

# COVID-19: CORONAVIRUS Q&A – AUSTRALIA

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## Labour, Employment and Workplace Safety Alert

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*\*This information is accurate as of 6.00 pm Thursday 19 March 2020 and is subject to change as this situation evolves.*

## 1. WHERE IS A GOOD PLACE TO GET GENERAL INFORMATION ABOUT COVID-19?

For general information about the progress of COVID-19 across Australia, updates about self-isolation and travel restrictions, the Australian Government Department of Health [Coronavirus Health Alert](#) website and the resources available there should be checked regularly.

You can also look at their [What you need to know](#) advice, and [Information for employers](#) advice.

For information about travel restrictions and cautions, see the [Smartraveller](#) website.

For information about occupational health and safety, see the [SafeWork](#) website.

For information about self-isolation, see the Department of Health's [Isolation Guidance](#) advice.

K&L Gates has a dedicated website with COVID-19 updates from around the world, click [here](#) to access this site.

## 2. WHO HAS TO SELF-ISOLATE?

All people who arrive in Australia from midnight 15 March 2020, and all people who think they may have been in close contact (see below) with a confirmed case of COVID-19, are required to self-isolate for 14 days.

Employees should be encouraged to avoid all non-essential travel.

Continue monitoring the Australian Department of Health resources as this situation evolves.

## 3. WHAT IS "CLOSE CONTACT"?

Generally, state governments suggest that "close contact" occurs where someone *"has been face to face for at least 15 minutes, or been in the same closed space for at least 2 hours, as someone who has tested positive for the COVID-19 when that person was infectious."*

## 4. WHO DO WE NOTIFY IF WE HAVE A CONFIRMED CASE OF COVID-19 IN OUR ORGANISATION?

If someone in your organisation has tested positive for COVID-19, it is likely that public health authorities will contact you. You can call your local [State or Territory Health Department](#), but this is not required.

As a courtesy, you should also inform the management of your building that someone has tested positive, so they may inform their other tenants.

## **5. WHO DO WE HAVE TO SEND HOME IF SOMEONE IN OUR OFFICE TESTED POSITIVE FOR COVID-19?**

According to government advice, anyone who has been in "close contact" with a proven case of COVID-19 must self-isolate.

In the event that someone in your office has tested positive to COVID-19, your local Health Department and doctors will be able to advise you as to how broadly your organisation should cast the net (eg a person's immediate team, extended team, entire floor, anyone who has used the printer, bathroom, entire office, etc). This will need to be determined on a case by case basis.

You can call your local [State or Territory Health Department](#) if you require more clarification.

## **6. WHO DO WE NOTIFY IF WE HAVE A SUSPECTED CASE?**

If your employee has travelled overseas in the 14 days before developing symptoms or been in close contact with a confirmed case of COVID-19, and begins to feel unwell and develop a fever or shortness of breath, a cough or respiratory illness they should seek immediate medical attention.

You will need to advise your employee to call ahead to their General Practitioner (GP) or emergency department and mention that they are concerned that they have been exposed (by way of travel or close contact with a confirmed case) before they arrive at the doctor's office.

There are also several screening clinics at hospitals across the country. People do not need to call ahead to attend these clinics.

If you suspect the employee may have COVID-19, you may choose to send home anyone in the office who has been in close contact with the employee. However, note that until the employee tests positive, sending anyone else home will be a precautionary measure, and this means you will have to continue to pay them as normal regardless of whether they are able to work remotely or not.

## **7. CAN WE JUST SEND PEOPLE HOME OUT OF CAUTION?**

If employees are able to work from home, and you consider that is appropriate in the circumstances, this should be considered. However you must continue to pay them as normal in these circumstances.

If employees cannot work from home, but you still want to send them home out of caution, this is also fine. But unless they have been in "close contact" with a confirmed case, or are required by the Government to self-isolate (see below), you will need to continue paying the employee their usual wage regardless of their absence.

## **8. WHAT ABOUT CASUALS?**

Casuals are likely to be the most severely impacted financially as a result of COVID-19 as they do not accrue paid leave. As a result, we recommend businesses avoid sending casual employees home unless they can work from home and it is necessary for health and safety reasons (eg they have been in close contact with someone in the workplace who has tested positive to COVID-19).

Casuals are not entitled to be paid if they are not required to work due to COVID-19, whether out of caution or otherwise, and may not have an alternative source of income. It is of course open to employers to continue paying casuals for their rostered hours if they are not required to work due to COVID-19.

The Australian Government has announced a package of measures to address the COVID-19 which seeks to address the situation with casuals to some extent.

## **9. WHAT KIND OF LEAVE SHOULD OUR EMPLOYEES BE TAKING? WHO HAS TO PAY?**

Employers will need to consider the terms of any relevant employment contracts, industrial instruments and policies and/or procedures which consider leave to identify any specific arrangements applicable to their organisation.

However, the general rule is that unless the Australian Government Department of Health advice is requiring self-isolation, any required absences at the employer's discretion out of caution will need to be paid at the employee's usual wage (where the employee cannot work remotely).

Arrangements to work remotely should be considered in the first instance at all times provided the employee has the resources and is well enough to do so.

### **Employee tests positive for COVID-19:**

Whilst personal leave is available for an employee who is not fit for work because of a personal illness or injury, affecting the employee, the employee in this situation may actually not be unwell but is carrying the virus.

We consider that in the circumstances of this pandemic it is open for the employer to treat the absence as paid personal leave.

If the employee is fit and the employee can work from home, then they should be able to do so.

### **Employee required to self-isolate:**

A person who is required to self-isolate as a result of travel commenced prior to the Government travel restrictions or who has come into close contact with a confirmed case of COVID-19 may not be unwell at all. Whilst in ordinary circumstances the employee may not have access to personal leave, given this unprecedented pandemic, we consider that it is open to the employer to treat the absence as paid personal leave.

However, where a person who chose to travel overseas after Government travel restrictions were issued, they have done so in the knowledge that they have to self-isolate for 14 days upon their return. In these circumstances, we consider it is open to the employer not to treat this self-isolation period as paid personal leave but enable the employee to access other forms of leave including paid annual leave, long service leave and leave without pay.

If the employee can work from home, then they should be able to do so.

### **Employee caring for sick person:**

**Personal (carers) leave** - If this is exhausted:

- the employee may elect to take annual leave or unpaid personal leave

- where applicable they may apply to take long service leave, or
- the employer may choose to grant them leave without pay or continue paying the employee their usual wage.

If the employee can work from home, they should be able to do so.

### **Employee not required to self-isolate, but sent home out of caution:**

#### **Continuing paying the employee their usual wage**

If the employee can work from home, then they should be able to do so.

## **10. SHOULD I ASK MY EMPLOYEES FOR A MEDICAL CERTIFICATE CLEARING THEM FOR WORK?**

It is important for you to consider what you are hoping to achieve by requiring an employee to see a doctor. If an employee attends a doctor, and obtains a medical certificate for a common cold or similar, but are otherwise cleared for work, it may be that you remain concerned about the employee's health. The only type of medical clearance a GP can provide is to the effect that, on the day of assessment, the patient was not displaying symptoms consistent with COVID-19. This may provide limited comfort to an employer.

If an employee is completely well after 14 days isolation, the advice from state governments is that the person can cease self-isolation and return to work, school and university.

If you have concerns about an employee's health, you should be mindful that unless the employee is in one of the risk categories (travel overseas or close contact with a confirmed case), it is highly unlikely that a doctor will test them for COVID-19 unless they are showing acute flu symptoms or they attend a screening clinic.

## **11. IF WE REQUIRE SOMEONE TO GO TO THE DOCTOR, DO WE NEED TO REIMBURSE THEM?**

No, this will be at the employee's expense, but you should not require an employee to seek medical attention unless it is reasonable to do so in the circumstances.

Minor sniffles and sore throats are not sufficient unless the employee has travelled overseas in the 14 days before developing symptoms or has been in close contact with a confirmed case of COVID-19.

## **12. WHAT SHOULD WE DO IF SOMEONE IS COUGHING A LITTLE BIT OR SNIFFLING?**

Unless they have been in contact with someone with COVID-19 or have recently returned from overseas, they may just have a cold. However, exercising proper hygiene is important in these situations and we would recommend advising the employee to:

- cover their nose and mouth when coughing and sneezing with tissue or the crease of their elbow

- regularly wash their hands thoroughly for at least 20 seconds with soap and water, or use an alcohol-based hand rub
- stay home and not attend work if they are feeling unwell.

If you are particularly concerned, you can request that the employee work from home, if possible. If that's not possible and you still want to send them home, note that this will be at the company's expense (ie continue paying the employee their usual wage or otherwise).

### **13. WHAT SHOULD WE DO IF SOMEONE HAS FLU SYMPTOMS?**

Encourage the employee to go home and attend a screening clinic if they have travelled overseas in the 14 days before developing symptoms or has been in close contact with a confirmed case of COVID-19. Consider whether you want to require anyone to work from home or take paid leave out of caution.

### **14. WHAT IF AN EMPLOYEE'S CHILD HAS TO STAY HOME BECAUSE THEIR SCHOOL HAS CLOSED?**

In circumstances where at short notice a child is required to be isolated and/or the school closes down and the child must stay home from school (regardless of whether they themselves are infected), and an employee is required to care for that child and is unable to work from home, we consider that period of leave may initially be treated as carer's leave.

In the event that the school is closed for a prolonged period of time, it may be that the employee must make other arrangements, rather than continuing to take carer's leave.

If the employee does not have any accrued carer's leave (or not enough to cover the period), they may elect to take annual leave, unpaid carer's leave (if this is applicable) or apply to take any long service leave. An employer may also choose to continue paying the employee their usual wage.

### **15. WHAT SHOULD WE CONSIDER IF WE HAVE EMPLOYEES WORKING FROM HOME?**

Employees should complete a [Working from Home Self-Assessment](#) to ensure that their working environment is safe and appropriate. If any concerns arise during this assessment, it may be appropriate to consider alternative locations for that employee (eg a parent's house, library, café), or to consider making reasonable adjustments.

Employees should continue to be held accountable during working hours, and not treat this as time off. You should ensure that managers have oversight over workloads, and ensure productivity does not reduce during this time. Key performance indicators (KPIs) should remain the same wherever the employee is located.

### **16. CAN WE STAND DOWN OUR WORKFORCE?**

In circumstances where employees cannot usefully be employed due to a stoppage of work for which the employer cannot reasonably be held responsible, the employer may "stand down" employees under the Fair Work Act.

If an employer stands down employees in accordance with the Fair Work Act, they are not required to pay those employees. This is at the discretion of the organisation, and some organisations may choose to continue paying their employees their usual wage during this time. If an employer is considering standing down its workforce, that they need to attempt to identify other work for which the employees could be usefully engaged and notify the affected employees of the stand down.

Employers should also check that any proposed stand down action complies with any applicable awards or enterprise agreements, including in relation to consultation obligations.

Stand down does not apply to a decrease in workloads, but rather for situations for which the employer cannot be held responsible eg the closure of an area in which the work is performed.

The Australian Government has imposed the requirement that there is to be no non-essential gatherings of more than 100 people inside, and 500 people outside. In our view, this may enliven the stand down provisions in some industries and businesses. This will particularly concern businesses involving sport, events, catering and performance.

## 17. WHAT ELSE SHOULD WE BE DOING TO PROTECT OUR EMPLOYEES?

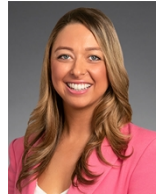
- **Communication:** Employees may be anxious about COVID-19, so it is important to keep lines of communication open. Provide regular updates about company policies, consider allowing employees to work from home where possible, and encourage them not to panic. Remind your employees of your Employee Assistance Program (EAP) if you have one.
- **Hygiene:** Remind employees and others entering your workplaces of the importance of high personal hygiene standards which are vital to protect against the spread of infection (eg display posters in the building), and consider providing hand sanitizer (no lower than 65% alcohol).
- **Separation:** In light of the Government's new requirement that there are to be no non-essential gatherings of more than 500 people, it may be prudent for large businesses to take a more cautious approach, and avoid having all of your employees in the same room together.
- **Discrimination:** Be mindful that employees may react or retaliate against any person who has returned from overseas, is native to an area with a high number of COVID-19 cases or has relatives overseas. Remind employees of their obligations to behave appropriately towards others at work and encourage employees to speak with HR if they have concerns.

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