

Article Information

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COVID-19 FAQs: Employment Issues

Piper Alderman provides practical guidance for companies during the COVID-19 pandemic

1. What should our company have put in place by now?

Answer: Organisations should have implemented their pandemic action plans already, or they should be working on finalising and implementing a plan soon. There needs to be close attention to communication with employees to manage their health, but also business continuity needs. Clearly business continuity will depend on having remote access arrangements where that is applicable, and checking that IT infrastructure can cope with the number of people working remotely.

2. What are the key issues if staff are to work remotely?

Answer: If a business is asking staff to work remotely, it needs to make sure that in the first instance they have the tools to undertake the work including that there is appropriate IT infrastructure which can sustain the amount of work to be undertaken. Are all laptops able to be used or do staff have their own laptops? Organisations should also check that the home workplace is safe for the work being undertaken. Many businesses already have checklists to establish whether the employee can undertake their work tasks safely at home. If businesses are asking employees to work from home, then it is likely that workers' compensation legislation would cover such work as would workplace health and safety legislation. Accordingly, you should keep that in mind when asking people to work remotely.

3. Can we send employees home if they are clearly too sick to work?

Answer: Yes. All employers and organisations that engage employees have obligations to keep their employees as safe as reasonably practicable and that includes not only an ill worker, but also other workers who might be exposed to the ill worker.

4. Can you insist that employees work from home even if they are not sick or injured?

Answer: Yes. If an employee has been in "close contact" with a person who currently (or has had) a confirmed case of COVID-19, then there is a risk that they also have become infected. Health authorities are saying that close contact includes being face-to-face for more than fifteen minutes, or sharing a closed space for more than two hours. It is currently not mandatory for such persons to stay at home, but it would be advisable to preserve the health of other employees.

5. Can we direct employees to work from home?

Answer: Yes. So long as appropriate arrangements are in place to allow them to do it safely.

6. Can we direct employees to take annual leave?

Answer: No. Annual leave is only taken by agreement except in circumstances where there is a shut down allowed for under an award or an enterprise agreement. Some, but not all, awards and enterprise agreements provide for circumstances where an employer can direct an employee with excessive leave accruals to take some of that leave. You may need to get advice from us about whether and how you can require employees to take annual leave during a shut down or to reduce excessive accruals while operations allow.

7. Can we require employees to stand down without pay?

Answer: Yes in certain circumstances. The *Fair Work Act 2009* (Cth) (**Fair Work Act**) allows such things where there is an interruption of work which is not the cause of the employer but such a shut down must be implemented "fairly". A stand down can be subject to challenge in the Fair Work Commission. You may care to talk to staff about giving them access to paid leave such as annual leave and long service leave during a shut down period.

8. If I need to make employees redundant because of COVID-19 impact, what must I do?

Answer: The *Fair Work Act* requires that employers comply with an appropriate process before they make people redundant. You should seek advice about how to implement redundancies without triggering an entitlement for staff to the payment of compensation because of an unfair dismissal.

9. What if an employee refuses to work because they say the situation is unsafe?

Answer: You need to carefully consider the facts relating to each such person and consider whether their demand is reasonable or not. You may need to get advice about your workplace health and safety obligations in respect of such a situation.

10. Should the business be taking measures to keep employees at work safe?

Answer: Yes. There is significant advice about how the workplace can be kept safe including with regard to implementing hygiene processes, extra cleaning, social distancing and cancellation of meetings of large groups of people. Client interaction might be restricted to email and telephone contact and, where appropriate, working remotely. All of those measures would go towards meeting the obligations on the employer to keep their employees and people affected by their business as safe as reasonably practicable.

11. Should we try to vary our enterprise agreements to reduce the impact of the virus on our business?

Answer: Unfortunately, varying collective enterprise agreements under the *Fair Work Act* is a very difficult and lengthy process. You should seek advice about whether there is flexibility under your enterprise agreement which would allow you to achieve your business objectives.

12. Can we ask an employee if they have tested positive for COVID-19?

Answer: There are extensive privacy law and discrimination law provisions which prevent an employer from obtaining information about the health status of their employees without the consent of the employee. Having said that, if you suspect that someone is seriously ill then you don't need to know why they are ill to direct them to go home until they are well enough to return to the workplace. You might also consider requiring an employee (who has been absent from work due to illness) to provide a medical certificate confirming that are fit to return to work.

13. Can we collect information about staff showing COVID-19 symptoms?

Answer: Health information of an individual staff member, such as their test results for COVID-19, is likely to be sensitive information under privacy laws. Businesses need to consider whether it is necessary to collect, use or disclose health information about individual employees in the context of the COVID-19 outbreak. Consent from individual employees is generally required for a business to collect health information about an individual.

14. Can we disclose information about COVID-19 symptoms of a staff member to others?

Answer: Businesses must ensure that any disclosure of health information about an individual employee is allowed under one of the permitted exceptions under privacy laws, such as for any purpose for which the individual has consented or where you reasonably believe that the disclosure is necessary to lessen or prevent a serious threat to life, health or safety of an individual or to protect public health or safety. The exceptions can turn on the specific facts of a case so advice should be obtained before acting.

For further information in relation to these and other industrial and safety issues arising from the pandemic, Piper Alderman has produced a two [part podcast](#) on dealing with COVID-19 in the workplace – see our Related Insights.