

Consultation and cooperation in the workplace best practice guide



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This best practice guide is for managers and employers of employees. It explains the advantages of taking a best practice approach to consultation and cooperation in your business. It includes:

- [Working at best practice](#)
- [Consultation and cooperation in the workplace](#)
- [Legal requirement to consult](#)
- [Using best practice to support consultation and cooperation in the workplace](#)
- [Best practice checklist](#)
- [Where to find more information.](#)

It also has practical tips and case studies to help you move your business towards best practice.

While this best practice guide relates to employees and employers, there may also be a requirement to consult with some types of independent contractors (known as regulated workers) if they are covered by minimum standards orders or guidelines, road transport contractual chain orders or guidelines or a collective agreement with a consultation term. For more information on regulated workers visit fairwork.gov.au/regulated-workers.

Working at best practice

When running a business, you're likely to face challenges that affect both your business and your employees. Sometimes these challenges are small, such as introducing a new staff training program. Other times they're large, such as a significant fall in sales. Best practice employers examine and talk about these challenges with their staff. They aim for a genuine exchange of information and opinions and collaborate to reach solutions.

Every workplace can enjoy the benefits of taking a best practice approach to consultation and cooperation. These may include:

- better decision making when employees have input
- easier change implementation, as employees have been involved in the planning process
- better business performance during change, as less time is spent on responding to misunderstandings, rumours or disputes
- improved employee engagement and performance.

Consultation and cooperation in the workplace

Consultation means asking for and considering employees' views when making decisions. Cooperation means working together harmoniously to find solutions.

Consultation is important during major workplace change. This means any change to the business that will affect employees in a significant way, for example different working hours, duties, work locations or redundancies.

Employers who take a consultative and cooperative approach still have the right to make the final decision on how to manage their business. Employees who have the opportunity to be a part of the process are more likely to accept change and are less likely to feel anxious or fearful. Being consulted about important decisions in the workplace can improve an employee's engagement with their work.



CASE STUDY – Consulting staff about organisational restructures

A larger-sized stationery retailer has been through two reorganisations in the past 5 years. Each time, management consulted with employees before any restructuring decisions were made. They did so by setting up a structured framework for meetings between managers and staff. Some meetings were 1-on-1 and some were in teams.

Management made a conscious decision to be open and honest about the problems they were having. They asked employees to analyse their own roles and the roles they thought were needed for the future. They also asked each team to consider sales and financial data and suggest ways they could respond to lower sales.

The process took 3 to 4 months each time. The business believes it was worth it because the restructuring went smoothly and the employees who stayed with the business remained engaged and committed to it.

Legal requirement to consult

Requirements to consult with employees about significant changes in the workplace are set out in legislation, awards and enterprise agreements.

Consultation requirements in awards

Awards contain standard consultation clauses.

These require employers to consult with employees and their representatives if:

- they intend to change an employee's regular roster or ordinary hours of work, or
- they intend to make significant changes at the workplace.

Consultation about changes to rosters or hours of work

An employer who intends to change regular rosters or ordinary hours of work at a workplace must consult with employees affected by the change first.

The employer must:

- provide employees and their representatives with information about the proposed change
- invite the employees and their representatives to give their views about the impact of the proposed change, including any impact on family and caring responsibilities
- consider any views given by the employees or their representatives.

If the award also has rules about rostering and ordinary hours (for example in a different clause), the employer needs to follow those rules first. This means that if the award says that the employer needs the employee's consent to make any changes to their roster or ordinary hours, this applies. They can't make the changes without consent by just using the consultation clause.

Consultation about major workplace change

Consultation clauses generally require consultation where an employer has decided to introduce major changes in production, programming, organisation, structure or technology that are likely to significantly affect employees. They also require the employer to:

- notify any employees who might be affected by the proposed changes, and their representatives
- discuss the proposed changes with the affected employees and any representatives as soon as possible after a decision is made
- provide them with written information about the changes, how they might affect employees, and any measures the employer will put in place to prevent or reduce any adverse effects
- give prompt consideration to any matters raised by the employees and their representatives.

While an employer must consider the matters raised by the employees, they don't have to obtain the consent of employees or their representatives to make the proposed changes.

Consultation requirements in enterprise agreements

An enterprise agreement must contain a consultation term that:

- requires the employer to consult with employees about any major workplace changes or changes to their regular roster or ordinary hours of work
- allows employees to be represented during the consultation (for example, by an elected employee or a representative from a union).

Any agreement lodged without a consultation clause will automatically have a 'model consultation term' included in the agreement.



PRACTICAL TIP: Read the consultation and dispute resolution clauses set out in your award or registered agreement. These are usually found in Part 2 of an award.

Use our Find My Award tool at fairwork.gov.au/findmyaward or visit the Fair Work Commission's Agreements page at fwc.gov.au/agreements to find the award or agreement that applies to your workplace.

Consultation requirements when terminating 15 or more employees

The Fair Work Act requires an employer to notify or consult with a union if:

- they decide to dismiss 15 or more employees for economic, technological, structural or similar reasons; and
- they knew or should have known that at least 1 of the employees was a union member.

The employees don't need to be covered by an award or enterprise agreement. Employers are also required to notify Centrelink before dismissing 15 or more employees.

Consultation regarding work health and safety

Employers should be aware they might have additional consultation duties with employees who have health, safety and welfare issues in the workplace. These consultation requirements fall under state or territory work health and safety laws. Find the contact details for your state or territory body in the Links and resources section at the end of this guide.

An employer working at best practice will routinely consult with its employees on these important issues.

Other situations

The Fair Work Act sets out other situations where an employer must engage with its employees or their representatives. These include:

- when bargaining in good faith in the negotiation of the terms of an enterprise agreement
- where an employee who is entitled to request a flexible working arrangement makes such a request
- when negotiating an individual flexibility arrangement with an employee under an award or enterprise agreement
- when an employee is on parental leave, and the employer makes a decision that will have a significant effect on the employee's pre-parental leave position
- when an employee requests to extend their parental leave after the initial 12 months.



PRACTICAL TIP: Discussing workplace issues can be difficult for both employers and employees, especially when emotions are involved.

Complete our free Difficult conversations in the workplace online course to learn practical tips to manage conversations and achieve positive outcomes. The course is available from fairwork.gov.au/learning.

Using best practice to support consultation and cooperation in the workplace

Best practice doesn't look the same for all employers. The way to achieve best practice will vary because of things like the number of employees, industry and the business environment.

Below are initiatives and suggestions that can help you move your business towards best practice.

Develop a communication strategy

An internal communication strategy outlines exactly how your business will deliver key messages to your staff. How sophisticated the communication strategy should be depends on the size of your business and the type of changes involved. For smaller businesses, this can be a simple document setting out the ground rules for when and how staff communications will be handled, and who will handle them. Your communications strategy should cover:

- **What** – the types of information or key messages that will be communicated to staff
- **Who** – the messages should come with the authority of senior managers. Engaging representatives from different parts of the organisation ensures the communication is seen as having broad support by management
- **How** – messages should be clear, consistent and given with context so employees can better understand them. Also consider which communication methods will be used
- **When** - the communication should be prompt and give employees time to respond.

Seek feedback on how your employees are receiving communications. Be flexible and refine your strategy over time to make sure it remains effective and practical.

Establish communication channels

There are many communication methods that you can use with your employees. Most businesses use more than one method. A good communication channel will have the following key elements:

- **It's authentic** – employees know their employer genuinely wants to listen to them
- **It's regular** – how regular will depend on the method. Team meetings might occur weekly or fortnightly, but employee surveys may happen once a year
- **It's targeted** – while there might be some overlap, employees should know what type of communication method is more appropriate for certain information
- **It's two-way** – employees know their employer will consider what they have to say and will respond.



PRACTICAL TIP: Some examples of communication methods include:

- **An ‘open door’ policy** – this means that owners or managers commit to being open and responsive to any work-related matters their employees want to bring to them
- **Meetings** – this could include team meetings, toolbox talks or ‘town hall’ meetings for the whole workforce. Large employers with staff in multiple locations might also organise senior managers to visit each location
- **Surveys** – employers might ask employees to participate in a survey to find out what they like (or don’t like) in the workplace, what the employer is doing well and areas for improvement. Allowing employees to complete a survey anonymously is a good way to get honest feedback
- **Employee committees** – a consultative committee usually meets once every few months to discuss workplace issues and suggest actions. It’s important that management is accountable for considering any of the committee’s suggestions and responding in a timely way
- **Social media and other technology** – employers can also make good use of social media, electronic forums, video blogs and other technology to create new kinds of communication.

Learn to communicate effectively

Using a variety of different communication channels isn’t very effective if the quality of the communication is poor. Best practice employers know how to communicate effectively and encourage their managers and employees to also communicate clearly, honestly and respectfully.

The following initiatives can be used to promote effective communication in your workplace:

- Role model the standard of communication you want and, if needed, work on your own communication skills
- Recognise employees who communicate effectively and constructively
- Take the time to explain your expectations about communication to new employees before they start. Employees have a diverse range of backgrounds and life experience. It makes sense to spend some time with them to explain how the business expects employees to communicate with each other
- Regularly share information about the business. If you don’t want to share financial data, pick a non-financial performance indicator such as how many meals were sold or haircuts given, how the team is tracking against KPIs, and customer feedback. You should also share technological developments that could impact the business and any upcoming staffing changes. Most employees are very interested in what’s happening in the business and how it’s performing, especially if that might impact on their job security.



PRACTICAL TIP: Improve your communication with these tips:

- communicate face to face wherever possible, especially for important messages
- give the communication your full attention
- make your communication as clear and as honest as you can
- listen reflectively and actively and check that you have heard the message correctly
- respond respectfully, be empathetic ('I can appreciate why you feel that way...')
- ask questions
- pay attention to body language and non-verbal triggers
- be aware that different cultures have different ways of communicating respectfully (for example not making eye contact or favouring private rather than public praise)
- take care with written communications, such as emails. Check that the language you use is clear and will not intimidate or offend the recipient.

Analyse the change

Before consulting your employees about a proposed workplace change, you need to consider what that change might mean for your business.

'SWOT' is a commonly used business analysis and decision-making tool. A SWOT analysis helps you:

- build on strengths (S)
- minimise weakness (W)
- seize opportunities (O)
- counteract threats (T).

All you need to begin is something that you want to analyse, for example, the proposed introduction of new technology in your business. First, identify all the SWOT points for the change. This might be:

- the new technology will improve employee productivity (S)
- because it's new technology, there may be teething problems at the start (W)
- it should ultimately allow the business to produce more at a lower cost (O)
- redundancies may be necessary if the technology is implemented (T).

These points will be key messages in your consultation. Finally, consult with staff and develop a strategy to address the issues in the SWOT.



CASE STUDY – Consulting staff in times of change

In 2020 many employees' work arrangements changed because of the impacts of coronavirus. The Fair Work Act and awards were temporarily changed to give employers and employees extra flexibility with respect to hours, work location and stand downs. Some of these temporary provisions contained specific consultation requirements that had to be followed.

Best practice employers communicated with employees about the business impacts of coronavirus and consulted with employees about how they might change their operations and respond to new opportunities. These consultations helped many businesses gain the buy-in needed to quickly adapt to new or different ways of working.

Plan your consultation

Consultation is most effective when it's carefully considered and planned. Best practice employers create a consultation strategy whenever they need to consult with staff about significant workplace change.

There are many ways to consult with employees, but key elements include:

- The employees know what's being considered. They understand the change and its potential impact on the workforce
- There is a clear process for consultation and employees know who will make the final decision and how
- Management and employees then work together to identify any workforce issues or problems arising out of the change and agree on ways to solve those problems.

Your consultation plan should set out how consultation will occur and who will be involved.

You might be able to use some existing communication channels for this (such as team meetings, newsletters or webinars). Existing processes for sharing information may be insufficient to properly consult on important issues. In these cases, consider specific consultation arrangements such as focus groups or consultation workshops with staff.



CASE STUDY – Talking circles

A security organisation experienced a critical incident at the workplace. As a result, changes in the workplace were required. The managers invited employees to take part in 'talking circles' where they could talk about the impact of the proposed changes on their jobs, make suggestions and evaluate options. An outside facilitator helped with the process.

Afterwards, decisions were reached, and changes were made. The employees reported feeling better because they had the chance to offer their views and suggestions about the changes. The organisation felt pleased they'd thought of an original approach that worked for this situation that was co-designed with employees.



PRACTICAL TIP: A structured workshop consultation process can help achieve effective consultation. To run an effective consultation workshop:

- Set aside enough time to get the most out of the discussion
- Hold the workshop somewhere where your employees won't be distracted by work
- Make sure the senior people in your business attend
- Begin by outlining the proposed changes and encourage questions to make sure everyone understands the facts
- Have the group brainstorm ideas and record all the points (SWOT analysis can be a useful approach)
- Prioritise - ask the group to each identify their top 3 points
- Finally, ask the group to break into smaller groups to talk about the priority issues further. Ask them to think of ways in which the weaknesses or threats can be reduced, strengths built on and opportunities maximised.

Review your position and inform employees

The purpose of consultation is to genuinely listen to your employees and consider their input.

Consider the information and ideas shared by staff. Once you've determined your position, you should consider:

- When assessed against business requirements, how have the information and ideas shared by staff affected your position?
- Have you recorded any decisions made and the reasons why?
- Have you communicated the decision and reasons for it with employees and representatives?



Best practice checklist

A best practice workplace involves more than just understanding and complying with the law. This checklist will help you work at best practice:

- ☐ **Set your business up for good communication.** You can do this by implementing an internal communication strategy, establishing good communication channels and setting clear standards for communication in your workplace. Remember:
 - key messages should be clear, consistent and given with context
 - select communication channels carefully
 - the communication should invite responses
 - seek feedback on how your employees are receiving your communications.
- ☐ **Analyse the change.** Use a SWOT analysis (or similar) to help you identify the key strengths, weakness, opportunities and threats associated with the proposed change. Use your analysis to identify issues and inform the key messages for staff.
- ☐ **Decide on a consultation strategy.** Plan how you will consult your employees. When developing your consultation strategy consider:
 - How will you help your employees understand the change and its potential impact on them?
 - How will management and employees work together to identify and solve issues?
- ☐ **Review your position about the change.** Consider the information and ideas shared by staff.
- ☐ **Inform employees.** Communicate the decision and reasons with employees and representatives.
- ☐ **Implement the required changes.**

Where to find more information

Resources

- To check the consultation clause in your award – use our Find My Award tool at fairwork.gov.au/findmyaward.
- To check the consultation clause in an enterprise agreement - visit the Fair Work Commission's Agreements page at fwc.gov.au/agreements.
- Access our free online training for employers and managers at fairwork.gov.au/learning. Available courses cover best practice approaches to difficult conversations in the workplace, managing employees, managing performance, hiring employees, diversity and discrimination, workplace flexibility and record-keeping and pay slips.
- Find all our Best practice guides at fairwork.gov.au/bestpracticeguides. These easy-to-follow and practical guides will help you transform your business from compliant to best practice, so you can get the most out of your employees.

Links

Fair Work Commission

fwc.gov.au

State & Territory work health and safety bodies

- ACT - WorkSafe ACT
worksafe.act.gov.au
- SA - SafeWork SA
safework.sa.gov.au
- NT – NT WorkSafe
worksafe.nt.gov.au
- WA – WorkSafe WA
worksafe.wa.gov.au
- TAS - WorkSafe Tasmania
worksafe.tas.gov.au
- NSW- SafeWork NSW
safework.nsw.gov.au
- QLD – WorkSafe QLD
worksafe.qld.gov.au
- VIC – WorkSafe Victoria
worksafe.vic.gov.au

CONTACT US

Fair Work online: fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS)
on **13 14 50**

Help for people who are deaf or have hearing or speech difficulties

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our
phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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