

COVID-19 – Questions answered for employers

We are receiving plenty of questions as employers come to grips with the current and potential impact of the COVID-19 virus.

Provided below is some guidance on the most commonly asked queries. Please contact us if you need advice specific to your business or situation.

1. Can we stand employees down if they can't work from home and if so, do we have to pay them?

The Fair Work Act provides that employers have a right to stand employees down in certain circumstances. Modern awards, enterprise agreements or employment contract may also contain stand down provisions and generally such periods are unpaid. However, this would need to be looked at on a case-by-case basis.

2. If we are standing down a number of employees, are they able to access leave? Further, if employees are already on leave or have upcoming pre-approved leave, can we stand them down?

The Fair Work Act provides that an employee may take paid or unpaid leave (such as annual leave) during all or part of a period during which an employee would otherwise be stood down. This leave must of course be authorised by the employer and may be subject to modern awards, enterprise agreements or specific clauses in employment contracts.

If employees are currently on leave or have pre-approved leave, then they will not be considered to be stood down for the period in which they are on approved leave.

3. What are our obligations as an employer if our employees are working from home for a period?

The obligations on employers remain even when employees are working from home in respect of providing and maintaining a safe working environment without risks to the health of employees and others, to the extent that it is reasonably practicable. Failure to do so may expose employers to repercussions under the workplace health and safety or occupational health and safety legislation.

4. If kindergartens, schools and universities are closed, some employees may require flexibility in working arrangements and hours, be it working from home or the office. What are our obligations as an employer in these circumstances?

When children are home and childcare demands increase, this increases family and/or carers' responsibilities. Employees have the ability to seek flexible working arrangements as a result of these responsibilities. It is important that employers do not treat employees less favourably because of their family or carers' responsibilities. This will need to be dealt with on a case-by-case basis.

This scenario can also lead to cases of discrimination depending on how the matter is dealt with; it is therefore very important that employers seek advice specific to employees so as not to discriminate against certain employees as their working arrangements may need to change.

5. Can we force employees to take annual leave or long service leave during a period of stand down due to government requirements?

Generally, if employees are being stood down without pay, the question of leave would likely become a matter to be agreed between the employer and the employee.

6. Can we direct employees to attend a medical examination if we believe they may be a health risk to other employees?

This will depend on the circumstances of each situation. Work health and safety laws impose strict obligations on employers to ensure the safety and well-being of their employees. An employer may request an employee to attend a medical examination to confirm their fitness for work. The reasonableness of this direction will depend on a number of factors, including but not limited to, whether there is a genuine indication of the need for the examination i.e:

- i. absences without explanation;
- ii. evidence of an illness which relates to the employee's capacity to perform the inherent requirements of their role;
- iii. whether the employer has legitimate concerns that an employee's illness or injury will impact others in the workplace etc.

7. How can we manage the economic downturn and impact on businesses?

It is likely that many employers are very concerned about cashflow in this climate and cutting costs is likely the first response to these types of circumstances. However, it is crucial that employers remain compliant with their legal obligations when implementing changes in the workplace. If employers propose to make 'significant' changes (including potential redundancies), then they will more than likely need to consult with employees in accordance with industrial instruments such as awards and enterprise agreements.

Employers should obtain legal advice to discuss options or proposed courses of action to ensure compliance.

NOTE: Each matter will require specific consideration and if you require specific advice please contact a member of our [workplace team](#).

For more information contact our [Workplace Team](#).

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