



Implications of Coronavirus for your Employment

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Coronavirus, also referred to as COVID-19, is a virus that causes [illness ranging from the common cold to more severe medical issues such as respiratory illness](#). Currently, there is no vaccination against COVID-19. A number of Australian workers are rightly questioning their workplace rights and entitlements if they, or their colleagues, contract the virus.

The World Health Organisation and the Australian Government have issued advice in practising isolation and good hygiene, such as regular hand disinfection and washing, and social distancing as methods of preventing the spread of the virus.

Work Health and Safety Laws

By virtue of [section 19 of the Work Health and Safety Act 2011](#) (Qld), and comparable legislation in other States and Territories, an employer has a duty of care, so far as is reasonably practicable, to provide a safe and healthy work environment. Employers have an obligation to provide appropriate training and updated information in respect to potential health and safety risks, such as information regarding preventing the spread of the virus.

As with employers, employees also have a legal duty to take reasonable care that their acts or omissions do not adversely affect the health and safety of themselves or their coworkers.

In line with the above obligations, employees should advise their employer of any potential exposure to Coronavirus and adhere to the requirement of isolation for a 14-day period, in line with the [guidelines set out by the World Health Organisation](#).

Further, an employer may require an employee to stay home where there is a reasonable basis for believing they are not fit for work, until such time the employee can provide a medical clearance. Where an employer directs an employee to stay home from work, the employer is ordinarily obliged to pay the employees their usual wages, as it is the employer who initiated the absence from work.

Flexible work arrangements may also be implemented by agreement, in circumstances where it is appropriate for an employee to continue to fulfil their duties outside of the workplace, such as the employee working from home.

Leave Entitlements

Rights to access paid leave entitlements will firstly be dependent upon the basis of the employment arrangement – whether an employee is employed on a permanent or casual basis – and also on the applicable terms or conditions.

In the first instance, refer to any employment contract, [applicable award](#) or [enterprise agreement](#) in place, to seek clarification on your leave entitlements. The [National Employment Standards](#) also apply the minimum standard.

Where workers are employed on a permanent basis

Where an employee is employed on a permanent basis, and they have been required by the government or similar authority to isolate, they may access their accrued paid annual leave entitlements.

In circumstances where an employee does not have accrued paid leave, they can seek approved unpaid leave.

Employees should try to reach agreement with their employers on such matters as they arise. In the event of an employee contracting the virus or caring for an immediate family member who has contracted the illness, an employee should be able to access their personal leave, or careers leave, as long as the relevant notification and evidence requirements have been met.

Where workers are employed on a casual basis

Casual employees are the most vulnerable in terms of leave entitlements. Casual employees will not have a legal right to access paid personal or annual leave entitlements.

Some casuals may have access to long service leave and they should raise the possibility of accessing that leave with their employer.

In circumstances where they are not in a position to attend their work, casual employees can seek approved unpaid leave.

Employers have been encouraged to offer special paid leave for all employees, whether permanent or casual. This is to encourage staff to not attend work in circumstances where they are unwell, in a bid to prevent the spread of Coronavirus. It is also to ensure that casual staff are not placed into a compromised financial position and face having to decide whether to remain in isolation or attend work to receive their wages.

Stand Down

The impact of the COVID-19 pandemic has resulted in some employers standing down their workforce.

Section 524 of the *Fair Work Act 2009* allows an employer to stand down employees without pay for:

“a stoppage of work for any cause for which the employer cannot reasonably be held responsible”.

This will apply to workers in businesses affected by mandatory Government shutdowns. For example, airlines, event venues and hospitality workers may be stood down as a consequence of the Government’s directive that pubs and cafes close.

You can access your accrued entitlements while you are stood down. You may also, with the agreement of your employer, access leave entitlements at, for example, half pay.

There has been some confusion recently about access to Centrelink benefits (primarily JobSeeker allowance) if you are stood down as opposed to terminated, made redundant or the like.

The simple answer to this is if you have been stood down, you are entitled to apply for the JobSeeker allowance, even if technically, you’re still employed.

The Federal Government’s Social Security Guides state that a person who is on unpaid leave can be considered unemployed if they are not able to resume their employment and they are willing to look for suitable work.

Importantly, if you have been stood down and wish to go onto the JobSeeker allowance, you **must notify Centrelink** by completing the ‘intention to claim’ form online.

Discrimination

Discrimination is currently a topical issue stemming from the community’s fear and concern around Coronavirus. In the circumstances, discrimination occurs when a person is treated less favorably or unfairly on the basis of an illness, impairment or disability.

Employees’ rights against discrimination in the workplace are protected at both state and federal levels.

If there has been an occurrence of discrimination, an application to either the Australian Human Rights Commission or the Queensland Human Rights Commission can be made to seek a remedy to the discriminatory behaviour. Discrimination law is however, a very complicated area. If you are concerned about such treatment, you should consider seeking legal advice as soon as possible.

Accessing Workers Compensation

Coronavirus is a disease which falls within the definition of injury in section [32\(1\) of the Workers Compensation and Rehabilitation Act 2003](#) (Qld) (the Act). Comparable legislation applies to other States and Territories.

[Section 32\(3\) of the Act](#) specifically provides that an injury includes:

“a disease contracted in the course of employment, whether at or away from the place of employment, if the employment is a significant contributing factor to the disease.”

If an employee is required to be isolated and is suspected of having the virus but hasn't contracted it, then they are not entitled to workers' compensation, as they have not sustained an injury.

If, however, an employee contracts Coronavirus and can prove it was contracted in the course of employment and employment was a significant contributing factor, then the employee would arguably be entitled to workers' compensation.

Currently, with limited cases in Australia, proving the causal link to employment is possible. However, if the virus spreads throughout the community, it will become extremely difficult for a worker to establish the necessary causal link required for a workers' compensation claim to be accepted.

[You can read more about COVID-19 and Workers Compensation here.](#)

This article relates to Australian law; either at a State or Federal level. The information contained on this site is for general guidance only. No person should act or refrain from acting on the basis of such information. Appropriate professional advice should be sought based upon your particular circumstances. For further information, please do not hesitate to contact Hall Payne Lawyers.