

CORONAVIRUS (COVID-19) Q&A GUIDE FOR EMPLOYERS

Current at 26 March 2020

DISCLAIMER

The information contained within this document has been produced in good faith based on the NRA's professional interpretation of the relevant legislation and guidance from government and health authorities as at 26 March 2020.

As the situation and our understanding of COVID-19 develops, it likely that recommendations from government and health authorities will change.

Accordingly, we can make no guarantee that the information within this document entirely corresponds with the position of authorities at the time you are using it. We encourage you to refer to the resources and authorities provided in Appendix A of this document for the latest updates and recommendations.

This document should not be taken as a statement of the law and it is intended as a guide only, and we do not accept any liability for loss or damage sustained on the basis of this information.

If you require any further assistance regarding any of the matters outlined in this document, please do not hesitate to contact the NRA Hotline on [1800 RETAIL](tel:1800RETAIL) (738 245).



BUSINESS CONDITIONS AND DOWNTURN

Q What happens if the store suffers a downturn in business and it is not worth opening?

A Unless your lease says otherwise, you are not required to open for business on any day.

Making sure customers are aware of any store closures – such as through social media – can help minimise the impact for when you reopen.

However, this situation does not allow you to stand employees down without pay. Permanent employees who are directed to not attend work because of a store closure are entitled to be paid for their contracted hours.

Q When can I stand employees down without pay?

A Under the [Fair Work Act](#) employers have the right to temporarily stand down employees without pay during a period in which the employees cannot be “usefully employed” because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible.

“Usefully employed” means that the employment will result in a net benefit to the employer’s business by reason of the performance of the particular work done by the employee.

On 22 March the Prime Minister announced that the Federal government in conjunction with the states and territories would direct pubs, licensed and registered clubs, cinemas, casinos, nightclubs, places of worship, gyms and indoors sporting venues to close. Restaurants and cafes had their trade restricted to takeaway and home delivery.

On 24 March, the Prime Minister announced this list would be extended to include auction houses, food courts in shopping centres, some markets, beauty services, tanning services, tattoo parlours, waxing salons, nail salons, libraries, museums, galleries, amusement parks, swimming pools, indoor exercise activities, wellness centres and play centres.

As a result of these enforceable government directions where a business has been directed by the government to close, under the Fair Work Act, employees can be stood down because of a stoppage of work for which the employer cannot reasonably be held responsible and for which employees cannot be usefully employed.

Employers are not required to pay employees during the period of a stand down. Employees do however accrue leave as normal during a stand down.

Note: Enterprise agreements and employment contracts can sometime have different or extra rules about when an employer can stand down an employee without pay, for example, a requirement to notify or consult. Employers should consider whether their obligations are impacted by any applicable enterprise agreement, award, employees’ employment contracts or workplace policies prior to issuing a stand down even where it is as a result of an enforceable government direction to close.

See also: [Absence from Employment](#)

Q What happens if the Australian/State/Territory Government shuts down a shopping centre where I operate?

- A If the Australian/State/Territory Government decides to close any shopping centres or other places of business under biosecurity legislation, such as the *Biosecurity Act 2015* (Cth), you will need to comply and close down your business, exit the area, or undergo any other controls required by the Government.

As mentioned above, if an employer is not able to usefully employ their employees due to a stoppage of work for which the employer cannot reasonably be held responsible, then they may stand them down without pay.

An exercise of these powers by the Australian Government may provide a justification for an employer to stand employees down without pay. However, employers should note that if the Government's powers were exercised in the middle of a work day, employees would still need to be paid for any work performed.

Furthermore, employers should ensure that they have assessed whether employees cannot be usefully employed before standing down without pay. If employees could be usefully employed, either by working at home or at another nearby workplace, then the requirements would not be met in order to stand employees down without pay.

If you are unsure of whether your situation permits you to stand down employees with pay, please don't hesitate to contact the National Retail Association's Workplace Relations team on [1800 RETAIL](tel:1800RETAIL) (738 245) for more guidance.

ABSENCE FROM EMPLOYMENT

Q If I direct an employee to self-isolate, do I have to pay them?

A Yes.

If you have directed a full-time or part-time employee to self-isolate because they have exhibited symptoms of COVID-19, then you should ask them to self-isolate and they may take personal leave until they are no longer exhibiting symptoms. You could also request that the employee seek medical clearance that their symptoms are not as a result of COVID-19, and depending on the result of this, they may not need to self-isolate.

If a full-time or part-time employee is absent from work at your direction, and not because they are required by the Australian Government to self-isolate, then you are required to pay them at least their base rate of pay for their contracted hours during this period.

Q If an employee is self-isolating at the direction of the Australian Government, do I have to pay them?

A If the employee can perform their work remotely or from home, then you should pay them for the hours that they work.

If they cannot work remotely, and they have been required to self-isolate by the Government, you do not have to pay them.

However, employees may in some circumstances access personal leave, or you may agree to allow them to access annual leave, in order to maintain their income.

See also [Can I direct employees to take personal leave?](#) and [Can I direct employees to take annual leave?](#)

Q Can I direct employees to take personal leave?

A There is no power under [Fair Work legislation](#) for an employer to direct an employee to take personal leave.

An employee is not strictly entitled to take personal leave unless they are unfit for work because of an illness or injury – that is, unless they are actually displaying symptoms of illness.

However, employees may agree to access their personal leave in order to maintain their income, even if they are in self-isolation as a precautionary measure only.

Q When are employees entitled to take personal leave?

A Permanent employees are entitled to take paid personal/carers' leave if:

- they are experiencing symptoms of illness; or
- they are caring for member of their household or immediate family.

Permanent and casual employees are entitled to two days' unpaid carers' leave per permissible occasion to take care of a member of their household or immediate family who is unwell.

As these are minimum entitlements, employers can at their discretion elect to allow employees to access paid personal leave in excess of what has been accrued, or to access additional periods of unpaid leave.

Q Can employees access annual leave while in isolation?

A Yes. If an employee is required to self-isolate, and they wish to access paid annual leave, you can agree to this request.

Q If an employee refuses to self-isolate, can I direct them to not attend work if they aren't presenting any symptoms (for example, if they have recently travelled)?

A You can direct an employee to not attend work as long as the direction is reasonable. You should be guided by the principle that it will be reasonable to direct an employee to not attend work if:

- they are returning from a [country or region](#) considered by the Australian Government posing a higher risk of transmission; or
- have been in close contact with a confirmed case of COVID-19.

You should consider whether the employee should be asked to work from home while in quarantine, otherwise if they refuse to access any paid leave entitlements they may nevertheless be entitled to be paid for the period that they are directed by you to not attend work.

Q What are my obligations if someone is directed by the Australian Government to self-isolate?

A The Australian Government has certain powers under biosecurity legislation, including the power to direct individuals to remain at their place of residence or be isolated in a medical facility.

In general, these powers are only to be used as a last resort to limit the spread of the virus. Currently, the Australian Government requires persons to isolate themselves for a period of 14 days if they have returned from any overseas travel.

The Australian Government also requires persons who have been in close contact with a proven case of COVID-19 to isolate themselves for 14 days from the date of last contact with the confirmed case.

If an employee meets these circumstances, they are required to self-isolate even if they are not specifically directed to do so by the Australian Government.

If an employee cannot attend work as a result as a result of these requirements, they should be encouraged to access personal leave or annual leave.

Q When can employees work from home?

A Employers are entitled to issue reasonable and lawful directions to their employees which is likely to include a direction to work from home (in line with the Government's request) in instances where the nature of work involved is suitable to be conducted from an employee's home. Employers should however also review their obligations under any applicable enterprise agreements, awards, contracts and policy (such as consultation clauses) prior to issuing such a direction.

Where employees are required to record their hours of work (for example, in relation to annualised wage arrangements under some awards), this currently needs to continue when employees are working from home.

Q Can I ask someone to work remotely whilst in quarantine?

A If an employee is able to work remotely whilst in isolation, this option ought to be explored as it allows the employee to remain an active participant in the workforce and maintain their usual income without being required to access their paid leave entitlements.

However, if an employee is in self-isolation and accessing annual leave, personal/carer's leave, or unpaid leave, then you should not ask them to work.

Q How do I manage productivity if someone is working remotely?

A In essence, when managing productivity for employees working from home, you should take similar steps to manage employee productivity as you would in the workplace. That being said, you will have to adapt your approach to account for your inability to visually supervise them and the potential for miscommunication.

A few easy steps employers can take to more effectively manager remote workers include:

- Set clear expectations

Clearly outline what you want, when you want it done by, how you want it done, and ensure you encourage employees to clarify anything they are not clear on. Avoid assumptions, and vague or ambiguous directions.

- Maintain regular communication

Organise regular catch-ups, and try to maintain multiple lines of communication in addition to email, such as voice calls, and instant messaging.

- Provide the appropriate technology

Where possible, provide employees working remotely with the technology required to do so. Productivity is likely to suffer where an employee has technical issues, and this is more likely where they rely on personal laptops or home internet.

Q What happens to casual employees if they are required to go into isolation?

- A Casual employees are not entitled to paid leave, as this is intended to be accommodated in their higher rate of pay.

Employers may choose to make discretionary payments to casual employees during this period, however any such payment would be purely discretionary and not required by law. It is recommended that independent legal advice be obtained before making any such payment, as these may constitute as evidence that the employee is not truly a casual employee, but a part-time or full-time employee, if not managed correctly.

As at the date of publication various options to assist casual employees are being considered by the Australian Government, however no formal policy position has been announced.

Q Might the disruption caused by COVID-19 interfere with casual conversion rights?

- A It is possible that the disruption caused by COVID-19 could interfere with casual conversion rights under modern awards and enterprise agreements, where applicable.

Specifically, the disruption caused may:

- disrupt a casual employee's pattern of work to such an extent that they no longer satisfy the eligibility requirements for casual conversion; or
- result in reasonable grounds for refusing a request for casual conversion.

It should be noted that notwithstanding this, employers can still agree that employee convert from casual to permanent employment if this is appropriate for the needs of their business.

Q Can I dismiss an employee who refuses to self-isolate?

A No. However, if an employee refuses to self-isolate, you may wish to issue them with a reasonable and lawful direction not to attend the workplace until the self-isolation period has passed for the employee. The employee should be paid for their contracted hours at their base rate of pay.

If an employee does not follow this reasonable and lawful direction, then this will amount to misconduct, and may provide a valid reason for dismissal.

However, employers should always ensure they follow a disciplinary process that affords the employee with natural justice and procedural fairness when considering disciplinary action against an employee that may result in termination of their employee.

Any termination or other disciplinary action because an employee is required to self-isolate, whether they have contracted COVID-19 or not, may be prohibited under anti-discrimination laws. Before taking any such action, it is recommended that you seek separate legal advice.

Q Do I need to consider workplace health and safety issues if my employees are working from home?

A Employers have a duty of care to their employees, even if their employees are working from home.

Prior to going ahead with a work-from-home arrangement, employers should have a discussion with their employees to make sure their work area at home meets WHS standards, which would involve a safety assessment of the work area prior to the employee working from home.

Some key things to consider during an assessment include the following:

- any manual handling tasks the employee will have to carry out;
- tripping or falling hazards and associated musculoskeletal risks;
- electrical safety; and
- their general environment – things like noise, security, fire exit access, first aid, etc.

After doing such an assessment, you should come to an agreement with the employee about any controls and preventative measures that need to be put in place.

Q What should I do if the school of an employee's child is closed, and my employee has to care for the child?

A If an employee has to stay home to care for a child whose school has been closed in response to concerns about COVID-19, then they will be able to access paid personal/carer's leave to provide this care and supervision to the child, even if their child is not sick. If an employee exhausts their accrued paid personal leave they may also access up to two days' unpaid carer's leave (or a longer period with the agreement of their employer) to help during an unexpected emergency .

HEALTH AND SAFETY

Q What steps should I take to protect my employees?

A Work health and safety laws in Australia require employers to ensure, so far as is reasonably practicable, the health and safety of their workers and others at the workplace. You must identify hazards at the workplace, and take steps to eliminate or reduce any risks.

To ensure employers are complying with their obligations under WHS laws, SafeWork Australia [recommends employers](#):

- monitor the [information and advice](#) published by the Australian Government;
- ensure policies and procedures are in place to deal with infection control;
- communicate the requirement for employees to self-isolate in certain circumstances;
- eliminate international travel in line with the Australian Government's recommendations; and
- provide regular updates to employees.

Employees also have an obligation to ensure their own health and safety, and the health and safety of others in the workplace.

To prevent the spread of the virus, the World Health Organization [recommends](#) to:

- wipe down and disinfect surfaces regularly;
- encourage employees and customers to frequently wash their hands with soap and water;
- place hand sanitiser dispensers in prominent places throughout the workplace;
- ensure that P2/N95 face masks and paper tissues are available; and
- once the virus starts spreading in your community, ask employees to stay at home if they develop any symptoms.

You should also develop a business contingency plan to deal with likelihood of an outbreak. If there is a confirmed case in the workplace, employers should consider whether to:

- close the store and direct employees to not attend work or to work from home;
- have the store professionally cleaned; and
- notify the [health department](#) in your state or territory.

Employees who contract the virus at work may be eligible to make a workers' compensation claim if they contract the virus due to insufficient measures being taken by their employer to ensure their health and safety.

See also: [Can a person claim workers' compensation if they contract COVID-19 while at work?](#) and [Should I quarantine goods coming from China before sale?](#)

Q Do I have to provide my employees with personal protective equipment (PPE)? (i.e. face masks)

A It will depend on your workplace, but depending on the risk present in your workplace you may need to.

Employers have a duty to ensure a safe and healthy workplace for their employees. Accordingly, if the nature of the workplace poses a significant risk of an employee contracting the virus, then an employer may need to consider making PPE available to their employees.

If an employer decides that face masks or other forms of PPE are appropriate to minimize the risk of an employee contracting COVID-19, then they will need to provide these masks to employees, and cannot expect employees to purchase their own.

Employers should also:

- select PPE that is:
 - suitable with regard to the nature of the work, and how COVID-19 is transmitted; and
 - ◆ For example, surgical masks may be adequate, but depending on our latest understanding of how the virus transmits, it may be more appropriate to provide P2/N95 masks.
 - a suitable size and fit for your employees to wear;
- provide information and training on how to use, wear, store and/or maintain the PPE properly;
- maintain, repair, and replace PPE to ensure employees are provided with clean, hygienic, and functioning PPE;
- ensure that employees use or wear the PPE provided.

However, if employers believe that the risk to employees was such that the use of masks was appropriate then employers should also consider whether it is even safe for the shopfront to continue to operate. Particularly as PPE is the least effective form of risk prevention in the workplace, while elimination of the risk is the most effective.

Public health authorities will likely give guidance to employers concerning whether shopfronts in certain areas will need to close.

If an employer believes there is a lower risk of COVID-19 transmission in their workplace, they may just wish to make use of other risk reduction approaches, such as ensuring employees have access to hand-washing facilities and soap or alcohol-based hand rub to reduce the risk of infection.

Q How should I deal with customer abuse towards staff eg. in cases of shortages, unit limits, or interceding in altercations between customers?

A Customer abuse directed at staff should never be tolerated and protocols for dealing with customers who are aggressive should be followed. This will differ between organisations and shopfronts.

Essentially, a procedure should be in place for when and how to contact management or supervisors for assistance with an aggressive customer. If the matter escalates then the relevant security service used by the employer (if any) should be contacted. If a conflict occurs between customers that is escalating towards a physical confrontation then the police should be contacted.

If an employer is selling a product that is in particularly high demand then it may be useful to develop a guidance script for employees to assist them with explaining to the customer the reasons behind the policy and why it is occurring.

Employers should consider supporting employees who have been subject to verbal or physical abuse through an employee assistance program that provides access to counselling services.

Q Can a person claim workers' compensation if they contract COVID-19 while at work?

A Yes. It is possible that an employee could claim workers' compensation if they contracted COVID-19 in the course of their employment, and their employment was a significant contributing factor.

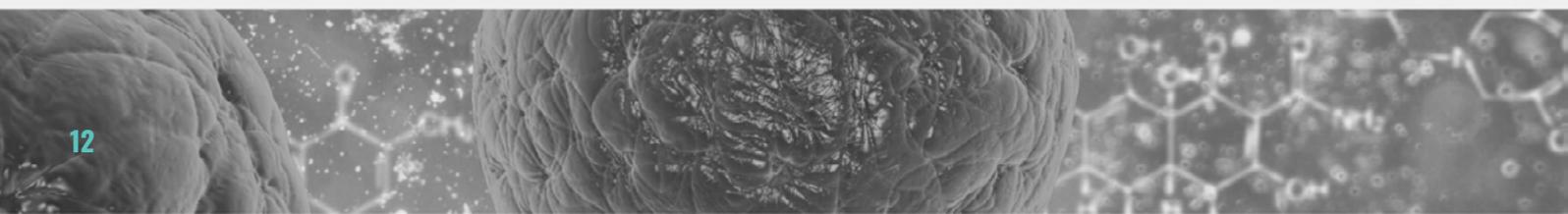
However, as the spread of COVID-19 continues, it may be more difficult for the employee to prove that they contracted the virus in the course of employment, as opposed to them contracting it from the wider community outside of work.

Q Should I quarantine any goods coming from overseas before sale?

A The World Health Organization reports that it is currently uncertain how long COVID-19 is able to survive on surfaces. Some studies suggest that coronaviruses in general are able to survive anywhere from a few hours to several days.

If this is a concern for your business, we recommend regularly checking the [Australian Government's guidance](#) in relation to COVID-19 for updated information.

See also: [What steps should I take to protect my employees?](#)



Q If I have a confirmed case of COVID-19 in my store, do I need to notify anyone?

A Where there has been a confirmed case of COVID-19 in the workplace, you may need to notify your employees so that steps may be taken to ensure their health and safety. You also have a common law duty of care to entrants such as customers.

Under work health and safety legislation, employers also have a duty to notify the relevant state or territory regulator of an incidence of a ‘serious injury or illness of a person’ for an employee in the workplace. This term is further defined, and specifically includes where there is an injury or illness requiring the person to have:

- immediate treatment as an in-patient in a hospital;
- immediate treatment for loss of a bodily function; or
- medical treatment within 48 hours of exposure to a substance.

Accordingly, depending on the circumstances of COVID-19 affecting an employee, an employer may need to notify the relevant regulator. A list of the regulators will be provided at the end of this document for reference.

You should also monitor the advice from the Australian Government on whether it is necessary to disclose this information to customers or surrounding businesses.

If you do decide to make a public announcement, it is recommended that you check with the relevant government health department (either State, Territory or Federal) to ensure that any public notice you make is accurate. The relevant health department will be the department which notifies you of the confirmed case in your store.

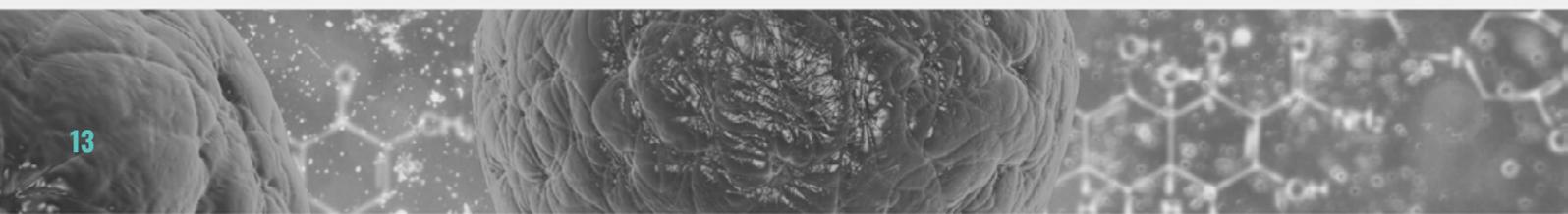
See also: [What steps should I take to protect my employees?](#)

Q What privacy considerations do I need to keep in mind at this time?

A Most employers will need to collect personal information from staff members and workplace visitors to control the risks posed by the COVID-19 pandemic, but they must still comply with privacy laws and the Australian Privacy Principles (APPs) in Schedule 1 of the Commonwealth Privacy Act 1988.

In relation to the coronavirus, employers can collect, use and disclose personal information for the purpose of ensuring all necessary precautionary steps are taken for the individual the information is taken from or any other individuals who might be at risk. However, you must collect “as little information as is reasonably necessary”, in line with Department of Health advice on identifying COVID-19 risk factors and controlling the spread of the communicable disease.

You may inform staff that a colleague or visitor has or may have contracted COVID-19 but you should only use or disclose personal information that is reasonably necessary in order to prevent or manage COVID-19 in the workplace.



Depending on the circumstances, it may not be necessary to reveal the name of an individual in order to prevent or manage COVID-19, or the disclosure of the name of the individual may be restricted to a limited number of people on a ‘need-to-know basis’.

An employer doesn’t need to obtain an individual’s express or implied consent to collect personal health information where, for example, the collection relates to preventing serious health and safety threats.

An employee’s sick leave records aren’t protected by the Privacy Act where those records are used or disclosed for a purpose directly related to the relevant employment relationship.

Where employees are working remotely or from home we strongly recommend employers implement stringent security measures to protect personal information during remote work. This include ensuring all laptops and other devices have updated operating systems and anti-virus software, and strong passwords; workers use work email accounts instead of personal ones; and multi-factor authentication for remote access systems and resources are in place.



APPENDIX A - FURTHER SOURCES OF INFORMATION

Commonwealth Government National Coronavirus Health Information Line: [1800 020 080](tel:1800020080)

Commonwealth Department of Health: [Coronavirus \(COVID-19\) health alert - latest advice](#)

Commonwealth Department of Home Affairs: [Advice on travel, including current restrictions](#)

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

Safe Work Australia: [Coronavirus \(COVID-19\): Advice for PCBU\(s\) conducting a business or undertaking](#)

Services Australia: [Financial Assistance for those affected by Coronavirus \(COVID-19\)](#)

Smart Traveller: [Current advisories for overseas travellers](#)

World Health Organisation: [Guide - Getting your workplace ready for COVID-19](#)

State and Territory Work Health and Safety Regulators

New South Wales: [SafeWork NSW](#) and their [current advice on COVID-19](#)

Victoria: [Worksafe Victoria](#)

- [their current advice on COVID-19](#); and
- report - [Preparing for a pandemic: a guide for employers](#)

Queensland: [WorkCover QLD](#) and their [current advice on COVID-19](#)

Northern Territory: [NT Worksafe](#)

Tasmania: [WorkSafe Tasmania](#) and their [current advice on COVID-19](#)

Australian Capital Territory: [WorkSafe ACT](#)

South Australia: [SafeWork SA](#) and their [current advice on COVID-19](#)

Western Australia: [WorkSafe WA](#)



National Retail
Association

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CALL 1800 RETAIL
PRESS OPTION 1

To speak to one of our workplace relations specialists