

MANAGING CORONAVIRUS IN THE WORKPLACE: IS YOUR BUSINESS “PANDEMIC” READY?

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UNDERSTAND THE RISK TO YOUR WORKPLACE AND YOUR OVERALL OBLIGATIONS

- Keep updated on any changes to the current health advice and information from the Federal Government's Department of Health, state health agencies, and the World Health Organisation (WHO)
- All employers have obligations to ensure the health, safety and welfare of their employees and other persons in their workplace, as far as is reasonably practicable – employers need to assess the risks arising in their workplace and eliminate those risks where possible, and where not possible, implement control measures to minimise those risks
- Responses to risks should be proportionate, reasonable and measured, and will necessarily change as new information becomes available
- Employers should consult with employees and others with whom they work, such as contractors and labour hire providers, and also other organisations who they operate in close proximity to or within a shared space with
- Prepare, and if necessary implement, a strategy or contingency plan in the event there is a significant disruption to their operations and/or a reduction in their available workforce
- Consider how any updated information or emergency notification can be provided to employees either using present systems or introducing new systems

EMPLOYEES WORKING FROM HOME OR REMOTELY

- A primary control measure for infection control is social distancing, that is reducing and restricting physical contact and proximity between persons – the ability of employees to be able to work flexibly and/or take leave may be important to minimising business disruption and to maximising employee safety
- It would seem reasonable for an employer to expect and direct its employees to inform it as soon as possible where they are unable to attend work because of contracting COVID-19 or the need to self-quarantine
- It is also likely to be a lawful and reasonable direction, consistent with occupational health and safety obligations, for an employer to direct an employee to not attend its workplace – where it is necessary to do so, an employer should check relevant industrial instruments and employment contracts to ensure that it is able to require an employee to work from home or a different location
- Where home-based or remote working is being considered, employers need to ensure that employees have all the necessary equipment in order to allow them to work effectively – it is critical that employers test their IT and other services prior to any implementation

EMPLOYEE LEAVE

- Employees who are diagnosed with COVID-19 will be able to take their accrued paid personal/carer's leave
- Consider what, if any, paid leave employees are able to access, in circumstances where they are required to self-quarantine but may not otherwise be sick themselves. Advice should be sought in respect of particular circumstances
- Employees may also take carer's leave where they need to provide care and support to a family member or member of their household
- Consider what happens once any such leave is exhausted – some employers may grant special paid leave to those employees, while other employees may be required to take unpaid leave

This guide should not be taken as specific legal advice which should be sought for any particular issue. Please contact the Employment Advisory team with any queries:

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ESTABLISH OR UPDATE POLICIES AND PROCEDURES

- It is important for employers to provide clear guidance to employees through their policies and procedures on when and how they can work from home or remotely, when they can take leave and so on
- Re-review policies to ensure they are in compliance with all applicable laws, including but not limited to occupational health and safety and discrimination laws – if the business undertook contingency planning and/or implemented policies as a result of the past SARS, swine or avian flu outbreaks, then look to re-use that past work where possible
- Establish a policy or procedure if one does not already exist – it is never too late!
- Communicate and redistribute existing or new policies and procedures to employees in order to be effective

CRITICAL OR CHANGED ROLES

- Where employees perform a critical function, other employees may need to be cross-trained to undertake part or all of that role in case of unexpected employee absences
- Some employees may be required to perform additional or new tasks, which could lead to additional overtime and related issues
- Where employees are working other than in the normal workplace, it is important for employers to put in place protections in relation to confidential information and document security generally

EMPLOYEE TRAVEL

- Consider whether it is necessary to suspend or limit international and interstate business travel, especially to areas where there has been a drastic increase in the COVID-19, and look for ways in which meetings can be conducted other than face-to-face through the use of technology
- Where employees are currently working overseas, then consideration should be given to repatriating those individuals wherever possible to their normal location and in line with any government guidance
- For employees undertaking non-work related travel, employees should be advised to exercise caution and adopt a practical, common-sense approach
- Regularly refer to the Australian Department of Home Affairs for status updates on travel bans and the safety of traveling to certain countries and regions
- If an employee returns from travel feeling unwell, then they should be reminded to seek medical assistance as soon as possible
- Consider the implications if an employee refuses to adhere to travel advice and whether it is necessary to impose a period of self-quarantining

SHUTDOWNS AND REDUNDANCIES

- Consider the legal implications of any necessary temporary reduction in the workforce or shut down due to reduced business demands or critical shortages in supply chains, both as to how this situation can be managed in the short term and how the business is protected in the long-term
- A range of alternative initiatives could be used, including directions to employees to take annual leave accrued, implementing stand downs, and whether there are redeployment opportunities to direct employees to parts of the business less affected – each of those initiatives raise legal issues which need to be carefully considered and managed
- If a business is significantly affected, then it may be necessary for an employer to make the difficult decision as to whether or not to implement redundancies – prior to making that decision, other alternatives could be considered such as hiring freezes, roster changes, and reducing the use of contractors and labour hire workers. Each of those changes will require specific processes to lawfully implement and may trigger consultation obligations

CONTINUOUS AND ONGOING COMMUNICATIONS IS KEY

- Educate employees of the potential impacts of the COVID-19 to ensure that they are well informed and are taking appropriate and proportionate steps to protect themselves and their family members from risk of infection
- Employers should circulate information to employees and provide education on sound hygiene practices, respiratory etiquette, and other prevention measures
- It is critical that employees are instructed to inform management if they believe that they may have been exposed to COVID-19 or show symptoms of infection, and ensure there is clarity around any request or imposed period of self-quarantining
- Any decision on whether an employee is fit to work should be based on expert medical information and advice
- Some employees may feel a heightened sense of anxiety as a result of COVID-19 and/or that they are at a heightened, personal risk of the effects of infection – consider how those employees can be supported from a well-being perspective and direct them to any employee assistance program which is in place
- Where an employee has undergone a period of self-quarantine, consider whether they can only be able to return to the workplace upon receiving some form of medical clearance
- Any employee who has developed any of the COVID-19 symptoms, such as a respiratory complaint, should be advised to seek expert medical assistance to obtain a diagnosis – if an employee starts to exhibit any of those symptoms while at the workplace, they should be given immediate medical assistance, with precautionary steps being taken to isolate them from other employees

UNLAWFUL DISCRIMINATION

- Unfortunately there has been a reported increase in unlawful discrimination and vilification being directed at certain racial and national groups perceived to be more likely to have contracted COVID-19 or to be in contact with someone who has
- Remind employees discriminatory behaviour will not be tolerated and may be considered serious misconduct (businesses can be vicariously liable for conduct of their employees who discriminate against other employees)
- Employees who have contracted COVID-19 should also not be unlawfully discriminated against on the ground of disability and any steps taken by an employer should be reasonable and directed towards safety concerns
- Employers should avoid enacting or updating policies that inadvertently or directly discriminate against their employees

IMPLEMENT OTHER PREVENTATIVE MEASURES

- Routinely maintain and thoroughly clean the workplace to minimise the risk of workplace transmission
- Promote and encourage maintenance of personal hygiene at the highest standard and the use of handwashing facilities such as hand sanitisers
- Provide proper safety equipment including hygiene products and offer employees on-site seasonal flu vaccinations
- For high risk industries (such as healthcare, aged care, and the like) and for employees engaged in high-risk activities for their employers, employers need to provide all appropriate personal protective equipment – this may include not only face masks, but also gloves, gowns and eye protection
- Consider limiting the number of non-employees and visitors to the workplace, and where it is necessary for such persons to be present, obtaining information from them as to whether they have undertaken any recent travel, and if so, where

OTHER PRACTICAL ISSUES

- Where face-to-face business meetings are discouraged, and those meetings are held via videoconferencing or using the telephone, confirm that those meetings will still be lawful and legally effective
- Where staff are not working in their normal workplace, employers will necessarily need to adjust how supervisory functions operate – practical issues such as how any necessary “wet” signatures can be obtained, whether alternative signing arrangements can be put in place, and how normal banking and account processes can be maintained, all need to be considered