to work his GP said that his underlying poor health meant his RTW would need to be careful to avoid both further arrest risk and stroke. His cardiologist said he needed to change his lifestyle, control his diabetes, exercise more and lose significant weight.

No plan was implemented by GAGF and two months later his workload remained the same and he was clearly struggling when removing ore. His face was often red, sweating profusely and he was breathless.

GAGF spoke to his treating GP who said unless he lost weight and exercised he would never be able to RTW fully. GAGF terminated his employment.

The heavy work represented 5 % of his usual work. Operational staff were meant to help him but didn't.

## When is a casual, casual?

- Reasonable expectation of continuing employment and regular and systematic basis 384(2) U/D
- *Greene v Floreat Hotel* extends *WorkPac v Rossato* (also *Skene*)
- Impact on Awards



## Safety as an industrial tool

1. Lawful industrial action outside nominal expiry date - imminent risk to safety
2. Unprotected when not
  1. *ABCC v CEPU and others*
  2. Fed Court fines Union and three organisers

## Next week

1. Managing RTW in a post-COVID world  
Part 3: The Policy
2. COVID/JobKeeper update
3. Latest cases and developments

## Stay up-to-date

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**Andrew Douglas**  
Managing Principal

[Email](#) or call  
0488 151 50



**Sotheary Bryant**  
Principal Lawyer  
Commercial

[Email](#) or call  
0403 625 524



**Kim McLagan**  
Principal Lawyer  
Workplace

[Email](#) or call  
0477 455 189



**Karen Luu**  
Principal  
Consultant

[Email](#) or call  
0439 513 138



**Robert Patterson**  
Virtual CEO

[Email](#) or call  
0413 751 691