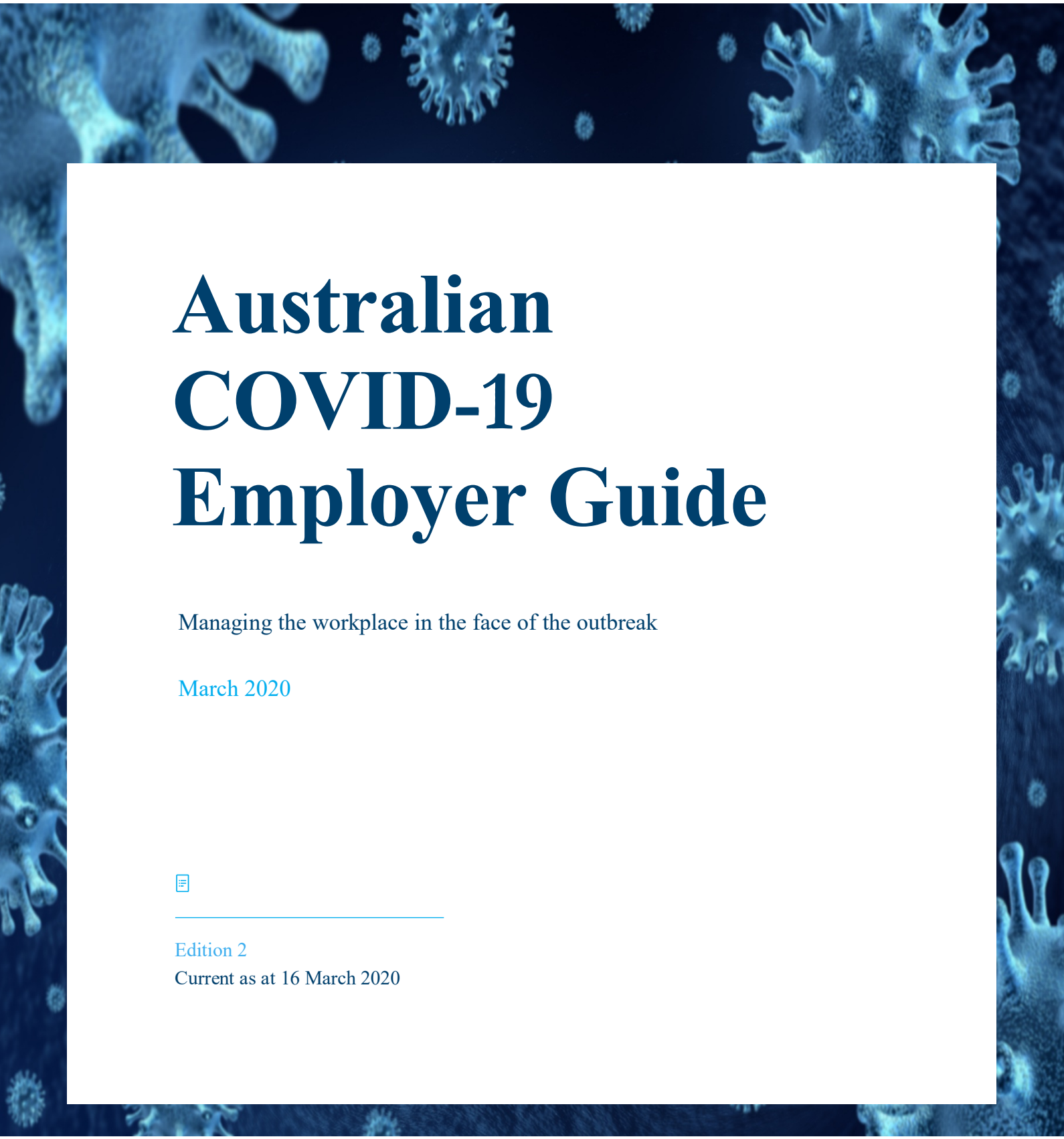

Australian COVID-19 Employer Guide

Managing the workplace in the face of the outbreak

March 2020

Edition 2
Current as at 16 March 2020

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Introduction

COVID-19 Employer Guide

The spread of the novel coronavirus (COVID-19) has been the dominating news topic of 2020 so far. The Australian Government on the advice of health officials have implemented a range of changes to ordinary life in order to try to slow the outbreak of COVID-19 and stay ahead of the curve. It is therefore important for employers to prepare and adequately to respond as COVID-19 continues to develop both in Australia and globally.

What then should employers do to manage through the COVID-19 outbreak? The focus of this information booklet is on managing and protecting your employees and your workplace and answering some of the workplace relations and work health and safety (WHS) questions that are coming up for employers.

To assist we have set out this information booklet in a way to address the key safety and employment issues, outlining the base position and then additional questions that may arise. Employers should, however, at all times be conscious of their particular legal obligations that will apply under the Fair Work Act 2009, respective State and Territory WHS legislation and workers compensation legislation, enterprise agreements, awards, contracts and policies and should seek further advice where necessary.

The content of this publication is for general informational purposes only, it may not be applicable to your organisation and does not constitute legal advice. You should seek advice before acting or relying on any of the content.

1. Understanding the risk to your workplace

Be alert, not alarmed!

Monitor the Department of Health website daily for up to date information about travel restrictions and situations in which isolation is recommended. This website also contains specific resources for workplaces and information for employers. For example employers should be aware of those who the Department of Health has identified as most at risk of serious infection: the elderly, those with chronic medical conditions, young children and babies, aboriginal and Torres Strait Islander people and people with compromised immune systems.

1.1 Providing information to employees

Employees are likely to be anxious about the COVID-19 pandemic, and could have questions about what will happen to their working arrangements and employment.

Australia's model Work Health and Safety (WHS) laws require a person conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of their workers and others at the workplace. This includes providing and maintaining a work environment that is without risk to health and safety.

Employers also have a duty under WHS legislation to provide information to workers about health and safety in the workplace. You should provide regular updates to workers about the status of COVID-19 that are consistent with information provided by the Department of Health and WHO.

Safety regulators in Australia have all published guidance material for employer responses to influenza pandemics generally and we recommend that you familiarise yourself with the guidance material in your jurisdiction (see Section 7 Resources and Contacts for relevant state and territory details).

We recommend that you provide regular updates on COVID-19 to employees so that they feel informed and well supported and in return, stay motivated to assist and adapt through this time.

We recommend any updates address:

- the current status of the virus in Australia (to share any new information and dispel any myths);
- potential impacts on the workplace and changes to policies; and
- advice on good hygiene practices for work.

You might also be asked about whether employees will be stood down and/or paid in the event of a further spread throughout the community.

1.2 Workplace Hygiene

Employers have a duty to provide and maintain, so far as is reasonably practicable, a working environment that is safe and without risks to the health of employees. This includes identifying risks to health or safety associated with potential exposure to COVID-19 – and taking measures to control these risks.

The current ban on non-essential, organised public gatherings of more than 500 people does not currently apply to workplaces. However, the principle of social distancing should still apply in the workplace.

Social distancing in the workplace includes:

- Stop handshaking
- Hold meetings via video conferencing or phone call
- Defer large face-to-face meetings
- Hold essential meetings outside in the open air (if possible and video/phone not suitable)
- Promote good hand and sneeze/cough hygiene and provide hand sanitisers for all staff and workers
- Take lunch at your desk or outside rather than in the lunch room
- Clean and disinfect high touch surfaces regularly
- Consider opening windows and adjusting air conditioning for more ventilation
- Limit food handling and sharing of food in the workplace
- Reconsider non-essential business travel
- Consider if large gatherings can be rescheduled, staggered or cancelled

Employers are taking various measures to control the health risks to their workforces, including:

- providing adequate facilities to enable good hygiene practices (e.g. soap, hand sanitiser, signage and reminders);
- limiting or banning non-essential work travel;
- developing infection control policies and procedures; and
- directing employees to comply with quarantine measures, particularly following travel to high risk locations.

The Department of Health has published an information sheet for employers. As the situation and corresponding medical advice is constantly changing, it is critical that employers keep up to speed with the latest information.

Employers should provide information and brief all employees and any contract staff in the workplace (such as cleaning staff), on relevant information and procedures to prevent the spread of COVID-19 (see section 1.3).

1.3. Managing and controlling the risk of COVID-19 in the workplace

Identifying and controlling risks to workers, and other persons connected to the workplace, arising from exposure to COVID-19 may involve:

- Closely monitoring official advice, such as updates from the Department of Health and the WHO.
- Reviewing your policies and measures for infection control, including educating workers on best practice.
- Ensuring workers are aware of the isolation/quarantine periods in accordance with advice from the Department of Health.
- Providing clear advice to workers about actions they should take if they become unwell or think they may have the symptoms of COVID-19.
- Monitoring the latest travel advice on the smartraveller.gov.au website for anyone planning to travel for work.
- Considering whether work activities put other people at risk.
- Contingency planning to manage staff absences and plans to manage increased workloads.
- Providing workers with information and links to relevant services should they require support.

Workers also have a duty to take reasonable care for their own and others' health and safety. This includes ensuring good hygiene practices, such as frequent hand washing, to protect against infections.

Coronavirus Health Information Line
Operates 24 hour a day, seven days a week
1800 020 080

1.4 Workers compensation

Employers need to be aware that the impact of COVID-19 being covered by workers compensation is a legal question that will differ by jurisdiction and circumstance.

Any workers' compensation claim will require the person considering entitlement (whether it be an insurer or self-insurer, a Regulator or court / tribunal) to conduct a highly fact-sensitive enquiry.

Nevertheless employers should be very careful to guard against the risks of employees contracting COVID-19 at the workplace and should ensure that any mitigating steps they take in response to COVID-19 are measured.

Where employers are concerned about this issue we strongly recommend they seek specific legal advice based on their circumstances.

2. Employer Obligations

2.1 Managing employees and leave entitlements

2.1.1 What do I do if an employee is feeling unwell and suffering flu like symptoms?

According to the WHO website the most common symptoms of COVID-19 are fever, tiredness, and dry cough. Some patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea. These symptoms are usually mild and begin gradually.

If an employee presents with these symptoms they should be directed to follow advice from the Australian Government and seek urgent medical attention if they suspect they have contracted the COVID-19 virus.

The health and safety of staff and those they come into contact with must be an employer's top priority. This should dictate the approach any employer takes to responding to employees that may have come into contact with the COVID-19 virus.

An employee can (of course) avail themselves of their accrued sick leave if they take time off work due to being ill with the COVID-19 virus.

Under the Fair Work Act, national system employees (other than those engaged on a casual basis), are entitled to 10 days each year paid sick leave (personal) for each year of service. This entitlement accrues on a progressive basis during each year of service and many employees will have an accrual in excess of 10 days.

There is no limit on the number of days of accrued leave that can be taken as personal leave.

2.1.2 What do I do if an employee has recently returned from overseas (from 11:59pm Sunday 15 March 2020)?

The Australian Government has imposed a universal precautionary self-isolation requirement on all international arrivals in Australia (effective as at 11:59pm Sunday 15 March 2020).

This means that all employees - whether they be citizens, residents or visitors - will be required to self-isolate for 14 days upon arrival in Australia because of their possible or actual exposure to the COVID-19 virus.

Self-isolation means staying in your home, hotel room or provided accommodation and not leaving for the period of time that you are required to isolate for (currently 14 days). Only people who usually live in the household should be in the home. No visitors should be allowed.

The Department of Health has issued isolation guidance which can be accessed here.

Technically an employee is not entitled to take sick/carer's (personal) leave under the Fair Work Act unless they are absent from work due to either a personal injury or illness, a need to care for a member of their immediate family or household who is sick or injured or due to a family emergency.

This means that an employee returning from travel who is required by government to self-isolate, but is not yet sick themselves cannot avail themselves of sick (personal) leave. This is because, to qualify for personal leave, an employee must be "not fit for work" because of an illness or injury affecting them. It is unlikely that this pre-requisite will be met by persons who are not yet diagnosed as ill but merely require isolation.

On a practical level, however, it may make sense for employers to look to utilise practical solutions during the employee's absence due to government imposed

quarantine so that employees do not suffer from a loss of pay during the isolation period where possible, such as:

- allowing the employee to work from home (where feasible), during the quarantine period;
- allowing employees to avail themselves of other leave available to an employee (such as annual leave, long service leave or any other leave available under an award, enterprise agreement or contract of employment); or
- any other paid or unpaid leave by agreement between the employee and the employer (e.g. personal leave or discretionary paid leave).

Note: Employers should be aware they may attract the risk of breaching the National Employment Standards in the Fair Work Act if they allow an employee to use personal leave where the employee is not in fact ill, even where the employee agrees to this approach.

Always be sure to also check any applicable modern awards, enterprise agreements, employment contract terms and company policies – as they may contain additional rules or entitlements which may apply to your workplace and employees.

2.1.3 What do I do if an employee has been in contact with someone who has or may have COVID-19 or has returned from overseas prior to 11:59pm Sunday 15 March 2020?

If an employee has recently return from overseas (prior to 11:59pm Sunday 15 March 2020) or has been "in contact with" someone who has or may have COVID-19 they may also be required to self-quarantine because of their possible or actual exposure to the virus.

"In contact with" is defined as requiring:

- Greater than 15 minutes face-to-face contact in any setting with a person who has tested positive for COVID-19 in the period extending from 24 hours before onset of symptoms in the confirmed case; or
- Sharing a closed space for 2 hours or more with a person who has tested positive for COVID-19, in the period extending from 24 hours before onset of symptoms in the confirmed case.

~~Similar to the position at 2.1.2, employees in these~~ circumstances who need to quarantine but are not yet sick themselves cannot avail themselves of sick (personal) leave. This is because, to qualify for personal leave, an employee must be "not fit for work" because of an illness or injury affecting them. It is unlikely that this pre-requisite will be met by persons who are not yet diagnosed as ill but merely require isolation.

Again however we suggest discussing the matter with your employees and trying to utilize the practical solutions set out at 2.1.2 so that employees do not suffer from a loss of pay during the isolation period where possible.

2.1.4 What happens if an employee's immediate family member contracts the COVID-19 virus or their children's school is closed?

An employee may use paid personal leave to take time off to care for an immediate family member or household member who is sick or injured or to help during a family emergency.

Previous case law around the meaning of a "family emergency" suggests that it is likely to include providing care to a child whose school has been forced to close with little or no notice as a result of COVID-19. Therefore an employee in this circumstance will likely also be able to access their personal leave for this purpose even if their child is not ill or injured.

The amount of accrued paid carer's leave that can be taken is not capped, subject to the employee's accrued balance of personal leave at the time.

If an employee exhausts their accrued paid personal leave they may also access up to two days' unpaid carer's leave (or a longer period with the agreement of their employer) in order to care for a family member with a personal illness or injury or to help during a family emergency.

2.1.5 What if an employee may have contracted COVID-19 but they still wish to attend work?

If an employee maintains that they are able to work (but are not sick and not able to work from home) then employers face a difficult scenario: the employee says they are fit to work, but the employer has concerns that the employee is not fit to work (perhaps because they may have been exposed to COVID-19 through travel or close contact with someone who has tested positive) without posing unacceptable safety risks to the workforce. Remembering that employers have a duty to provide and maintain, so far as is reasonably practicable, a working environment that is safe and without risks to the health of employees. As well as

workers having a duty to take reasonable care for their own and others' health and safety.

The best means of resolving this impasse is to first discuss the issue with the employee and then if necessary direct the relevant employee to undergo testing if testing is available.

Employees can be directed to obtain medical clearance, which may include being tested for coronavirus, provided this is reasonable and based on factual information about health and safety risks.

Once the test is undertaken, if the employee is cleared, they are able to return to work (best practice would dictates the employer pays the employee for the relevant period). If the employee tests positive, then they can be permitted to take personal leave for the duration of their absence.

2.1.6 What about casual employees?

Casual employees are entitled to not attend work when they are unwell or injured. However, they are not entitled to any additional payment of sick leave for any shifts they do not work as they have already been paid an additional loading in lieu of other entitlements including sick leave. This means that a casual employee who is diagnosed with COVID-19 may be required to refrain from presenting to work without a legal entitlement to additional payments.

Furthermore, where shifts to casual employees are reduced either on account of business downturn or because the employee has been required to isolate (due to contact or recent travel), the employees will not be entitled to payment during this period.

Casual employees are entitled to 2 days unpaid carer's leave to take time off to care for an immediate family member or household member who is sick or injured or to help during a family emergency.

2.2 Employee directions

2.2.1 Can you send an employee home if you observe COVID-19 virus symptoms?

Employers have a legal responsibility to ensure the health and safety of those in the workplace, including visitors. Where an employer holds a reasonable belief that an employee is posing a health risk – such as showing symptoms of the COVID-19 virus – it would not be unreasonable to send the employee home on sick (personal) leave on the basis that they are unfit to work safely and without risk to the health of others in the workplace.

Employers should ask the employee to seek medical advice / testing and a clearance before returning to work. If the employee maintains they are able to work, consider whether it is practical for the employee to work from home for part or all of the period prior to obtaining the test results.

Once the test is undertaken, an employee may return to work if they are cleared. If the employee tests positive, see section 2.1.1 regarding any pay and leave obligations and entitlements that may apply.

During the COVID-19 outbreak, it may also be prudent to remind employees of their obligation to take reasonable care not to adversely affect the health and safety of other persons, and ask that they notify their employer immediately if they are suffering flu-like symptoms.

2.2.2 What if you wish to direct an employee to not attend work but the employee is not showing signs of COVID-19 and is not required to isolate themselves under Australian government direction (and not subject to a stand down)?

If an employer directs an employee not to attend work, despite them being fit and able to do so (and not subject to any government isolation requirements) then we suggest best practice is for that employee to continue to get paid.

In this situation, it is also important to check and consider whether you can simply issue this direction (e.g. pursuant to the employee's contract or as a reasonable and lawful direction based on factual information about health and safety risks) – or whether you need employee agreement. Again, also check any applicable industrial instruments (such as enterprise agreements, awards), contract terms and company policies – and seek specific advice.

2.2.3 Work related travel

Employers should make sure that travel policies clearly address where an employee can travel to, the reasons for travel and permission required.

Employers need to be constantly assessing the risks of requiring employees to travel, particularly overseas, even for critical meetings.

Employees should be informed that travel policies are constantly under review and may be subject to regular change.

Employers should also carefully check any insurance cover for work-related travel.

2.2.4 Can you give directions about non-work related employee travel?

Employers must be mindful not to give directions to employees that might extend to or impact the personal or

private activities of the employee and which would not otherwise affect their work. Only in exceptional circumstances would it be regarded as reasonable for an employer to direct an employee how to conduct themselves outside the workplace and have the right to extend its supervision over the private lives of employees. In considering this issue, a court will look at whether there is a significant connection between the outside activity and the employee's employment.

It is possible that the current COVID-19 circumstances may give rise to such a sufficient connection, given subsequent quarantine at the government's direction that the employee will be subject to, meaning an employer may be in a position to potentially direct staff to abide by the travel advisories of the Australian government (smartraveller.gov.au).

At a minimum employers should inform employees that when making travel plans they should understand the risks they are taking by reference to the government travel advisories and alert them to the fact that they will be subject to government quarantine measures when they return.

2.3 Visitors to workplaces

Taking extra precautions in allowing visitors to enter the workplace is important for employers in limiting exposure to COVID-19 in the workplace.

Employers have the right to ask visitors to provide information in advance as to whether they have flu-like symptoms, have been in contact with anyone infected with COVID-19, or travelled to a high-risk area.

If a visitor answers affirmatively to any of these questions, employers should strongly consider their work health and safety obligations and should request the visitor not come to the workplace until they have been asymptomatic for 14 days or can provide a clearance letter from a physician.

Employers may also ask any visitor to provide their contact information in the event that COVID-19 develops in the workplace and the visitor may have been exposed to the COVID-19 virus.

3. Working from home

Reducing face-to-face contact is an excellent measure to mitigate the impact of COVID-19. Depending on your location and the spread of COVID-19, your business may need to ask employees to work from home, or your employees may ask to work from home. With this however, comes a number of practical implications to consider.

Firstly not every position and every activity can be conducted from an employee's home, but in an increasingly service based economy / IT based jobs perhaps can more than ever before, and this will be an immediate consideration for many workplaces if the spread of COVID-19 virus worsens.

It is also important to remember that regardless of where your employees work, you are still responsible for their physical health and safety while at work, as well as their mental wellbeing.

3.1 Ensuring the health and safety of your staff working from home

Prior to going ahead with a work-from-home arrangement, employers should have a discussion with their staff to make sure their work area at home meets WHS standards, which would involve a safety assessment of the work area prior to the employee working from home.

Some key things to consider during an assessment include the following:

- Any manual tasks the employee will have to carry out.
- Tripping or falling hazards and associated musculoskeletal risks.
- Electrical safety.
- The general environment — things like noise, security, fire exit access, first aid, etc.

After doing such an assessment, you should come to an agreement with the employee about any controls and preventative measures that need to be put in place.

It is also important to consider whether employees are set up effectively to work from home. It may be for instance that at present only some staff have the technological capacity to work remotely. Considering what is needed to expand this capacity will involve consideration of available technology, cyber-security, cost factors and work, health and safety implications.

3.2 Expectation around working remotely

Employers should make sure that employees are aware of any on-going obligations around issues and policies such as confidentiality and safe work practices whilst working at home.

3.3 Insurance

It is important to remember that while employees are not working at their standard workplace, it is still an employer's responsibility to provide a safe work environment. Therefore, if an employee sustains an injury in the course of their work while at home, it is an employer's responsibility to ensure they are covered by workers compensation insurance. Bear in mind that psychological injury is also claimable under workers compensation.

4. Changing or scaling down operations

The following section addresses the worst-case scenarios and suggests some contingency strategies that business may be considering to limit the impact of COVID-19.

4.1 Varying hours or rosters

As a result of the spread of COVID-19 some employers may be considering varying operations, for example to reduce the risk of exposure for employees by altering start and finishing times or to address changes in demand patterns of consumers.

An employer's ability to vary hours and/or rosters will largely depend upon the applicable industrial instrument (e.g. enterprise agreement or award) or contract that applies to their employees.

For example some employers whose workforces are covered by an award or enterprise agreement may be restricted from altering work arrangements without first consulting with employees (and potentially also union/s).

We therefore strongly recommend if you are considering making certain variations to your operations that you get advice on your specific options and obligations prior to making any changes.

4.2 Reducing operations

As a result of the potential further spread of COVID-19 some employers may be forced to consider scaling down operations. For example by:

- placing a freeze on new hires;
- reducing any supplementary labour such as contractors or labour hire workers;
- reducing employee hours; or
- providing annual or long service leave in advance or at half pay.

An employer's ability to make such changes will largely depend upon the applicable industrial instrument (e.g. enterprise agreement or award) or contract that applies to their employees.

We therefore strongly recommend if you are considering scaling down your operations that you seek advice on your specific options and obligations prior to making any changes.

4.3 Redundancies

Some employers may eventually decide that things have gotten so financially stringent that they are compelled to reduce the size of their workforce and as a result need to make some staff redundant.

Before making any employees redundant it is important to first consider:

- whether there are any options for redeployment within the business or associated entities; and
- your consultation obligations under any enterprise agreements or modern awards.

Most employees (who have at least one year of service with the employer) will be entitled to receive a minimum redundancy payment in accordance with the Fair Work Act (a general exception applies to employers with fewer than 15 employees in most (but not all) industries).

The amount of redundancy pay employees are entitled to will be based upon their continuous service, as well as any terms in any applicable enterprise agreement or award.

It is possible for employers to ask the Fair Work Commission to reduce an amount that would otherwise be payable on redundancy if:

- the employer finds other acceptable employment for the employee; or
- the employer cannot afford the full redundancy amount.

If as an employer you are considering redundancy of 15 or more staff, you must also give written notice to the Department of Human Services of the proposed dismissals.

Before taking steps to make an employee redundant we strongly suggest getting advice on your specific circumstances as any redundancies are likely to be highly scrutinised, can be disputed and should be considered as a last resort.

5. Business shut down

The course of the COVID-19 outbreak remains very uncertain. However, it is highly foreseeable that the negative effects of a further spread of the virus both in Australia and globally will test the resilience of businesses generally.

Under the Biosecurity Act 2015 the government has a range of powers that could affect employers. The Attorney General has already suggested that these powers may be used widely if the situation in Australia deteriorates further. Relevantly for employers, under the Act, the Health Minister may direct a "person who is in a position to close premises, or prevent access to premises, to do so". Meaning that the government could direct employers to close their workplaces or may restrict movement of people more generally which may force the closure of workplaces. Breaching such a direction is an offence punishable by imprisonment for five years. As a result some businesses may be forced to close due to a government directive if COVID-19 takes a worsening course.

Business may also be forced to close due to a lack of stock or customers (if the community decide not to go to restaurants or shops, or are discouraged from unnecessary public gatherings or contact). This may include situations in which businesses are unable to trade due to essential supplies or stock becoming unavailable (for example medical and allied businesses that may require masks to safely work), due to particular risks or because stock and supplies have run out.

While the following section outlines the steps that may be taken under the Fair Work Act to implement a stand down, such a step is not without risk, so we strongly recommend prior to any decision by an employer to stand down (which is not as a result of a government direction) first consulting with staff to see if alternative arrangements can be made (e.g. a reduction in hours or days of work).

5.1 Stand down

Under the Fair Work Act employers have the right to temporarily stand down employees without pay during a period in which the employees cannot be "usefully employed" because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible.[1] (The other circumstances are industrial action and breakdown of machinery or equipment).

"Usefully employed" means that the employment will result in a net benefit to the employer's business by reason of the performance of the particular work done by the employee.

While the regulator, the Fair Work Ombudsman, states on its website that employers cannot stand down an employee "just because the business is quiet or there isn't enough work", (in our view) the COVID-19 outbreak could result in a situation that meets the requirements for stand down under the Act, for example where an entire department, office or operation is required to close due to quarantining of the workforce or the business' customers or where directed to close by the government.

Employers may also be able to consider standing down employees where a business has been so severely impacted by import/export restrictions resulting from COVID-19, that there is no work at all available to employees.

There will be no right to stand down if there is useful work available for the employee to do which is within the terms of the employee's contract of employment. It need not be work the employee normally carries out.

It is an essential part of stand down that the decision is a unilateral one of an employer to withhold work and payment even when employees are prepared to perform all duties.

Employees can be stood down for the period of time while the business is dealing with the issue AND employees cannot be usefully employed.

Situations where stand down does NOT apply:

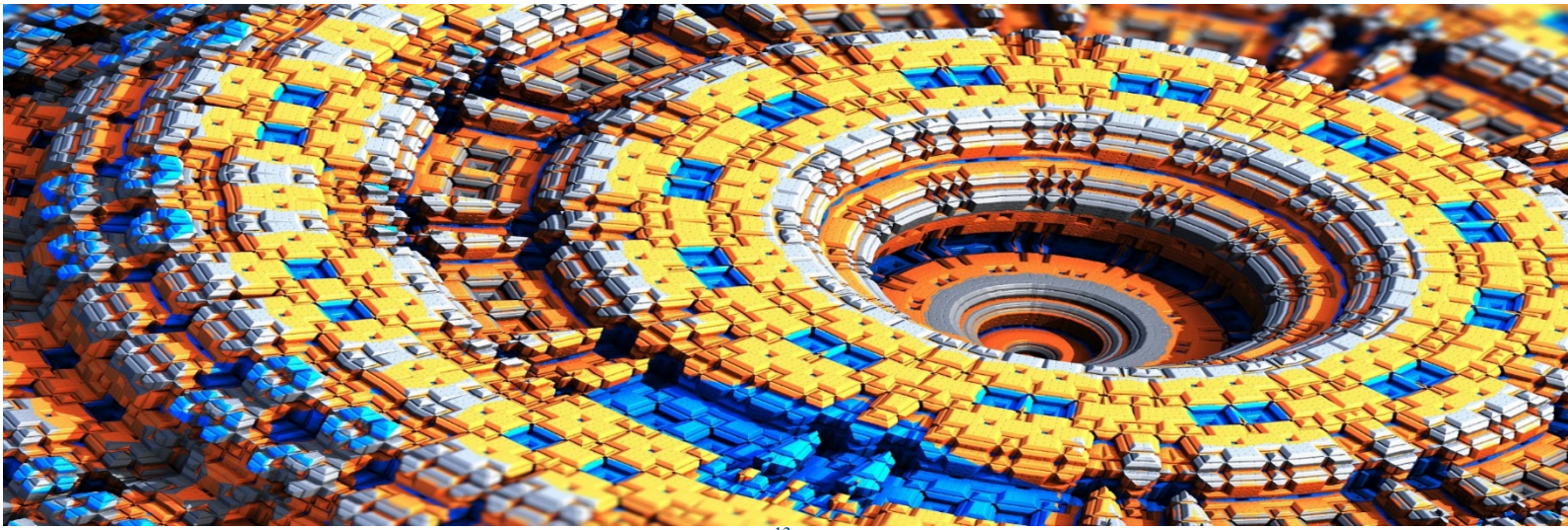
- Where an employer refuses to pay an employee in response to the employee's refusal to work (e.g. for safety reasons) in accordance with the contract of employment.
- If an enterprise agreement or contract of employment (rare) makes provision for stand down. In these circumstances the provisions in the agreement or contract will apply as opposed to the Fair Work Act. They may have different or extra rules about when an employer can stand down an employee without pay.
- An employee is taking authorised leave (paid or unpaid) or is otherwise authorised to be absent from their employment.
- If there is work available for some employees you cannot stand down all employees. Only those employees who cannot be usefully employed may be stood down.

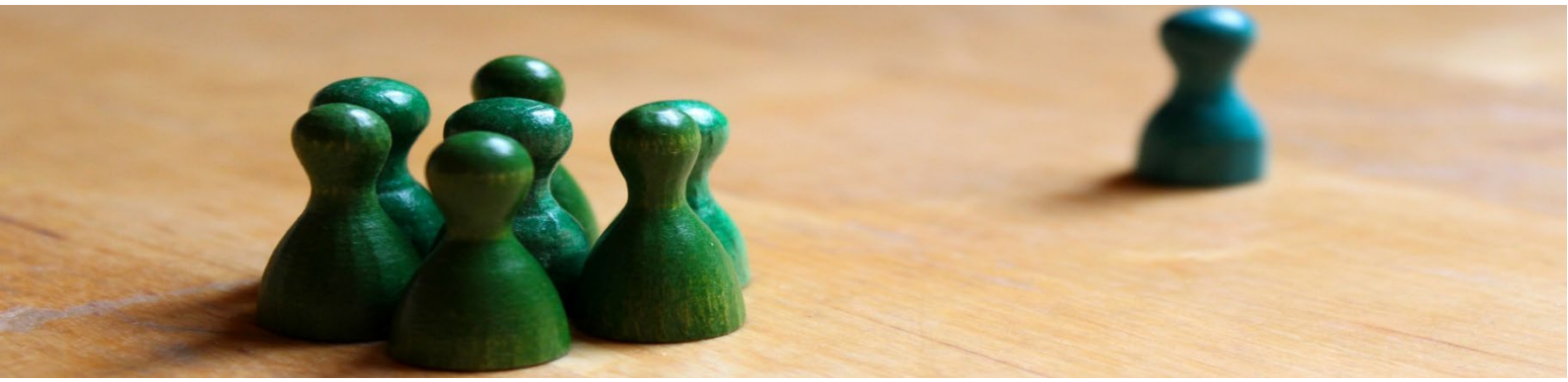
In the event of a valid stand down under the Fair Work Act, an employer does not need to pay wages to stood down employees, but an employee accrues leave in the usual way (as though they have worked). Continuity is also not broken.

Even though stand down periods are unpaid, an employer may wish to consider some of the following options prior to ceasing employee pay outright:

- Options for redeployment to other parts of the business where available.
- Allowing employees to take paid leave (such as annual leave or long service leave) if requested.
- Allowing employees alternative leave arrangements such as extended annual leave at half pay or early long service leave (if permitted under any applicable award, enterprise agreement or contract).
- Special provisions for employees with insufficient accrued leave to cover the period of shut down (for example, allowing staff to purchase leave which is then dedicated on a pro rata basis from their annual wage).

Stand downs are likely to be closely scrutinised and can be challenged by an employee or union in the Fair Work Commission if not implemented strictly in accordance with legal obligations, so we strongly recommend seeking advice prior to implementing a stand down.





6. Discrimination and privacy

6.1 Discrimination, bullying

Employers should be careful to balance their health and safety obligations to ensure the health and safety of all employees against a risk of practices which unlawfully discriminate against employees or harass them (for example on the grounds of race or disability).

It is likely in our view that contracting COVID-19 would be characterized as a 'disability' for the purposes of anti-discrimination laws.

Whilst arrangements based on risk assessments which are critical to discharging an employer's work health and safety obligation to ensure a safe workplace are likely to be defensible, employers should be alert and aware that conduct may be unlawful even if it arises from a genuinely held concern about COVID-19 (e.g. changes to the provision of services for certain types of customers).

Employers will be vicariously liable for the conduct of their employees who discriminate against or harass other employees, unless the employer can show it has taken reasonable steps to avoid the conduct.

Reasonable steps include:

- having a policy which deals with discrimination and unlawful harassment;
- having a procedure to handle complaints of unlawful discrimination and harassment;
- conducting training on those policies and procedures;
- directing employees not to engage in any kind of discrimination or harassment; and
- acting promptly in relation to any complaints of unlawful discrimination in accordance with the appropriate policies and procedures and then taking actions to avoid such conduct occurring again.

Employers can minimise the risk of unlawful discrimination claims by ensuring that any decisions made as to a workers' attendance or requesting medical clearance are consistent with publications of the Department of Health and communicating this with employees.

6.2 Privacy considerations

Employers may have to collect, use, and disclose personal information in order to prevent or manage the risk and/or reality of COVID-19's rapid spread.

In the event that an individual attends the workplace (a) within 14 days of travelling to an area of high-risk for COVID-19 transmission; (b) within 14 days of developing symptoms for COVID-19; or (c) after testing positive for COVID-19, employers are faced with the difficult task of balancing that individual's right to privacy with the employer's obligation to maintain a safe workplace.

Generally speaking, employers should not disclose the reasons for an employee's leave or remote working arrangements, except to those employees who require that information to carry out their employment duties.

Where possible, employers should notify employees who have been subject to a credible transmission risk of COVID-19 in the workplace. What constitutes a credible transmission risk will vary, and should be determined in consultation with qualified medical personnel.

In carrying out such notifications, employers should make reasonable efforts not to disclose information that might (alone or together with publicly available information) identify the individual who may have caused the COVID-19 transmission risk. The objective, rather, is to provide potentially exposed employees with sufficient information to obtain medical advice and, if necessary, treatment.

7. Resources and contacts

7.1 Key resources

The following are links to government and public health organization websites that have reliable up-to-date information about the status of the COVID-19 in Australia and globally:

Commonwealth Department of Health – Coronavirus (COVID-19) health alert

World Health Organisation – Coronavirus disease (COVID-19) outbreak

Fair Work Ombudsman - Coronavirus and Australian workplace laws

Safe Work Australia – Coronavirus (CONVID-19) Advice for PCBUs

Worksafe Victoria – Exp0sure to coronavirus in workplaces

SafeWork NSW – Coronavirus

WorkCover QLD – Coronavirus (COVID-19) workplace risk management

NT Worksafe – Getting your workplace ready for COVID-19

WorkSafe Tasmania – Novel coronavirus (COVID-19)

SafeWork SA – Coronavirus (COVID-19) workplace information

Coronavirus Health Information Line
Operates 24 hour a day, seven days a week
1800 020 080

7.2 Key contacts

If you need any further assistance or advice related to COVID-19 RCSA is here to assist.

Corporate members can direct inquiries relating to employment relations law and landscape to RCSA's Workforce Information Line (WIL). WIL is an immediate telephone advice service which is provided as part of your RCSA Corporate Membership.

- Australian Members Call 1300 988 685
- New Zealand Members Call 0800 7272 69

Please quote your Corporate Member ID number and make sure your relevant staff know your ID number too!

For all other workforce and business operations enquiries our rapid response email support service applies at: bussolutions@rcsa.com.au. Copies of templates and business resources are available via that email support service or on our website at www.rcsa.com.au.

For general assistance and enquiries you can call our head office landline 61 3 9663 0555.