

COVID-19 (Coronavirus)

Workplace Relations and WHS Guide.

Workplace Relations Q and A.

Can I stand my employees down?

Due to current economic circumstances related to the COVID 19 pandemic, many businesses are coming to us for clarification on whether they can stand down staff.

Specifically, many business owners view standing down staff as the most effective means of ensuring their business remains viable. Standing down employees is largely covered by Section 524 of the Fair Work Act 2009. As per these provisions, for a staff member to be legally stood down, it needs to be demonstrable that:

1. they are unable to be usefully employed;
2. due to a stoppage of work ...
3. for reasons which the employer cannot reasonably be held responsible.

Under the current COVID-19 circumstances, the most likely scenarios that would satisfy this criteria is:

- A. if the member's business is either ordered to cease operating by the government or
- B. can no longer operate/trade *for any other reason* for which the employer cannot reasonably be held responsible.

If the member believes their situation reflects the above - then standing down staff can be considered.

Caution: Given the relatively tight definition and historically limited application of the stand down provisions, please be advised that a decision to stand down staff does carry some risk. ie. that the Fair Work Commission may, at some later stage, deem the stand down invalid. However, we live in very unique times and under the current circumstances, this may well be a commercial risk worth bearing for the survival of the member's business.

Other options

Please consider the following four staffing options *before* considering standing down staff:

- a. Agreeing with employees to take their annual leave and/or long service leave by agreement
- b. Asking employees if they would be willing to agree to a reduction in ordinary hours – possibly for a temporary period
- c. Asking employees if they would be willing to take possibly unpaid leave by agreement
- d. Deciding to make staff redundant

These options arguably carry less risk than standing down staff, particularly if your circumstances mean a stand down may not be entirely permissible.

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What happens if my employee is required to self-isolate after returning from overseas?

If an employee cannot return from overseas due to travel restrictions or is required to self-isolate after returning from overseas, they should contact their employer immediately. They may take annual leave or leave without pay during this period. If they are unwell or are caring for someone who is unwell during this period, they may take personal/carer's leave.

What if an employee chooses to self-isolate but has not been directed to do so?

If an employee wants to self-isolate – but has not been directed to do so (e.g. have not arrived from overseas), they may request to work from home (if feasible), otherwise they will need to apply for annual leave or leave without pay. If the employee is unwell or is caring for someone who is unwell, they may take personal/carer's leave.

What happens if the employer directs the employee not to attend the workplace (but they were not directed to self-isolate by an authority)?

If you direct an employee not to attend the workplace to fulfill your WHS requirements (i.e. they have not been directed to self-isolate by a government authority and have not chosen to self-isolate themselves), they will be entitled to normal pay until they receive evidence from a medical practitioner or other relevant authority that they are either fit for work (and therefore return to the workplace), or not fit for work (they then go on personal/carer's leave).

What happens if an employee wants to cancel a leave request as they can no longer travel overseas?

Employers are encouraged to do everything reasonable to allow an employee to cancel their leave request in this sort of circumstance. Both parties should work together to reach an amicable agreement – e.g. employee only takes a portion of the leave etc.

What happens if a school closure affects my employees?

If a school closure results in your employee being forced to stay home to care for their child/children, they will likely be entitled to personal/carers leave for that period if they are a permanent employee.

Is there any financial assistance available for businesses and employees affected by COVID 19?

The Government recently announced the JobKeeper Payment on the 30th March 2020, wherein businesses significantly impacted by the coronavirus outbreak will be able to access a subsidy to continue paying their employees. This assistance will help businesses to keep people in their jobs and re-start when the crisis is over. For employees, this means they can keep their job and earn an income – even if their hours have been cut. The JobKeeper Payment will also be available to independent contractors and the self-employed. The Government will provide \$1,500 per fortnight per eligible employee for up to 6 months.

For assistance accessing these payments, individuals should contact the Australian Taxation Office (ATO) directly. To register your interest in the JobKeeper payment, go to <https://www.ato.gov.au/Job-keeper-payment/>. The Government provides further information on this matter at the following address: <https://www.business.gov.au/risk-management/emergency->

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[management/coronavirus-information-and-support-for-business/jobkeeper-payment.](#)

What if I need to consider redundancy due to a downturn in business related to COVID 19?

The normal redundancy provisions apply. This includes consulting with employees covered by a modern award, providing the appropriate notice period and paying the appropriate entitlements (including redundancy pay if your business has 15 or more employees).

A comprehensive redundancy guide is available to members online at www.ava.com.au. If you are considering redundancies, please contact the service directly via phone or email.

WHS (OHS).

As per Work Health and Safety legislation in normal circumstances, there is an obligation for businesses to do everything reasonably practicable to ensure the health and safety of anyone who enters the workplace (this includes workers, volunteers, customers etc.). This includes limiting the spread of illness (including COVID-19) wherever reasonably possible. Preventative measures to limit the spread of the virus include*:

- Washing your hands often with soap and water before and after eating as well as after attending the toilet;
- Avoiding contact with others (including touching, kissing, hugging, and other intimate contact); and;
- Coughing or sneezing into your elbow
- Implementing social distancing measures**

**Information provided by the Department of Health*

***Information on social distancing available from the Department of Health at the following address:*

<https://www.health.gov.au/sites/default/files/documents/2020/03/coronavirus-covid-19-information-on-social-distancing.pdf>

You should also consider disinfecting items such as communal computers/phones, reception desks, waiting areas etc.

In determining additional appropriate measures intended to fulfil obligations under work health and safety legislation, employers should:

- Engage in consultation with workers to identify potential hazards/risks and establish protocols to follow
- Implement the agreed-upon measures and ensure there is clear communication (by multiple channels) of the established protocols to all workers
- Keep up to date with the official information released by government sources (e.g. the Fair Work Ombudsman, Safe Work Australia, Department of Health, state/territory health authority etc.)
- Ensure workers are given ongoing access to information released by government sources
- Limit individuals' access to the workplace where non-essential (e.g. consider conducting meetings with external clients by teleconference as opposed to face-to-face)

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- Reconsider non-essential business travel
- Defer large staff meetings if possible
- Provide workers with access to support services to address queries or concerns, including employee assistance programs

If an employee is experiencing symptoms that suggest they are unfit for work such as fever, cough, runny nose or shortness of breath OR if they have come in close contact with anyone with these symptoms, it would be prudent to direct them not to attend the workplace and require them to obtain medical clearance from a doctor before returning.

Working from home.

If an arrangement has been made to allow an employee or employees to work from home due to the COVID 19 outbreak, all parties must consider their WHS obligations. The AVA HR Advisory Service has working from home resources, including a Working from Home WHS Risk Analysis and Working from Home Agreement template available online at www.ava.com.au.

For more information on WHS and workplace relations considerations during this time, contact the AVA HR Advisory Service on 1300 788 977 or email hrhotline@ava.com.au.

For more health information on the coronavirus, call the Public Health Information Line on 1800 004 599 or the Coronavirus Hotline on 1800 020 080.

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