

Legal Alert

Workplace

March 2020

Coronavirus (COVID-19): Workplace Update & Guidance for Employers

With the COVID-19 pandemic continuing to rapidly escalate across the globe, employers are becoming progressively mindful of the effects the pandemic will have upon their statutory employment obligations. In particular, there is an increasing concern of employer obligations relating to the health and safety of employees, as well as employee leave entitlements in light of potential **social distancing**. It is crucial that employers review and understand their legal requirements. This alert will provide practical advice regarding how employer obligations under the *Fair Work Act 2009* (Cth) and *Work Health and Safety Act 2012* (SA) directly relate to the on-going COVID-19 pandemic.

Health and Safety obligations

Health and safety implications are likely to be the greatest issue and challenge for employers during the COVID-19 pandemic. Not only will this alert discuss the health and safety obligations that employers are required to exercise on premises but will also consider the practicality of these obligations extending to circumstances where employees work from home.

Under the *Work Health and Safety Act 2012* (SA) (WHS Act), employers have an obligation to eliminate risks to health and safety, so far as is reasonably practicable and if the risks cannot be fully eliminated, they are to be minimised.¹

Employers should therefore identify any potential risks that COVID-19 has on the health and safety of workers and subsequently take measures in order to control any risks. This could involve undertaking the following risk precautions:

- monitoring and implementing expert advice and strategies to minimise risk;
- educating employees on quarantine requirements and ensuring these are complied with;
- limiting non-essential work travel;

- limiting non-essential work activities that involve crowds;
- ensuring that employees who are sick do not attend work as this exposes other employees to an increased risk;
- providing information to employees regarding safe hygiene practices; and
- ensuring adequate hygiene facilities are available for employee use.

Employers also have a duty to provide information to their employees regarding workplace health and safety.

Employers should therefore consider providing regular updates to employees which reflect the updates given by the Department of Health and the World Health Organisation to comply with this obligation.

Additionally, with more workers having to self-isolate and quarantine, employers around the country are being encouraged to be flexible and allow employees to continue to work from home. This poses the question as to whether the health and safety obligations discussed extend to these circumstances. The clear answer to this question is yes. Employers must ensure a safe work environment, no matter where the work is carried out. This means that to comply with their health and safety statutory obligations,

¹ *Work Health and Safety Act 2012* (SA) s 17.

employers will need to minimise risks in employee homes so far as is as reasonably practicable. It is usually onerous and can be considered invasive for an employer to undertake home visits to ensure the home environment is a safe space, however, an employer should undertake the following in order to avoid potentially breaching their obligations:

- ensuring they have a relevant 'working from home policy' in place which outlines their method to minimise safety risks at home;
- training or educating employees on minimising risks at home;
- ensuring employees have adequate equipment to work from home. This might include allowing employees to borrow workplace office equipment (eg. suitable chairs); and
- ensuring employees have access to a work laptop (if necessary) with built-in security systems.

Entitlements

Under the *Fair Work Act 2009 (Cth)* (FWA), employees (other than casual employees) are entitled to 10 days paid personal leave/carers leave per year which can continue to accrue during an employee's employment.²

Employees who contract COVID-19 or need to care for an immediate family or household member who has contracted the virus, therefore have a right to use any paid personal leave accrued.

However, it is important to note that those that are required to self-isolate or quarantine at home, will not qualify for taking personal leave.

This is because the employee has not been diagnosed with an illness that deems them "not fit for work", an essential criterion that needs to be satisfied.³ Awarding paid personal leave incorrectly poses risks for the employer, as they may be found to be breaching the National Employment Standards set out in the FWA.⁴

Similarly, employees who choose not to attend their workplace due to the fear of contracting COVID-19 from others on the premise, will also not be able to obtain the benefit of qualifying for paid personal leave (unless evidence is provided of their illness / anxiety).

From a practical perspective, employers should consider allowing their employees to work from home (if this is an option) if they are required to quarantine or would prefer to stay away from the workplace premises to avoid social interactions. This will also help ensure that employees do

not face harsh financial implications from a loss of wages during any isolation or quarantine period.

Further questions have been raised regarding obligations from an employer's perspective if an employee is required to be at home to care for children if their school needs to be closed a period of time. According to the provisions in the FWA, paid personal leave can be taken if an "unexpected emergency" affects an employee's immediate family member or household member.⁵ It is therefore likely that an employee would be able to obtain such benefit if this circumstance were to arise.

If an employee exhausts their paid personal leave entitlements in the above circumstances, the employer should consider allowing employees to use other forms of paid leave (this could be the use of annual leave, long service leave or other leave specified under an award or contract) or make an alternative agreement for unpaid leave.

Employees' contracts, enterprise agreements and Awards can also provide further guidance on when and how an employer can require employees to take annual leave.

These rights are usually only relevant for shut-downs over Christmas or other similar periods but may be relevant if your workplace is forced to close due to this situation.

Conclusion

This content is current as at 17 March 2020. It is important to note that the COVID-19 pandemic is moving fast and developing daily. While the above information is relevant to the situation today, this does not necessarily mean this will always be the case.

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[Insurance Contract Considerations in Response to Coronavirus Outbreak](#)

² *Fair Work Act 2009 (Cth)* s 96.

³ *Fair Work Act 2009 (Cth)* s 97.

⁴ *Fair Work Act 2009 (Cth)* s 44.

⁵ *Fair Work Act 2009 (Cth)* s 97