

Sharpe Workplace Solutions

Powerful Partnerships

COVID-19

Employer Information Memo

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Leading edge Industrial Relations and Human Resources Consultancy firm providing real world solutions to complex people problems.

National experience that you can benefit from in both the public and private sectors. Successful outcomes are the product of our pursuit for excellence in everything we do.

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Supporting business

Given the constantly changing status of this pandemic, the impact on Australian businesses is shifting daily and therefore it is important for employers to be prepared to respond as COVID-19 continues to develop both in Australia and globally.

Sharpe Workplace Solutions have developed this Information Memorandum to assist you to balance your obligations to worker health and safety with worker rights whilst still continuing with business on a day to day basis.



This Information Memorandum is for general information purposes only and does not constitute the provision of professional/legal advice to your business. You should seek advice by contacting us directly before acting or relying on any of the content in this guide.

Employers should, at all times, be conscious of legal obligations that will apply under the Fair Work Act 2009, State legislation, modern awards, enterprise agreements, contracts and policies and should seek advice where necessary.

Workplace Health & Safety

Firstly, ensure you are monitoring the Department of Health website for up to date information about the virus, hygiene requirements, travel restrictions and isolation arrangements <https://www.health.gov.au/>.

Australia's 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 the World Health Organisation.

We recommend that you provide updates to employees addressing:

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

[Here](#) is a link to useful resources.



Managing and Controlling Workplace Risks

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 government departments and provide these to employees
- 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 government departments
- providing clear advice to workers about actions they should take if they become unwell or think they may have the symptoms of coronavirus
- monitoring the latest travel advice for anyone planning to travel for work and considering whether work activities put other people at risk
- contingency planning to manage staff absences and plans to manage increased workloads

Workplace Hygiene

We recommend that you regularly remind your workers to always practice good hygiene, including:

- washing their hands often, with soap and water, or carrying hand sanitizer and using it as needed
- covering their mouth when coughing or sneezing, but not using their hands to do so (eg. covering their mouth with their elbow)
- seeing a health care professional if they start to feel unwell
- if unwell, avoiding contact with others (including shaking hands or other touching, such as hugging)

Here is a guide to [good handwashing](#) that you could display in appropriate communal areas.



Workers Compensation

Employers also need to be aware that the impact of COVID-19 being covered by workers compensation is a legal question that will differ from State to State. 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 an employee

contracting COVID-19 at the workplace and should ensure that any mitigating steps they take in response to coronavirus are measured.

Coronavirus Health
Information Line operates
24 hours a day,
seven days a week
1800 020 080

Managing employees and leave entitlements

Employees are likely to be anxious about the COVID-19 pandemic and will have questions about what will happen to their working arrangements and employment. You might also be asked about whether employees will be stood down and/or their employment terminated due to a business downturn or even closure.

The following are some responses to common questions.

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

The [World Health Organisation](#) website states that the most common symptoms are fever, tiredness, and dry cough, some patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea.

The employee should be directed to follow advice from the relevant government department and seek medical attention if they suspect they have contracted COVID-19.

If an employee is absent from work because they are unwell with COVID-19, they can utilise paid personal leave (if applicable).

If an employee is required to care for a family member who is unwell with COVID-19 they may also be eligible to use paid carer's leave (if applicable).

If an employee exhausts any accrued paid personal/carers leave, or does not have any available, they may seek unpaid personal/carers leave (or request another form of applicable paid leave, for example annual leave or long service leave).

For those employees who fall under the Fair Work Act, (other than a casual employee) their entitlement is 10 days each year of paid personal leave for each year of service. There is no limit to the number of accrued leave that can be taken as personal leave.

What do I do if an employee has recently been in contact with someone who may have COVID-19 or may have travelled to an area affected by COVID-19?

The Government's current advice (as at 18/03/2020) is that all persons should self-quarantine for 14 days. (Self-quarantine means staying in your home and not leaving for a period of time in this case 14 days). Only people who usually live in the household should be home. No visitors to be allowed.

If an employee is to isolate themselves for a period of 14 days but they do not have the coronavirus, it is likely that the worker is not entitled to paid personal, carer's or special paid leave (depending on any applicable award, enterprise agreement or contractual entitlements).

However, Employers should 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

What happens if an employee's immediate family member contacts the COVID-19?

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. 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.

What happens if an employee's 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 may likely 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.

What if an employee may have COVID-19 but still wishes to attend work?

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.

Workers also have a duty to take reasonable care for the health and safety of themselves and others. Employers can act when they reasonably believe an employee is putting at risk their own health or that of others.

An employer can discuss the issue with the employee and then if necessary direct the employee to undergo testing for the virus. Once the test is undertaken and if the employee is cleared, they are able to return to work. The employee should be paid for this time. If the test is positive, then the employee would be permitted to commence personal leave for the duration of their illness.

What about casual employees?

Casual employees are entitled to be absent from 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.

What this means is that a casual employee who is diagnosed with COVID-19 can be stopped from working and will not be entitled to paid sick leave.

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.

Employee directions - 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 provide a medical clearance before returning to work.

If the employee is unable 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 test is positive, then the employee would be permitted to commence personal leave for the duration of their illness.

What if you wish to direct an employee to not attend work but the employee is not showing any signs of the virus and is not required to isolate themselves under Government advice?

If an employer directs an employee not to attend work, despite them being fit and able to do so and they are not subject to any quarantine (for example, some organisations are imposing company-specific quarantine requirements on all employees who return from overseas, not merely those returning from destinations in respect of which there is government

ordered quarantine) then we suggest best practice is for that employee to continue to get paid.

In this situation, it is also important to check whether you can simply issue this direction (e.g. pursuant to the employee's contract) – or whether you need employee agreement. Again, also check any applicable award enterprise agreements, contracts and company policies – and seek advice.

What about 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.

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.

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 may be subject to government quarantine measures when they return.

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 or 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 obligation 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.

Working from Home

Reducing face-to-face contact is a 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 decision, 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.

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 risks
- Electrical safety
- The general environment — things like noise, security, fire exit access, first aid

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, security, cost factors and work, health and safety implications.

Employers will have an obligation to look into their insurance to make sure it allows employees to work from home.

Scaling Down Operations

Varying hours or rosters

As a result of the spread of COVID-19 some employers may be considering changing the way they operate, 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 unions. This can take time to undertake.

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 decisions on changes in rosters or hours.

Reducing Operations

As a result of the 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 decisions on reducing your operations.

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

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.

Business Shut Down

Most recently the Federal Government introduced national discontinuation of all non-essential gatherings which will see the temporary closure of registered and licensed clubs (excluding bottleshops attached to these venues), pubs, hotels (excluding accommodation), gyms, indoor

sporting venues, cinemas, casinos, entertainment venues, restaurants and cafes (which will be restricted to take away and/or home delivery), places of worship, weddings, funerals (other than very small groups with the 4sqM per person rule to apply). Business may also be forced to close due to a lack of stock or custom.

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 an alternative arrangement can be made (e.g. a reduction in hours or days of work).

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 be reasonably be held responsible. (The other circumstances are industrial action and breakdown of machinery or equipment).



“Usefully employed” means that the employment will result in a new benefit to the employer’s business by reason of the performance of the particular work don’t 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.

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 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 to pay an employee 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.

Discrimination and 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 the 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.

Further help and resources

If you need any assistance related to any of the above please contact **Sharpe Workplace Solutions** anytime as we are here to help you through these difficult times:

(07) 46915046 / 1300 135 782
Email info@sharpews.com.au

There is help through the Queensland Government's Industry Recovery Package for further details information head to : www.qld.gov.au/industryrecovery or contact 13 QGOV (13 74 68).

The Coronavirus Health Information Line operates 24 hours a day, seven days a week:
1800 020 080

Useful information sheets and resources for employers:

- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-about-returning-to-your-community>

- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-know-the-signs>
- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-stop-the-spread>
- [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
- [WorkCover QLD](#) – Coronavirus (COVID-19) workplace risk management