

17 March 2020

The coronavirus (**COVID-19**) continues and the number of confirmed cases in Australia continues to grow. As of the date of this FAQ, 298 cases of COVID-19 have been confirmed in Australia.

This FAQ is intended to answer some of the common HR and employment relations questions arising from the COVID-19 outbreak.

The information provided in this FAQ is current as at the date of publication. However, given the fast pace at which the situation is evolving, members are strongly encouraged to monitor the Federal Department of Health's COVID-19 Health Alert and associated resources which can be found on page 5 of this FAQ.

1. *When should an employee self-isolate?*

Based on the information available from the Department of Health as at **16 March 2020**:

***All** people who arrive in Australia from midnight 15 March 2020, or think may they have been in close contact with a confirmed case of coronavirus, are required to self-isolate for 14 days.*

More information on isolation can be found on the Department of Health [Isolation Guidance](#) and [Health Alert](#).

2. *What if an employee or their family member is sick with coronavirus?*

Where an employee is unfit for work due to personal injury or illness, he/she can take paid **personal leave** (sick leave). Permanent employees have the right to take paid leave until such time as they have exhausted their allocated leave entitlement after which the period of absence would be unpaid. A casual employee may take unpaid personal leave.

If an employee needs to look after a family member, or member of their household, who is sick with coronavirus, or suffering an unexpected emergency, full-time and part-time employees are entitled to take paid **carer's leave**. Casual employees are entitled to unpaid carer's leave.

If an employer requests evidence of the illness or expected emergency, an employee must provide such evidence (e.g. a medical certificate or a statutory declaration).

3. *What happens in the event of school or day care closures and an employee be required to stay home with their children?*

A closure of day care or school which requires a parent to remain at home during the period of closure does not of itself give rise to personal/carers leave, although employers may choose to treat the period of as carer's leave in the circumstances. Specific advice should be sought if this arises.

4. What happens if an employee is required to self-isolate? How is this period treated?

Where an individual self-isolates, either personally or upon the Government's direction, **and is not unwell**, the period of absence from the workplace is not arising from the employee being “*unfit for work due to illness or injury*” and as such, there is no obligation to pay personal leave.

This period of absence would be a period of **authorised unpaid leave** unless the employer agrees to treat this period as paid leave, such as annual leave, long service leave or personal/carer's leave.

We would encourage employer's to be flexible and accommodating with their workforce where possible and agree on other personal arrangements to suit the circumstances. Options for alternative arrangements during self-isolation may include an employee accessing annual leave by agreement, taking long service leave, or working from home arrangements (if practicable).

5. What if an employee has been in contact with someone who has coronavirus?

If an employee has been in close contact with a confirmed case, they will fall within the Department of Health's advice of requiring isolation for 14 days (*please see FAQ 1 above*).

In these circumstances, if the employee is not unwell, has no symptoms and is not otherwise sick there is no obligation to pay personal leave. This period of absence would be a period of **authorised unpaid leave** unless the employer agrees to treat this period as paid leave, such as annual leave, long service leave or personal/carer's leave.

However, if the employee develops symptoms, becomes sick or is confirmed to have coronavirus there would be a requirement to treat the absence as personal leave.

This FAQ does **not** intend to address the clinical or health related requirements arising from close contact with a confirmed case. A person who has been in contact with a confirmed case should look to the Department of Health resources and telephone their health clinic or hospital to arrange for urgent assessment.

6. What if a staff member has flu like symptoms and I suspect they have coronavirus?

Whilst we understand the coronavirus is the emergence of a new risk, it is important not to make assumptions. Additionally, whilst an employer has a duty of care to ensure the health and safety of their workers, so far as reasonably practicable, an employer does **not** have a right to direct an employee to take personal leave.

If there are reasonable concerns for the safety of the employee, and other staff, an employer could encourage the employee to take a period of personal leave and may, if reasonable, direct the employee to obtain a medical clearance of their fitness to work.

7. *What if an employee is stuck overseas?*

The *Fair Work Act 2009 (Act)* does not have any specific rules for these situations. In this regard, employees and employers should come to their own arrangements. Such alternative arrangements may include:

- working remotely or working from home (if possible);
- taking annual leave by agreement;
- taking sick leave if the employee is sick;
- taking long service leave (if available); and
- arranging any other paid or unpaid leave by agreement.

In the event alternative arrangements are not possible the employee will be on a period of authorised unpaid leave.

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

If the employee wishes to self-isolate or stay at home as a precautionary measure but is not otherwise unwell or injured any period of absence would **not** ordinarily be covered by personal leave. In these circumstances, there is no obligation to pay the employee.

An employer and employee may reach an agreement to take annual leave or a period of long service leave (if available) for the period available. Under the Act, an employee's request for annual leave cannot be unreasonably refused. Given the unique circumstances we face with COVID-19 if an employee wishes to self-isolate due to genuine concerns for their health and safety, or the health and safety of others (for example due to *potential* exposure to a confirmed case) then it may be unreasonable to refuse any request for annual leave.

Employees should discuss their level of risk of contracting coronavirus with their doctor, workplace health and safety representative or the appropriate State or Territory workplace health and safety body.

9. *What if an employer wants their staff to stay home as a precaution?*

If an employee is at risk of infection or the employer generally has concerns about infection and the **employer directs** an employee to remain at home there is an obligation to **pay** the employee for the period of the absence. The requirement to pay does not extend to casual employees.

An employee may be directed to remain at home and work from home, if they are fit to do so, however, in the event that the employee cannot work from home there is an obligation to pay the employee. The obligation to pay the employee extends unless the employee is declared unfit to work, at which point the absence will be considered personal/carer's leave.

10. What if an employee refuses to serve a customer or client due to concern of coronavirus?

If an employee is refusing to work or refusing to serve a customer/client, at first instance it is important for the employer to genuinely discuss the concerns with the employee to try and understand the basis for the refusal and any health and safety matters arising.

If on a reasonable assessment the employee's refusal is unreasonable in the circumstances, the likelihood of infection is low and the employer has taken all reasonable steps to mitigate risk of injury or illness, then the employer may provide a reasonable direction for the employee to perform the work.

11. Should an employer provide information to employees?

It is expected that employees may be anxious about the risk of a pandemic and will likely have questions about their working arrangements. In this regard, employers should be providing information to employees about health and safety in the workplace as this is an obligation under WHS legislation.

In particular, employers should provide regular updates to employees about the status of coronavirus, advice on hygiene practices and information available through the Department of Health.

12. What other practical measures should a business be taking in the circumstances?

In addition to implementing clear guidance concerning the coronavirus pandemic and personal hygiene, other steps a business may take in response to the coronavirus include:

- implementing guidelines concerning employees having to report, and potentially remain absent from the workplace, where they exhibit any of the symptoms of the coronavirus (fever, cough, runny nose, shortness of breath);
- altering annual leave request processes so employees are required to disclose if they intend to travel overseas. While an employer is unable to unreasonably refuse an annual leave request, the disclosure will facilitate a further conversation and may give rise to an employer being able to refuse the request in the event that the employee refuses to accept any reasonable health and safety measures suggested by the employer; and
- for those who indicate that they intend to travel overseas, discuss that the leave request is approved upon the basis that they must fully observe any and all recommendations of the Australian Government upon their return, including but not limited to, the condition that any mandatory period of self-quarantine is to be treated as a period of authorised unpaid leave unless specifically agreed.

13. What if there is no work for employees to perform? Or what happens in the event of a temporary closure?

In the unfortunate circumstance in which a business may be required close due to circumstances beyond its control, employees may be stood down without pay. This is on the basis employees cannot usefully perform work.

Employers should not enact a stand down prematurely or arbitrarily as to do so may expose the business to dispute or risk.

While it is not a requirement, it is recommended employers should explore all available options with employees which would avoid, or minimise, the impact of a stand down.

If a stand down is to be implemented the employer should:

- seek specific advice in all circumstances to ensure that the risks with such an approach are understood;
- engage with impacted employees as soon as possible and provide employees with a reasonable opportunity to present ideas or proposals which may avoid the stand down;
- confirm the stand down in a meeting and later confirmed in writing;
- maintain constant contact with employees during the stand down period and provide updates and information which will assist with their ongoing understanding of the matter; and
- the continuation, or cancelation, of a stand down should be confirmed in writing.

NOTE: This FAQ should not be taken as an advice that employers are able to impose a stand down and specific advice should be taken in all the circumstances before stand down is taken.

14. Where can I get more information?

It is important for employers to stay up to date with information provided by the Department of Health. Below are a number of links to resources from the **Department of Health**.

Health Alert COVID-19

<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert>

Isolation Guidance

<https://www.health.gov.au/resources/publications/coronavirus-covid-19-isolation-guidance>

COVID-19 What you need to know

<https://www.health.gov.au/sites/default/files/documents/2020/03/coronavirus-covid-19-what-you-need-to-know.pdf>

Information for travellers who have been to mainland China, Iran, Republic of Korea and Italy

<https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-for-travellers-arriving-from-mainland-china-iran-republic-of-korea-and-italy>

Information about home isolation when unwell (suspected or confirmed cases)

<https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-about-home-isolation-when-unwell-suspected-or-confirmed-cases>