

As the coronavirus disease 2019 (COVID-19) crisis hits Australia, there is a real risk that many businesses and their employees will be directly or indirectly affected. We set out some key issues and suggested strategies employers should consider in preparing for and mitigating the effects of COVID-19 in their workplace.

What Are My Legal Obligations to Prevent Employees Contracting the Virus?

Under workplace health and safety legislation, employers have a duty to ensure the health and safety of their workers, so far as is reasonably practicable. This involves taking reasonable steps to eliminate or minimise risks to health and safety in the workplace. What this duty requires in the context of COVID-19 will vary depending on the nature of an employer's business and workplace, and will likely evolve as the health crisis continues to develop. As a minimum, employers should:

- Monitor employee health, and require sick employees to stay at home and provide an appropriate medical certificate prior to their return
- Keep abreast of travel and health advice from the Australian government, World Health Organization and other relevant authorities and appropriately implement this advice in the workplace
- Have an appropriate crisis response plan in place
- Review and update internal health and safety and travel policies
- Regularly communicate developments to employees
- Remind employees that they have an obligation to take reasonable care of their own health and safety and to avoid adversely affecting the health and safety of others in the workplace

What If the Virus Prevents My Employees Attending Work?

Unwell Employees

Unsurprisingly, if an employee (other than a casual employee) contracts the virus, they are entitled to access their paid personal (sick) leave entitlement under the Fair Work Act 2009 (Cth) (FW Act), which accrues progressively at the rate of 10 days per year. Similarly, if an employee is required to care for a family member because of an unexpected emergency (such as a school shutdown), they can access paid carer's leave. Full-time/part-time employees who have exhausted their paid personal leave entitlement, and casual employees, can access two days of unpaid carer's leave.

Quarantined Employees

There are no specific FW Act provisions addressing a situation where employees are required to be quarantined during a public health crisis. The Fair Work Ombudsman (FWO) has published guidance on how workplaces should manage the impact of the virus, which emphasises the importance of employers and employees cooperating to reach appropriate solutions. Where employees are required to be quarantined, employers could consider providing employees with access to their paid sick leave (if the employee is sick or medically unfit for work), annual leave or other leave entitlements (such as long service leave). If employers direct employees to take annual leave, they must ensure the direction is reasonable and complies with the terms of any applicable modern award, enterprise agreement or employment contract.

Employers may also consider implementing flexible arrangements, such as granting alternative forms of paid or unpaid leave or remote working arrangements. Employers should implement a consistent approach if offering additional leave in excess of statutory entitlements. Implementing working from home arrangements may impose hurdles to monitoring employee productivity and safety. Employers should review existing "working from home policies" to ensure they require the use of appropriate at-home workstations and to ensure employee accountability.

Precautionary Time Off Work

Where employees elect to stay at home as a precautionary measure to protect themselves and their family from contracting COVID-19, the FWO suggests that they must request to work from home (if possible) or take out some form of leave entitlement. Where an employee refuses to attend work, we recommend employers follow their procedures for dealing with workplace complaints, and assess whether the employee's concerns are reasonable.

What If My Business Is Forced to Close?

Subject to the terms of an applicable employment contract, modern award or enterprise agreement, an employer may be able to order employees to temporarily stay at home from work without pay, under the FW Act's stand-down provisions. These provisions may be enlivened if the virus directly or indirectly causes a "stoppage of work" that the employer cannot reasonably be held responsible for. Employers can only enforce a stand-down where employees cannot be usefully employed and the employer is not able to "obtain some benefit or value for work" from the employee. Accordingly, prior to implementing a stand-down, employers must determine whether there is any alternative work employees could usefully perform within the business, as well as consider the terms of their employment contracts and any applicable awards or enterprise agreements.

What Can I Do to Prepare My Workplace?

It is increasingly imperative that employers have a workable contingency plan, policies and procedures in place to mitigate the direct and indirect impacts of the virus and ensure the sustainability of their business. As the situation is evolving, existing policies are likely to be tested and may not be fit for purpose as drafted. We recommend employers actively review relevant policies to ensure they are appropriate and flexible to meet changing circumstances. Employers should also update employees about any policy changes.

If you wish to discuss any specific concerns about the impact of COVID-19 on the management of your employees, please contact our Labour & Employment team.

For further information and updates on COVID-19, please visit our [website](#).

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