

DEALING WITH COVID-19 AS AN EMPLOYER - FAQs

What if....

- Q: ...my employee is symptom free, but required to self-isolate because of Government orders? 3
- Q: ...my employee is stuck overseas/interstate and not able to return to work because of the Government imposed restrictions?3
- Q: ...my employee is refusing to come to work because they are fearful of contracting COVID-19? 3
- Q:my employee who is pregnant, presents with a medical certificate to say that they are fit to work but that it is inadvisable for them to continue in their current position during a stated period because of the hazards connected with their position (ie potential exposure to COVID)?4
- Q:I need to reduce my workforce as I do not have sufficient work for my current employees ..4
- Q:my employee advises me that they have increased family responsibilities due to school and child care closure?.....5
- Q:my employee or a member of their immediate family or household tests positive for COVID-19. 5
- Q: ...my employee insists that they should be allowed to work from home?5
- Q; ...an employee presents with symptoms which could indicate that they are carrying the COVID-19 virus, but the employee is not requesting to go on sick leave as they insist that they are “just fine”. 6

Q: ...my employee is symptom free, but required to self-isolate because of Government orders?

A: In that case, the employee may be ready and willing, but no longer able to come to work. As a general rule, therefore, they may access annual leave or LSL (if accrued) entitlements, but no sick/personal leave, unless they are actually unfit for work due to illness or injury.

Q: ...my employee is stuck overseas/interstate and not able to return to work because of the Government imposed restrictions?

A: The answer will depend on whether the employee has been travelling for work or for pleasure. If they were sent abroad or interstate for work purposes, the employer will need to continue to pay the employee during their time of imposed isolation or inability to return home. If, however, the employee was travelling on annual leave, they will need to seek an extension of their annual leave or be placed on leave without pay whilst they are unable to return to work.

Q: ...my employee is refusing to come to work because they are fearful of contracting COVID-19?

A: Employees have a common law right to refuse to perform unsafe work. As such the critical question will be what is “unsafe”. If you have put safety measures in place to protect your employees, such as providing appropriate PPE, screening patients prior to their appointments, and allowing for social distancing at the workplace (eg limiting the number of staff in the reception area and requiring patients to stand clear from the desk), employees should be able to be directed to attend work. In ordinary circumstances a failure to attend work as directed could be the subject of disciplinary action.

Given the current situation, the better option may be to just advise the employee of your safety measures and the fact that if they do not attend work, they will not be paid, unless they seek to access annual leave entitlements.

Q:my employee who is pregnant, presents with a medical certificate to say that they are fit to work but that it is inadvisable for them to continue in their current position during a stated period because of the hazards connected with their position (ie potential exposure to COVID)?

A: The parental leave provisions of the *Fair Work Act 2009* (which apply to both federal and state system employers) provide that an employer must then transfer the employee to a safe job, and continue to pay the employee the same rate of pay and hours (unless otherwise agreed) applicable to the employee's position prior to the transfer. If no safe job is available, the employee must continue to be paid as if they had attended for work. The stated period is the period stated on the medical certificate or when the pregnancy ends, whichever is the earlier.

Q:I need to reduce my workforce as I do not have sufficient work for my current employees?

A: An employer cannot unilaterally make changes to an employee's contracted hours of work or any other material terms and conditions of their employment. The parties can, however, always make changes if these are mutually agreed to.

You will need to assess firstly whether you need to just generally reduce the hours across all your employees, or whether only certain positions will need to be made redundant. If you are looking at changes across all employees, it is important to hold open and frank discussions with all, to see if some mutually acceptable way forward can be agreed.

In the absence of any agreement, you will need to make the decision about whether or not you will make some or all of the positions redundant, and offer alternative positions (e.g. make the full time position redundant and offer a part time position). Redundancies involve holding discussions with the affected employees, canvassing any other options available (e.g. all agree to reduce hours equally, or someone may wish to resign or be terminated as they were intending to retire later this year anyway), considering the impact of any decision on the affected employee(s) and then confirming the decision.

In the case of redundancies, severance payments are payable if you have 15 or more employees. Notice requirements and payment of accrued annual leave and long service leave entitlements also apply.

Q:my employee advises me that they have increased family responsibilities due to school and child care closure?

A: Employees can generally access their sick/personal leave entitlements if they need to care for a member of their family or household who is sick, or requires their care or support because on unexpected emergency.

Whether or not a school closure qualifies as an “unexpected emergency” will depend on the facts of each situation. It is likely that the school closure would be seen as an unexpected emergency if it happened suddenly and without warning.

When the closure is advised well in advance, such as for the next term after the Easter break, it may no longer qualify as “unexpected”, although it may be if there are no alternative arrangements available (such as grand parents who are also required to self-isolate, or other fee paying out of school care centres are not able to be accessed).

Q:my employee or a member of their immediate family or household tests positive for COVID-19.

A: Subject to the required proof being provided, the employee should be allowed to access any accrued sick/personal leave entitlements. When these paid entitlements run out, the employee may be allowed to access other paid leave entitlements such as annual leave or long service leave, or leave without pay.

Q: ...my employee insists that they should be allowed to work from home?

A: It is advisable that working from home arrangements should be implemented wherever possible, but an employer is not obliged to grant a request to work from home, particularly if it is not operationally practicable to perform the functions remotely.

An employer does have a duty to provide a safe place and system of work, however, and working from home arrangements can be a useful tool in assisting an employer to meet its obligations under the *Occupational Safety and Health Act 1984*.

If working from home is implemented, it is advisable to have a policy in place as the home environment is seen as an extension of work, thereby placing a duty on the employer to ensure the home environment is safe.

Q; ...an employee presents with symptoms which could indicate that they are carrying the COVID-19 virus, but the employee is not requesting to go on sick leave as they insist that they are “just fine”.

A: As an employer you have a duty to protect your other employees as well as the public who will visit your workplace. Under the *Occupational Safety and Health Act 1984 (OSH Act)*, every employee also owes a duty to take care reasonable care for their own health and safety as well as the health and safety of others who may be affected by their acts or omissions.

Employees also have a duty to cooperate with the employer and their co-workers to help everyone meet their legal requirements.

If an employee presents to work with symptoms which may be indicative of COVID-19, they are prima facie in breach of their obligations under the OSH Act given the highly infectious nature of the virus. The employer should discuss this with the employee and require the employee to submit to testing for COVID-19. It is reasonable that the employee should be able to access sick/personal leave whilst absent from work awaiting the test results.