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HR

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**STRATEGY**

**Business Response to Covid-19**  
**Considerations & Protectionary Measures**

The World Health Organization (WHO) has announced that COVID-19 is a pandemic. Currently, Australia does not have widespread community transmission of COVID-19. Whether because of the actual virus, or the media hype surrounding it; there will be significant impacts on Australian business.

This paper is designed to provide guidance and suggest considerations for small to medium business on how to manage the situation.

It takes into consideration how to approach communication and policy implementation for employees; considerations on business impact and risk management; and the practicalities of measures such as working from home and workforce planning.

We see two key points of time that will trigger the need for escalated response. 1) When Covid-19 reaches our immediate community i.e. geographic region; and 2) when Covid-19 reaches our workforce i.e. we have a known case in one of our team. The measures below should be considered in light of how imminently you believe each of these points will occur.

Please be aware that new information is being released regularly. The information in this document is current as at 17/03/20.

Please monitor any further information releases from reputable sources and, if you need further guidance on handling these in your workplace, please contact us directly on 4765 3456 or contact Naomi Wilson or Alistair Green on [naomi@focushr.com.au](mailto:naomi@focushr.com.au) or [alistair@focushr.com.au](mailto:alistair@focushr.com.au).

# Leave Legislation

The key outcome that we should be seeking is that employees are not discouraged from being absent from work when there is a genuine need because of ill health and/or a genuine potential exposure to Covid-19.

It is also important to recognise that there is the potential for significant financial impact on business – whether through the cost of additional leave, reduction in productivity, or financial impact through downturn in business.

And these two elements need to be balanced with the legislative requirements and entitlements to leave. It is important that businesses are aware of the legislation to understand options and make informed decisions.

## *The Legislation*

The *Fair Work Act 2009* provides the guidelines on provision for Annual and Personal Leave. In QLD, Long Service Leave is covered by the *Industrial Relations Act 2016*. Here are the key points:

- Personal leave under the National Employment Standards (S97) can be taken *“because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or*
  - (b) to provide care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because of:*
    - (i) a personal illness, or personal injury, affecting the member; or*
    - (ii) an unexpected emergency affecting the member.”*

For more information on Personal leave visit:

- o <https://www.fairwork.gov.au/leave/sick-and-carers-leave;>
- o <https://www.fairwork.gov.au/leave/sick-and-carers-leave/unpaid-carers-leave;>
- o <https://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/notice-and-medical-certificates>
- Annual leave under the National Employment Standards (S88) can be taken:
  - (1) ... for a period agreed between an employee and his or her employer.*
  - (2) The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.*

For more information on Annual leave visit:

- o <https://www.fairwork.gov.au/leave/annual-leave>
- Long Service Leave under the *Industrial Relations Act 2016* (S97) allows for taking of long service leave, once the minimum service requirements are met, as follows:
  - (2) An employee and employer may agree when the employee will take long service leave.*
  - (3) If the employee and employer cannot agree, the employer may—*

- (a) decide when the employee will take long service leave; and
- (b) give the employee at least 3 months written notice of the date on which the employee must take at least 4 weeks long service leave.

The *model Work Health and Safety (WHS) laws* require a person conducting a business or undertaking (PCBU) to ensure, so far as is reasonably practicable, the health and safety of their workers and others at the workplace. This includes providing and maintaining a work environment that is without risk to health and safety and adequate facilities for workers in carrying out their work, so far as is reasonably practicable.

To comply with the model WHS laws, you must identify hazards at the workplace and the associated risks, and do what is reasonably practicable to eliminate those risks, or where this is not reasonably practicable, to minimise those risks. For further WHS information, go to:

- [The Department of Health](#) - for the latest information and advice about coronavirus.
- [Safe Work Australia](#) - for information and referrals about dealing with coronavirus in the workplace.
- Your [State or Territory workplace health and safety body](#).

## Casual Employees

Other than long service leave, casual employees are not entitled to any form of paid leave. Given the potential significant financial impact it will have on casual employees if they are forced to not work, we believe that businesses need to be prepared for claims from casuals that their employment.

Where a casual employee is no longer able to earn an income and is not entitled to paid leave, there is an increased likelihood that they may feel no other option than to claim that they are not a genuine casual and as such, entitled to paid leave benefits. The unions have already been in the media telling people that casuals who have worked for an employer for over 12 months are entitled to paid leave.

This is not a correct blanket statement. Employers do, however, need to be conscious of engaging casuals as genuine casuals. The key indicators of a true casual working agreement will be irregularity, uncertainty, unpredictability, intermittency and discontinuity in the pattern of work of the employee in question. The below table highlights the key differences in the way a casual is engaged.

Casual Employee:	Permanent Employee:
<b>No advance commitment from the employer to continuing and indefinite work</b>	Commitment to long-term or ongoing work
<b>Irregular work hours of shifts offered</b>	Expects regular and systematic work and shifts
<b>Unpredictable working hours and duration of shifts</b>	Predictable, rostered hours
<b>An intention to employ as a casual is expressed clearly in the contract of employment</b>	Expectation (implied or explicit) of ongoing work
<b>Paid by the hour only for hours actually worked</b>	Paid a wage that is not hourly (e.g. regular weekly payments)

## Practicality of Absence from Work

We see 2 situations in which isolation may be required because of Coronavirus.

- 1) Isolation through exposure (i.e. required by the World Health Organisation guidelines)
- 2) Isolation as a precaution

### *Isolation Through Exposure*

Isolation is required either through:

- Being stuck overseas or requiring to be quarantined due to international travel as specified by the World Health Organisation (WHO) or the Australian Government as (<https://www.smarttraveller.gov.au/>); or
- known contact with a person who has confirmed case of the Coronavirus

#### *Legislation Application*

- Fair Work does not have guidelines on what is required to be paid in this instances and as such, the technical position is that any leave resulting from exposure is leave without pay (unless of course the employee falls ill in which case the personal leave legislation applies)
- The key here is that, at the point that an employee may be required to self-isolate, they are not yet 'ill' and as such it is not Personal (sick) leave; on the flip side it is not the employer instructing them to not attend work (it is the World health Organisation and the Australian Authorities) and as such the normal stand down provisions do not apply; hence, **there is no set entitlement to paid leave or obligation to pay wages.**

*What we suggest you consider:*

- Whether the employee is able to work from home during isolation
- Will you automatically approve leave (annual or long service) for the employees in this situation?
- Would you allow an employee to go 'in the red' with their leave arrangements in this situation?
- Subsequently converting leave to personal leave if the person subsequently is diagnosed with Covid-19
- How will casuals be treated? Is it simply leave without pay?
- Who will pay for the swab testing?

### *Isolation as a Precaution*

#### Employer Instigated

- where management, through observation, believes there is a need for an employee to be tested for Coronavirus i.e. they display symptoms of illness

### *Legislation Application*

- Where an employer has reasonable belief that the employee is not fit for duty, they can issue a reasonable management instruction for them to not attend work and seek medical advice, treatment, or clearance if the employee believes they are fit for duty.
- The employer cannot require an employee to take personal (sick) leave, however in these circumstances the employee is not entitled to be paid unless they use their paid leave entitlements.
- Any such time off work for genuine casuals is unpaid.
- Sending an employee home for a reasonable belief that they require testing for Covid-19 due to the display of symptoms would fall into this category. The exception here is that the employer may choose to issue this instruction earlier than they otherwise normally would (you might not typically send an employee home with a sore throat and temps) – hence the considerations outlined below.

#### *What we suggest you consider:*

- Whether the employee is able to work from home during isolation
- Implement a policy statement that makes it clear that you reserve the right to direct an employee to leave work if they display symptoms
- Do you have the facility to assist the employee to attend/book in for a swab test as soon as possible to gain clearance?
- Require the employee to remain absent from work until the results of the swab test are received
- Consider giving the employee a letter to take to their Doctor – swab test + please assess if fit for duty –this this will assist in determining how the leave should ultimately be treated (see below)
- If entitled to paid Personal Leave,
  - o this leave will be treated as Personal (sick) Leave given the employee was displaying symptoms of illness
  - o If test shows positive for Coronavirus – Personal (sick) Leave continues until cleared to return to work
  - o If test is negative for Coronavirus – leave will be converted to paid work if the Doctor assessment is that the employee would have been fit for duties in the absence of the precaution of testing for Coronavirus
- How will casuals be treated? Is it simply leave without pay as they are not rostered for work?

### Employee Request

- where an employee identifies as someone who is at high risk of serious infection and requests to be absent from the workplace in order to self-isolate to prevent contracting Coronavirus

### *Legislation Application*

- Because the employee is not unfit for duty, Personal Leave does not apply. Technically a request to be absent from work as a precautionary measure is the same as a request for planned leave. As such, it is subject to approval by the employer (not an entitlement).

#### *What we suggest you consider:*

- Whether the employee is able to work from home during isolation

- Are you able to support people being absent from work as a precautionary measure (if it is possible, we recommend that you do for those at higher risk of serious implications)
- If you believe you need measures to ensure requests are genuine, create policy to say that the employee must provide a letter from their Doctor confirming they fit within the WHO definition of high risk of serious infection
- Consider whether Annual Leave or Long Service Leave will be automatically approved in this instance (and would you allow someone to go into the red with leave)
- How will casuals be treated? Is it simply leave without pay?

## *Stand down*

If an employer directs an employee not to attend work, despite them being fit and able to do so and not subject to quarantine. This may be a decision that effects only certain roles or organisation wide.

### *Legislation Application*

- Under the Fair Work Act, an employee can only be stood down without pay if they can't do useful work because of equipment break down, industrial action or a stoppage of work for which the employer can't be held responsible. The most common scenarios are severe and inclement weather or natural disasters.

### *What we suggest you consider:*

- Whether the employee is able to work from home rather than being stood down
- Check your Contracts of Employment, Enterprise Agreement and applicable Awards for the provisions relating to stand down

## Alternative Working Arrangements

Industry experts are promoting the concept of 'social distancing' which is based on the premise of reducing the amount of direct personal contact between individuals as possible. There are ways that this can be achieved in the workplace.

### *Working from Home*

#### *Company Considerations*

- If you are open to employees working from home, you need to consider:
  - o Is their role suitable for work from home? (not all roles will be suitable)
  - o Setting expectations:
    - For how long will the arrangement exist?
    - Under what circumstances?
    - How will communication and connectivity be maintained?
    - How will employees be expected to report on work/be held accountable?
    - How will hours be accounted for?
    - What if their family is also at home?
    - How can you continue to provide support remotely?

#### *Practical Elements*

- When an employee works from home, their home 'office' becomes their workplace and hence the business becomes responsible for safety in that workplace
- Implement a workplace self-assessment checklist of the workplace
- Implement a working from home agreement (including the considerations listed above)
- Talk to your IT provider about being set up for working from home

### *Split Shifts/Working Arrangement*

Currently, if there is a known connection with Covid-19 (i.e. someone in your workforce tests positive), there would be requirement for anyone who has been in contact with that person to go into self-isolation. For most small to medium businesses this would mean the majority of their workforce.

To prevent this from occurring, consider:

- Split shifts with distinct teams of people allocated to each shift – this would mean that if one shift was required to self-isolate, the second shift may be in a position to continue operating. Take care not to have individuals cross between shifts.
- Have a core group of employees self-isolate and work from home to ensure continuity in case of a known case in the workplace (see the section above on working from home for managing this)



## *Considerations if Hiring Employees*

Businesses need to consider their situation before hiring new employees. Where you believe that your business may be facing a downturn, yet you need additional people resources, consideration should be given to alternative forms of employment or engagement other than fulltime including:

- Casual
- Temporary/fixed term
- Contractor/outsourcing engagement

## Information for Employees

Be proactive in communicating to employees so they are reassured that you have a plan and are taking preventative measures.

Suggested key points in your message:

- We need to communicate about Coronavirus, not because we want people to be concerned, but because we want people to know that we are aware of it, planning for it and putting measures in place to protect our workforce as much as possible
- Acknowledge that there are 2 likely perspectives for the team: 1) I don't want to be at risk of falling ill in the workplace and I hope that my workmates will stay home if they might have been exposed; and 2) what happens to me if I need to be away from work i.e. am I on paid leave, how long do I have to be away etc.
- We need to take the perspective of keeping each other safe and not exposing each other unnecessarily to risk.
- While we take comfort in the knowledge that Australia is well set up to handle these sorts of health issues, we also won't ignore that there is a chance that you may know someone who contracts Coronavirus and may be seriously impacted.
- Remind employees of your EAP program if you have one.
- Remind your team that they have a duty to take reasonable care for their own health and safety and to not adversely affect the health and safety of other

Ensure staff are provided with the most recent information if you are providing it by always accessing up to date information from the relevant government website. At the time of creating this document, the following pages were active and provide useful information for the workplace:

- o <https://www.health.gov.au/resources/publications/coronavirus-covid-19-what-you-need-to-know>
- o <https://www.health.gov.au/resources/publications/coronavirus-covid-19-isolation-guidance>
- o <https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-about-home-isolation-when-unwell-suspected-or-confirmed-cases>
- o <https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-about-returning-to-your-community>

With all information or policies released to employees, be sure to note that the measures are being put in place in response to current circumstances and the knowledge available right now. If circumstances change and as further information is provided by the authorities, these arrangements (including any approved periods of leave) will be reassessed at the discretion of management.

### *Preparations*

- Contact your local medical centre or testing centre and understand their processes for testing so that this can be easily communicated to staff.

# Business Risk Management

## *Business Considerations:*

The business impact is going to be different for all types of businesses and for different sectors. For an up to date, in-depth look at the impact of COVID-19 per sector, take a look at Ibis World's [COVID-19 Special Report](#) and Ibis World's monitoring of the situation in the [Coronavirus Impact on Industries & Sectors Around the World](#) report.

A starting place in your business is to consider the impact on your own business:

1. Will demand in your business...
  - a. Increase?;
  - b. Decrease?; or
  - c. Remain consistent?
2. What does an interruption of your supply chain mean to continuity of service or delivery?
3. What does an interruption of your competitors' supply chains (or alternate supply chains) mean to demand for your product, continuity of service or delivery? (e.g. If products are not available out of China, what does that mean for you?)

## *Continuity of supply:*

If/when supply is interrupted, seek back up arrangements and contingency plans for supply

- Materials, PPE, consumables
- If you offshore, consider what the implications may be for your service providers
- If your suppliers are predominantly in a high-risk country, consider the implication if the factories reduce or stop supply

## *Continuity of Service or Delivery:*

There is hype in the media currently that there is likely to be a decrease in demand. But for some services (professional services, courier services, personal care etc), it is actually more likely that there will be an increase in demand temporarily. So, if demand exceeds supply (or demand from customers exceeds your current ability to deliver), look at the following options:

- Implement social distancing arrangements so that your entire workforce is not impacted simultaneously. Consider measures such as
  - Working from home / remote working
  - Split shifts and minimise cross-over within teams (i.e. a finance or payroll team)
  - Outsource work or components of work (or at least know your options if you need to)
  - Temporary halt to non-essential work, projects or service
  - Reducing or eliminating physical client contact (using phones, VOIP, Zoom, closing office to walk-ins, etc)
- Reduce or limit services to essential services, minimum service levels or critical services only

## *Customer Contact:*

- Many companies are looking to digital platforms or simple phone calls to continue their customer service delivery where possible
- If face to face contact is required, find ways to inform clients and visitors of your hygiene expectations at your front desk

### **Available assistance**

For anything people | strategy | leadership related please contact Focus HR on 4765 3456.

There is help through the Queensland Government's Industry Recovery Package for further details information head to [www.qld.gov.au/industryrecovery](http://www.qld.gov.au/industryrecovery) or contact 13 QGOV (13 74 68).

The Coronavirus Health Information Line operates 24 hours a day, seven days a week 1800 020 080

Useful information sheets and resources for employers:

- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-about-returning-to-your-community>
- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-know-the-signs>
- <https://www.health.gov.au/resources/publications/coronavirus-covid-19-stop-the-spread>

[Commonwealth Department of Health](#) – Coronavirus (COVID-19) health alert

[World Health Organisation](#) – Coronavirus disease (COVID-19) outbreak

[Fair Work Ombudsman](#) - Coronavirus and Australian workplace laws

[WorkCover QLD](#) – Coronavirus (COVID-19) workplace risk management