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Australia's original accounting firm for small business

Managing staff leave entitlements during the coronavirus pandemic

Top 14 questions companies are asking about
coronavirus and the impacts on the workplace

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Introduction

Due to the evolving global coronavirus pandemic, we've written this eBook to help business owners and managers navigate around the sensitivities of employee leave entitlements. In the current climate, it's a hard topic to approach and many businesses are unsure of their rights and obligations in these uncertain times.

Our parent company, FCB Group, operates a telephone advisory service that has received thousands of calls and questions in the past few weeks from clients – business owners and managers just like you – looking for help to ensure they're staying on the right side of the law while keeping their business afloat.

In this guide, we've compiled the top 14 questions that businesses are asking FCB's advisors about the coronavirus and the impact it's having on their workplace.

Here we share the answers with you.



1. What happens if an employee is required to self-isolate? How is this period treated?

Whether an employee decides to personally self-isolate, or is directed by the Government to do so, and they're **not unwell**, then their absence from the workplace is not a result of the employee being *"unfit for work due to illness or injury"*. In this circumstance, the employer has **no obligation** to pay personal leave.

This absence would be considered as authorised, unpaid leave unless the employer agrees to treat this period as paid leave, such as annual leave, long service leave or personal/carer's leave.

Only when the individual is **unwell** would this constitute a period of **personal leave**.

Despite this, we would encourage employers to be flexible and accommodating with their employees, where possible, and agree to other personal arrangements that suit the circumstances. Options for alternative arrangements during self-isolation may include an employee accessing annual leave by agreement, taking long service leave, or arranging to work from home (if practicable).



2. What if an employee has been in contact with someone who has coronavirus?

The employee must self-isolate for 14 days after the date of the last contact with the confirmed case.

In these circumstances, if the employee is not unwell, has no symptoms and is not otherwise sick, there is no obligation to pay them personal leave. This absence would be authorised unpaid leave unless the employer agrees to treat this time as paid leave, such as annual leave, long service leave or personal/carer's leave.

However, if the employee develops symptoms, becomes sick or is confirmed to have coronavirus there would be a requirement to treat the absence as personal leave until the entitlement has been exhausted.

3. What if my employee looks unwell but doesn't report to be sick?

If your employee is showing flu-like symptoms but doesn't report to be unwell, when you as the employer direct them to not attend work, you must pay them for their time off (unless they can reasonably work from home).

Also, if you require them to produce a medical certificate certifying that they are fit for work, you must pay the costs of the medical appointment in addition to the time off.

If the medical certificate declares the employee is unfit for work, then the employee will be paid personal leave.



4. What about casual employees?

Casual employees are not entitled to paid personal carer's leave when they are unfit to attend work on account of injury or illness.

If a casual employee attends work and is exhibiting symptoms of coronavirus but says they're feeling well, the employer is entitled to send them home without providing additional payment as long as the minimum engagement period has been paid.

Similarly, where a casual has their shift cancelled, an employer is not obliged to make payment.

5. What if schools shut down and employees need to stay home and look after their children?

Closure of schools which requires a parent to remain at home to care for their child/children does not give rise to personal or carer's leave.

In the absence of an employer choosing, at their sole discretion, to treat the period as carer's leave, the period will be a period of authorised unpaid absence.

Alternatively, if it's possible, the employer may come to an arrangement with the employee whereby the employee works from home during this period in order to minimise the burden of unpaid leave.



6. What if the workplace has to close as a result of COVID-19?

In the unfortunate event where a business needs to shut down due to a shortage of work (or other circumstances beyond its control), employees may be stood down without pay.

Employers **should not** enact a stand down prematurely or arbitrarily, as to do so may expose the business to dispute or risk. Seek specific advice in these circumstances.

7. What about non-work-related employee travel?

Employers must be mindful not to give directions that will impede an employee's private or personal activities. However, employees should be made aware that if they decide to travel overseas then, in line with the Government's newly announced restriction, anyone entering Australia from overseas from midnight 15 March 2020 **must** self-isolate for 14 days. This will mean that if there's no working from home arrangement in place between the employee and the business, the employee will be on a period of unpaid leave upon their return.



8. What if an employee is stuck overseas?

The Fair Work Act 2009 does not have any specific rules for these situations. In this regard, employees and employers should come to their own arrangements. Such alternative arrangements may include:

- working remotely or working from home (if possible);
- taking annual leave by agreement;
- taking sick leave if the employee is sick;
- taking long service leave (if available); and
- arranging any other paid or unpaid leave by agreement.

In the event alternative arrangements are not possible, the employee will be on a period of authorised unpaid leave.



9. As an employer, am I responsible for WHS if my employee is working from home?

Prior to agreeing to a working from home arrangement, employers should ensure that the employee's work area at home is safe.

WHS assessments should be undertaken, i.e. a safety assessment should be completed before any arrangement is signed off. Many companies are unable to conduct individual inspections of every employee's home due to the sudden large numbers of employees working from home due to the pandemic. In such cases, companies have opted for a self-check system, where the employee certifies their work area complies with WHS. Talk to us for specific advice on how to do this.

It's important to remember that the home office is considered the 'workplace' for the purposes of employer liability.

10. Is workers compensation a risk to my business?

If your employee were to contract coronavirus at the workplace, then this may give rise to a workers' compensation claim.

It's important to note that workers' compensation laws differ from State to State.

While employers are encouraged to do everything possible to ensure the health and safety of their staff, including guarding against the risks of contracting the virus, there's no need to be fearful of a claim.

Any workers' compensation claim will require the claimant to prove (by conducting a highly fact-sensitive enquiry) that the virus was contracted as a result of attendance at the workplace.

11. What if an employee refuses to serve a customer or client due to concern of coronavirus?

If an employee is refusing to work or refusing to serve a customer or client, at first instance it is important for the employer to genuinely discuss the concerns with the employee to try and understand the basis for the refusal and any health and safety matters arising from it.

If, after assessing the situation, the employee's refusal is unreasonable, the likelihood of infection is low and the employer has taken all reasonable steps to mitigate risk of injury or illness, then the employer may provide a reasonable direction for the employee to perform the work (and take appropriate disciplinary action if the employee continues to refuse such a direction).

12. Should an employer provide information to employees?

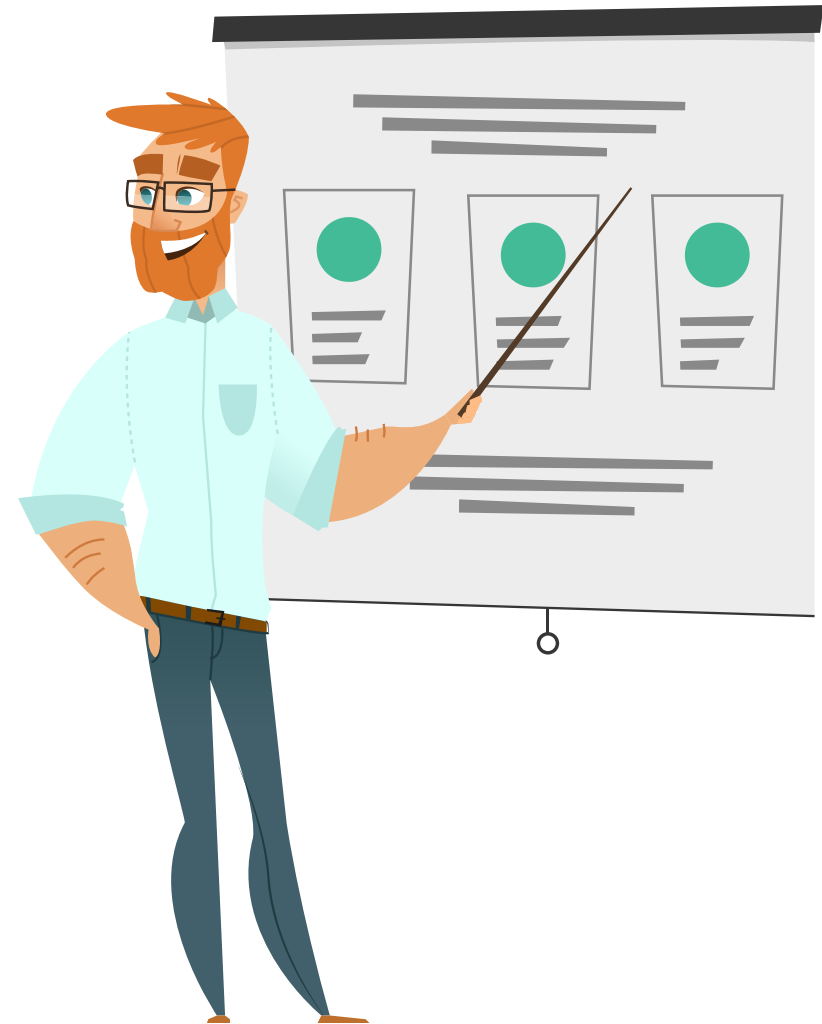
We expect that employees will be anxious about the risk of a pandemic and will likely have questions about their working arrangements. Employers should be providing information to employees about Health & Safety in the workplace as this is an obligation under WHS legislation.

In particular, employers should provide regular updates to employees about the status of coronavirus, advice on hygiene practices and information available through the Department of Health.

13. What other practical measures should a business be taking in the circumstances?

In addition to implementing clear guidance concerning the coronavirus pandemic and personal hygiene, other steps a business may take in response to the coronavirus include:

- Implementing guidelines on employees having to report, and potentially remain absent from the workplace, where they exhibit any of the symptoms of the coronavirus (fever, cough, runny nose, shortness of breath);
- Altering annual leave request processes so employees are required to disclose if they intend to travel overseas. While an employer is unable to unreasonably refuse an annual leave request, the disclosure will facilitate a further conversation and may give rise to an employer being able to refuse the request in the event that the employee refuses to accept any reasonable Health & Safety measures suggested by the employer; and
- For those who indicate that they intend to travel overseas, discuss that the leave request is approved upon the basis that they must fully observe any and all recommendations of the Australian Government upon their return. This includes, but isn't limited to, the condition that any mandatory period of self-quarantine will to be treated as a period of authorised unpaid leave unless specifically agreed.



14. Where can I get more information?

It is important for employers to stay up to date with information provided by the Department of Health (DOH). The information is updated frequently as more is learned about the virus and its transmission, and the results of other countries responses become clearer, so check often for updates, and subscribe for health alerts.

Below are a number of links to resources from the **DOH**.

Health Alerts COVID-19

<https://www.health.gov.au/news/health-alerts>

Isolation Guidance

<https://www.health.gov.au/resources/publications/coronavirus-covid-19-isolation-guidance>

COVID-19 What you need to know

<https://www.health.gov.au/sites/default/files/documents/2020/03/coronavirus-covid-19-what-you-need-to-know.pdf>

Information about home isolation when unwell (suspected or confirmed cases)

<https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-about-home-isolation-when-unwellsuspected-or-confirmed-cases>



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