

## Coronavirus and the workplace

The World Health Organisation (**WHO**) declared Coronavirus (COVID-19) a pandemic on 11 March 2020. With the impact of COVID-19 changing the business landscape daily, it is unsurprising that employers have been left asking “*but what does this mean for my business and workforce?*”

It is important for employers to understand their workplace obligations and know how to appropriately respond. This means it is time to invest in the “ABC” approach:

**A** = Ask the right questions;

**B** = Be prepared for the changes; and

**C** = Communicate.

So, what questions should an employer be asking?

### **What are my health and safety obligations and how can I meet these?**

Employers have duties under Workplace Health and Safety and Occupational Health and Safety laws to:

- provide information to employees about health and safety in the workplace; and
- monitor and maintain a safe working environment (so far as reasonably practicable).

We recommend that employers:

1. **Stay up to date:** Understand the current status of the COVID-19, regularly monitor the situation and utilise resources published by the WHO, the Department of Health and safety regulators in your State or Territory.
2. **Be policy ready:** Ensure policies and procedures are up to date and easily accessible by employees. An employer should have an action plan in dealing with COVID-19, including:
  - What happens to any proposed business and personal travel;
  - What resources are required by an employee to work from home (where applicable);
  - What special precautionary measures are to be taken for employees who attend the workplace; and
  - What are the workplace isolation and clearance procedures.
3. **Communication is key:** Keep the communication lines open with employees, and encourage them to ask questions and share their concerns. It is important to foster and maintain a culture of understanding, inclusiveness and respect, and take steps to prevent discrimination and avoid fear in the workplace.
4. **Promote good health and hygiene:** Now is a timely reminder of good hygiene practices. Make sure the workplace is regularly cleaned (especially shared workspaces and shared equipment). Consider providing employee and visitors with hand sanitiser, and displaying signage to remind people to wash their hands regularly and thoroughly. Employees should be reminded that they should not attend work if they are unwell.

### **What happens if an employee or their family member is diagnosed with Coronavirus?**

Full-time and part-time employees are entitled to take paid personal (sick or carer's) leave.

If an employee exhausts their paid personal leave entitlements, an employee:

- may elect to take unpaid personal leave;
- may elect to take annual leave; or
- may apply for long service leave (where eligible).

An employer may also allow an employee to take leave without pay or paid special leave.

If your employee is not diagnosed with Coronavirus, but is caring for someone who is, you should also consider allowing the employee to work from home (if available for your type of business).

An employer is entitled to request evidence of the illness or unexpected emergency. The type of evidence requested must always be reasonable in the circumstances. An employee who does not give their employer evidence where requested may not be entitled to be paid for their sick leave or carer's leave.

### **What happens if an employee is required to care for a family member where there is no Coronavirus infection?**

As schools begin to close, it is likely more employees will be required to care for family members who are not infected with Coronavirus.

Full-time and part-time employees are entitled to take personal (carer's) leave for unexpected emergencies. If an employee exhausts their paid personal leave entitlements, an employee:

- may elect to take unpaid personal leave;
- may elect to take annual leave; or
- may apply for long service leave (where eligible).

An employer may also allow an employee to take leave without pay or paid special leave.

However, you should consider allowing the employee to work from home (if available for your type of business).

### **What happens if an employee is stuck overseas or required to be self-isolated due to travel?**

You should consider allowing the employee to abroad (if they are adequately resourced to do so) or work from home (if available for your type of business).

The *Fair Work Act 2009* (Cth) does not provide for this specific situation so employers will need to come to a fair agreement with their employee. This may include:

- if the employee is not cleared by a doctor to work, the employee taking personal leave;
- the employee taking annual leave;
- the employee taking long service leave (where eligible); or
- arranging any other paid or unpaid leave by agreement.

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

You should consider allowing the employee to work from home (if available for your type of business). Alternatively, the employee may exercise their right to take paid or unpaid leave.

### **What happens if the employer needs to scale back operations, stand down employees or close?**

There is no 'one size fits all' answer to this question.

If the employer needs to scale down their operations, consideration needs to be given to the appropriateness of (amongst other things):

- freezing new hires;
- deferring salary increases or bonuses;
- changing rosters; and
- providing annual leave or long service leave in advance or at half pay.

If an employer is required to close, consideration needs to be given to the duration of closure. Redundancies should only be considered as a last resort. Where a business is in a position to temporarily redeploy staff, utilise their skills in other capacities, or make arrangements with employees to take leave (paid or unpaid as applicable), then this should be the first point of call.

Under the Fair Work Act, an employee can only be stood down without pay if they cannot do useful work because of equipment breakdown, industrial action or a stoppage of work for which the employer can't be held responsible. The most common examples where this is implemented is for severe and inclement weather or natural disasters.

What does all this mean? Employers need to be vigilant and understand their obligations under the Fair Work Act and relevant employment agreements, industrial instruments and policies. Employers are encouraged to obtain advice on their specific circumstances before implementing any changes.

If you would like assistance in understanding your rights and obligations, get in touch with Blue Rock Law to speak with our experts.



Blue Rock Law  
**Lisa-Marie Parks**  
Senior Associate  
T: 03 9089 7103  
E: [Lisa-Marie.Parks@thebluerock.com.au](mailto:Lisa-Marie.Parks@thebluerock.com.au)

