

## Workplace Guide - COVID-19

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### Introduction

The current outbreak of the Coronavirus (COVID-19) is having, and will continue to have, a significant impact on the day to day business operations and the availability of an organisation's workforce. It is creating complex work health and safety, human resource and industrial relations issues, particularly with respect to leave entitlements.

This document provides key guidance, advice and tips to help organisations effectively navigate through this dynamic and rapidly evolving public health situation.

### Business Continuity and Planning

Planning and preparing is vital to ensuring organisations can effectively navigate and manage through this period of change and uncertainty.

The two biggest scenarios that employers need to plan for is:

1. A reduction in normal operations; and/or
2. Employees being unable to attend work, either through infection/exposure, carer responsibilities, or other isolation/quarantine requirements.

Employers should start by undertaking a risk assessment and reviewing their business continuity plans to review what steps should be taken to effectively manage operations.

Employers should also undertake an assessment of work currently being undertaken by employees and plan for alternative duties/activities where operations are restricted.

Where any employee is not at work due to the Coronavirus, they should be supported and allocated alternate duties where practicable.

## Work Health and Safety

The health and safety of all staff and those they come into contact with must be an employer's top priority in all decision making processes.

In accordance with the *Occupational Safety and Health Act 1984 (WA)*, and the *Occupational Safety and Health Regulations 1996 (WA)*, all employers have a duty of care to provide and maintain a safe working environment for all. This includes taking all reasonable steps possible to ensure employees are not exposed to hazards, such as Coronavirus, while they are working.

It's important that employers identify risks to health or safety associated with potential exposure to COVID-19 – and taking measures to control these risks. Employers have a duty under the OSH Act to consult and provide all employees with information about health and safety matters in the workplace. All employers should provide timely and effective updates about the status of Coronavirus that are consistent with information provided by the Department of Health and World Health Organization.

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.

It is also critical that all employers:

- Provide employees with simple information regarding how they can maintain good hygiene. Helpful advice can be obtained from the World Health Organization at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>
- provide adequate facilities to enable good hygiene practices (e.g. soap, hand sanitiser, signage and reminders);
- limiting or prohibiting non-essential work travel;
- developing infection control policies and procedures;
- directing employees to comply with quarantine measures, as directed by relevant State and Federal Governments;
- considering whether work activities put other people at risk; and
- undertaking contingency planning to manage staff absences and plans to manage increased workloads.

It should be noted that a failure to provide a healthy and safe environment can expose employers to criminal prosecution under occupational health and safety legislation.



Notwithstanding the risks to employees' physical health and wellbeing, employers must also review and monitor all employees' mental health. This is just as important and employers need to take reasonable steps to promote and monitor the mental health of all employees. This includes promoting the use of the organisation's Employee Assistance Program and undertaking regular check-ins with staff, particularly those who are working remotely or are in isolation.

## Visitors

Employers should give due consideration to implementing extra precautions in allowing visitors and external stakeholders to enter the workplace. Employers should strongly consider their work health and safety obligations and limit visitors to only essential visits.

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.

Employers should communicate any requirements to their key stakeholders in advance and request any visitor not come to the premises.

## Self-Quarantine

Self-quarantine 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.

Where an employee is required to quarantine in accordance with Government regulations, employers are not required to pay them. Employee can instead use their annual leave. However, it may be in the interest of employers to consider providing employees with special discretionary leave during this period.

Employers should consider a number of ways to effectively manage mandated quarantine periods to support employees and help alleviate any financial loss during this period. This includes:

- allowing the employee to work from home (where practicable);
- allowing employees to use accrued leave available (such as annual leave, long service leave or TOIL); or
- providing special paid leave.



## Communication

Employers also have a duty under OHS legislation to provide information to employees about health and safety issues in the workplace.

The current COVID-19 outbreak will naturally cause a significant amount of anxiety and uncertainty within the workplace. A key way to address uncertainty is by providing clear, effective and regular communication to employees and providing avenues for staff to raise questions.

This includes:

- Providing clear advice to employees about the steps they should take if they become unwell or think they may have the symptoms of coronavirus;
- Providing employees with a point of contact to discuss their concerns and to find key information in a central place; and
- Informing employees about their entitlements if they become unfit for work or have caring responsibilities.

## Leave Arrangements

Managing employee leave arrangements during the COVID-19 pandemic can be difficult and there are a number of scenarios that create circumstances for the taking of different leave provisions.

Despite the unique circumstances of COVID-19 outbreak, employers must ensure they check and comply with any applicable modern awards, enterprise agreements, employment contract terms and organisational policies when considering different leave provisions.

It is recommended that employers consider providing employees with special discretionary leave to support employees and create an environment whereby employees are financially secure and do not attend work when they are unwell or should be self-isolating.

**Personal Leave (Sick Leave):** Under the National Employment Standards, employees can only access their paid personal leave if they are unfit for work, or are caring for someone who is unfit. This includes an employee who has contracted the Coronavirus or needs to care for a member of their immediate family or household who has contracted Coronavirus.

Technically, personal/carers leave is not available where an employee needs to self-isolate because they have come into contact with a person who has Coronavirus or where an employee returns from overseas/interstate, but is not yet sick themselves.

Strictly speaking you cannot pay personal leave to an employee, in these circumstances, who is not ill or injured as this is the criteria for personal paid (sick) leave under the National Employment Standards.

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.

Therefore special discretionary leave is a great alternative to support employees when they are required to self-isolate.

### **Special COVID-19 Leave**

Employers should consider following the State Government's lead in providing employees with special COVID-19 leave of up to 20 days' leave for employees who:

- have contracted the virus themselves;
- who have to self-isolate due to illness\*;
- need to care for a dependent who has the virus or because of school closure or disruption to other care arrangements;
- cannot attend work because of self-isolation requirements (and cannot work from home); or
- because of transport or other disruptions.

***\* Please note the WA Governments' special leave does not cover periods where employees need to self-isolate. Although we highly recommend employers include this in their policy.***

**Annual Leave:** Please remember that annual leave must be taken at a time that it is mutually agreeable. The criteria to direct an employee to use their annual leave or long service leave is very strict. In almost all circumstances, you cannot direct an employee to use their annual leave.

Employers should try to be as flexible and accommodating as possible during these unprecedented times and look at ways to support all employees. This includes supporting employees to mitigate any risk of individuals experiencing financial hardship.

<b>SCENARIO</b>	<b>LEAVE OPTIONS</b>
<b>An employee is infected with Coronavirus (COVID-19)</b>	<p>In the first instance, an employee should take personal (sick leave) leave.</p> <p>If an employee's personal leave is exhausted the employee should be granted access to 'Special COVID-19 paid leave' up to 20 days.</p>



	<p>Once this 'Special COVID-19 paid leave' is exhausted the employee can elect to take accrued time off in lieu (TOIL), annual leave, long service leave or unpaid personal leave.</p>
<p><b>An employee is fit for work but required to self-isolate in accordance with Government advice.</b> Eg. they have recently returned from overseas or have come in contact with someone who has Coronavirus.</p>	<p>You should consider whether the employee is able to work from home.</p> <p>If this is not possible, the employee should be granted 'Special COVID-19 paid leave' up to 20 days.</p> <p>Note: In these circumstances, an employee is not "sick" and so, strictly speaking, they are not eligible for personal leave under the National Employment Standards.</p>
<p><b>An employee is caring for someone who is infected with Coronavirus.</b></p>	<p>You should consider whether the person wishes to and is able to work from home (either for their normal hours or as a temporary flexible work arrangement).</p> <p>If an employee's personal leave is exhausted the employee should be granted 'Special COVID-19 paid leave' up to 20 days.</p> <p>Once this 'Special Leave' is exhausted the employee can elect to take TOIL, annual leave, long service leave or unpaid personal leave.</p> <p>The employee may also have an entitlement to compassionate leave for each occasion if a member of the employee's immediate family or household's illness poses a serious threat to his/her life.</p> <p>Employees caring for someone with Coronavirus must self-isolate themselves for 14 days before they return to work with colleagues.</p>
<p><b>An employee is caring for someone who is <u>not infected</u> with Coronavirus but requires care because of a school or day care closure or some unexpected emergency or disruption to care arrangements</b></p>	<p>The employee should work from home if this is possible.</p> <p>If this is not possible, they should take personal (carer's) leave.</p> <p>If an employee's personal leave is exhausted the employee should be granted 'Special COVID-19 paid leave' up to 20 days.</p> <p>Once this 'Special COVID-19 paid leave' is exhausted the employee can elect to take annual leave, long service leave or unpaid personal leave.</p>



<p><b>An organisation wants an employee to stay home as a precaution.</b> Eg. An employee is required to self-isolate in accordance with an organisational policy that is above the minimum quarantine requirements set by the State or Federal Government.</p>	<p>The employee should work from home if this is possible.</p> <p>Where this is not possible, and an employer directs a full-time or part-time employee to stay away from the workplace but the employee is ready, willing and able to work, the employee should be paid their ordinary hours at their base rate of pay for the duration of the period they are away from work as directed by the Employer.</p> <p>Eg. if it is organisational policy that all staff who travel interstate need to quarantine for 14 days, then the employer should continue to pay the employee's wage as per their standard working hours.</p>
<p><b>An employer suspects an employee is sick or has been exposed to COVID-19, but the employee believes they are fit for work and wants to work.</b></p>	<p>If you have a valid reason to doubt an employee is fit to work, you can insist on a clearance from their doctor.</p> <p>If employees are directed to obtain a medical clearance, employers will generally need to pay the employees for their absence from work for a reasonable period to enable them to obtain that clearance, for example 2-5 days (this timeframe will also be dependent on the availability of medical services at the time). Employers may also need to pay employees for out-of-pocket expenses in obtaining a medical clearance.</p>
<p><b>An employee refuses to attend work because of health and safety concerns</b></p>	<p>Employees may refuse to attend work because of fear of being exposed to COVID-19.</p> <p>Employers will need to quickly assess the legitimacy of health and safety risks raised by employees. The best means of resolving this impasse is to first discuss the issue with the employee and try to alleviate some of their concerns.</p> <p>The employee must be available to carry out suitable alternative work, such as working from home.</p> <p>If employees refuse to attend work, without reasonable cause will be required to take unpaid leave. However, we recommend that you seek legal advice in these circumstances.</p>



## **Flexible Work Arrangements (Working From Home)**

Flexibility during this outbreak is vital to maintain operational requirements and support employees.

Where practicable, employers should permit the employee to work from home. This ensures a level of productivity is retained and will allow the employee to continue to be paid wages during any quarantine period or where circumstances mandate that the workplace to shut down for a period of time.

However, before implementing working from home arrangements, employers should ensure individual employees have a work area that complies with relevant OHS standards. Employers should ask employees to undertake a safety assessment of the work area prior to the employee working from home.

Employers should review working from home policies or procedures to ensure it meets the current circumstances.

Employers will be required to test and review all IT systems and business continuity arrangements to ensure the business can continue to operate if a large number of employees need to access IT systems remotely at the same time.

Employers should also reinforce that, regardless of the employees' place of work, all normal policies, procedures and contractual obligations will remain, including confidentiality and safe work practices.

Where working from home is unavailable, employers may wish to provide discretionary paid leave to employees so that they do not suffer from a loss of pay during the isolation period.

## **Alternate Duties/Hours**

A number of employees may not be able to carry out their normal duties due to restrictions with client contact. This may impact certain funding contracts and predetermined deliverables. Employers should first discuss these impacts with the funding bodies to determine what alternative arrangements can be made during this period.

Where changes cannot be reasonably accommodated, employers should consider requiring employees to undertake other duties.

Employers have a right to direct employees to carry out other duties reasonably required by the employer that the employee is skilled and capable of performing.



## Travel (Work and Personal)

As part of providing a safe work environment, you should direct employees to declare any upcoming or recent travel (including areas through which the employees have transited) so that employers can assess the prospect of risks to health and safety arising from employees returning to work.

To help deter personal travel, inform employees that if they undertake personal travel and subsequently become required to self-isolate, they *may* be required to take annual leave or unpaid leave if this requirement is reasonable.

**Note:** Generally, employers are not permitted to have policies or give directions to employees that extend to or impact on their personal or private lives. Only in exceptional circumstances would it be regarded as reasonable for an employer to direct an employee how to conduct themselves outside the workplace. 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 is likely to be subject to, and the nature of the work of the employee (client contact). An employer may be in a position to direct staff to abide by certain travel restrictions. However, given the complexity of this, employers should seek legal advice before implementing such directions.

## Stand-downs

Under the *Fair Work Act 2009 (Cth)* 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. The COVID-19 outbreak could well cause this (although not relevant to most staff in health services).

The requirements to stand-down employees is very strict, so we encourage all employers to check and comply with any applicable modern awards, enterprise agreement, employment contract terms and organisational policies when considering to stand-down employees.



## Quick Tips for Employers

1. **Planning** – Planning is absolutely vital in managing organisations effectively. In times of immense uncertainty, there's one thing guaranteed to unsettle employees - seeing their employer react in a panicked, knee-jerk way. Exhaustive business continuity planning is the best way to prevent this occurring and the earlier it begins, the better.
2. **Over-Communicate** – Hold regular staff meetings and send email updates to staff at least every 48 hours. Educate and update employees on new information relating to the impact of COVID-19 on their workplace and business operations.
3. **Strong Leadership** – Leaders must alter the way they lead through times of uncertainty and crisis. Leadership needs to be flexible and compassionate.
4. **Be Flexible** – Explore, promote and approve flexible work arrangements that are mutually beneficial for both the employer and organisation.
5. **Be creative** – To survive in such challenging circumstances, you must be able to think outside the box and develop creative solutions.
6. **Support** – Promote and encourage employees to utilise the organisation's Employee Assistance Program or consider alternate support systems where an EAP is not practicable.
7. **Work from Home** - Promote and allow employees to work from home where practicable, and endeavour to support employees to maintain an effective and safe working environment.
8. **Technology** – Utilise video and tele-conferencing for meetings and other business requirements.
9. **Policies and Procedures** – Review, implement and maintain up-to-date and effective workplace policies relating to infection control, workplace hygiene, risk identification, working from home and other relevant policies.
10. **Alternate Duties** - Direct employees to perform alternate duties or work at alternate locations.