

CIRCULAR: GEN/091/NAT/091/20
DATE: 13 March 2020
SUBJECT: COVID019 - What should Australian employers be doing?
ATTENTION: All Relevant Managers

The World Health Organization has announced that COVID-19 is a pandemic. Given the recent increase in reports regarding the spread of COVID-19 across Australia, organisations need to take proactive steps to ensure that they are managing the risks to workers, as well as managing broader operational issues.

Managing the Risks

Work Health and Safety 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, which includes providing and maintaining a work environment that is without risk to health and safety.

Exposure to COVID-19 is a potential hazard for workers and other people at workplaces – as such, employers must have measures in place to protect worker health and safety and manage these risks.

Communication is Key

There may be growing anxiety amongst your workers in respect of the pandemic and many staff members will have questions as to how the virus will affect their working arrangements and employment. Communications to workers should be regular and will need to be updated as the situation changes.

In summary, communications should include:

1. Referring staff to **reliable sources of information** about COVID-19 and health recommendations, such as [The Australian Department of Health \(DoH\)](#) and [World Health Organisation](#), for the latest information.
2. Directions to staff who, within the past 14 days, have travelled to or from COVID-19 affected areas or have been in contact with a person who is suspected of having, or diagnosed with, COVID-19 to:
 - Not attend for work and to self- isolate (discussed further below);
 - Obtain appropriate medical clearance before returning to work; and
 - Comply with the notification requirements of the employer.
3. Promotion of, and guidance regarding, good hygiene protocols within the workplace – especially in respect of regular and thorough hand-washing and good respiratory hygiene – and cleanliness of workspaces, especially shared workspaces.

Employees should be reminded to always practice good hygiene and other measures to protect themselves and other against infection. This includes:

- Washing their hands often, with soap and water, or carrying hand sanitiser and using it as needed
 - Covering their mouth when coughing or sneezing, but not using their hands to do so
 - 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).
4. Promoting access to employee assistance programs – many staff may feel very anxious and require additional support during this period, which can be made available through EAP providers.

In the absence of a dedicated EAP provider, businesses may direct staff to the Federal Government's mental health online resource and referral system [Head to Health](#).

5. Confirmation of the organisation's position in respect of travel.

- Strongly consider ceasing all non-essential business travel to affected areas and otherwise continue to update your organisation's travel rules and arrangements as appropriate in line with travel advice issued by the [Australian Department of Foreign Affairs and Trade](#)
- It is also appropriate that organisation's confirm their expectations of staff about to embark on voluntary overseas travel, in respect of their return (ie. flag that, subject to ongoing health and travel advice, the employee may be required to self-isolate prior to returning to work and that communication as to the employee's situation is expected immediately prior to any return, to ensure appropriate measures implemented).

What happens if an employee (or their family/household member) becomes unwell?

An employee must give their employer evidence of the illness or unexpected emergency if their employer asks for it. An employer can also ask for an employee to provide a certificate of clearance from their employee before the employee returns to the workplace.

Full and part-time employees who can't come to work because they are sick, or caring for an immediate family or household member who is sick, can access their accrued personal (sick/carer's) leave. Casual employees are entitled to 2 days of unpaid carer's leave per occasion.

Full and part-time employees can take unpaid carer's leave if they have no paid sick or carer's leave left. In the current climate employers and employees may also agree for full and part-time employees to access accrued annual leave (and in certain circumstances long service leave) to cover their absence.

Are employees entitled to workers' compensation entitlements?

An employee who has an illness arising from COVID-19 may be entitled to workers' compensation, depending on how they contracted the virus. The test differs from State to State but generally, to be covered, the employee's employment must have significantly contributed to the employee contracting the virus. Where an employee's employment puts them at greater risk of contracting the virus this test may be easier to meet which is why risk measures should be adopted as identified above.

Every matter will need to be considered on its individual merits, having regard to the individual circumstances.

What if an employee wants to stay home as a precaution?

If an employee wants to stay at home as a precaution against being exposed to coronavirus, they will need to make a request to work from home (if possible) or to take some form of paid or unpaid leave, such as annual leave or long service leave. These requests are subject to the normal leave application process in the workplace.

Depending on the circumstances, an employee could be subject to disciplinary action if they refuse to attend work or perform certain duties if the direction is lawful and reasonable and does not put the employee at any risk. **However, this is not clear cut, as there are protections for employees (including under discrimination and safety laws), that prevent an employer from taking action against employees for raising genuine safety concerns. Specific advice is recommended.**

What if an employer wants their staff to stay home?

If an employee is at risk of infection from COVID-19 (for example, because the employee has recently travelled through a Level 3 or higher country listed by the Department of Foreign Affairs or has been in close contact with someone who has the virus), you should direct that the employee self-isolate in accordance

with DoH recommendations, not attend the workplace and request that they seek and provide medical clearance from a doctor before seeking to return to work.

Subject to your obligations under any applicable enterprise agreement, award, employees' contracts of employment or workplace policies, employers may have the capacity to stand down the employee without pay as they cannot be usefully employed in circumstances which are outside the control of the employer. However, you should may consider alternative arrangements to mitigate financial loss to the employee such as allowing the employee to work from home (if possible) or utilise their accrued paid leave entitlements during the period.

If employees are directed by the employer not to attend work (beyond government recommendations), the employer may request the employee take unpaid leave (or utilise accrued entitlements), but cannot compel them to do so and if an alternative arrangement is not agreed, the business must pay the person directed to stay/work from home.

What if an employer decides to, or is required to, close or suspend business?

In circumstances where the business is temporarily suspended or closed for other reasons, and it is not possible for work to continue remotely, we recommend you seek specific advice as to whether the circumstances of the closure would give rise to an obligation to pay staff who cannot perform their rostered shifts.

If the suspension / closure is based on government advice then, **subject to applicable** enterprise agreement, award, employees' contracts of employment or workplace policies terms, staff may be stood down without pay to the extent that the closure is outside of the control of the employer. Again, during such period – notwithstanding any capacity to effect stand down without pay – we encourage businesses to consider reaching agreement with full-time and part-time staff to allow access to accrued paid leave entitlements.

Where an employer otherwise effects a closure / suspension of work, and directs employees not to work, staff would ordinarily be entitled to be paid while subject to the direction.

Are there potential redundancy impacts arising from a suspension of business?

Whether or not the temporary closure or downturn of business would give rise to redundancies is a matter business should seek specific advice on. Businesses should consider how redundancies may be avoided, through management – and reduction – of their casual workforce and or roster adjustments, prior to making any permanent decisions to remove roles.

Assessment of whether casual staff are in fact 'genuine casuals' and what notification and/or consultation obligations may apply in respect of roster adjustments or redundancies are matters that SIAG advisors and lawyers can provide specific advice and guidance on.

The Information provided in this e-mail is **generic advice**.

If you would like advice in respect of your specific situation, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447.



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