

Frequently Asked Questions

Industrial Relations

COVID-19 QUESTIONS - INDUSTRIAL RELATIONS



COVID-19 is creating uncertainty and new challenges for you.

We will do everything we can to provide you with the information you need, and we will keep you informed of new developments. We have formulated a list of answers to common questions that members have been asking. These will guide you through the various workplace issues you may encounter.

Given this is an unprecedented situation, we recommend that you keep employees well-informed and start planning for various contingencies. In all cases, it will be better to engage with your employees and agree a way forward with them.

What do I do if one of my employees has been diagnosed with COVID-19?

If an employee becomes a confirmed case of COVID-19, the employee must not attend work in any circumstances. This is part of your obligation to provide a safe workplace for your staff and others.

The employee must follow all medical advice provided by their health care practitioner or the relevant government agency. This is likely to include a 14-day self-quarantine period.

An employee who is diagnosed with COVID-19 will be able to use accrued paid personal/carer's (sick) leave. If the employee doesn't have sufficient accrual, the employee can access unpaid personal/carer's leave for the period they are unfit for work.

If you are required by your industrial instrument to contribute to Incolink, your employees may be able to access entitlements from the Incolink Portable Sick Leave fund. Entitlements with Incolink's Portable Sick Leave Fund may be utilised if the employee has exhausted their paid personal/carer's leave with their employer.

In most circumstances, the employer may request supporting documentation to approve paid personal/carer's leave.

Where an employee is experiencing hardship and they receive Incolink redundancy contributions,

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they may also be able to access Incolink benefits. Incolink is currently looking at different ways to assist affected employees. We will continue to update our members with the necessary information.

For employees who have been in the construction industry for more than seven years, they may be able to access a lump-sum payment for accrued long service leave available through CoINVEST. Employees should be directed to contact CoINVEST to access those entitlements.

We encourage our members to keep all of their employees well informed. However, we emphasise that privacy is important and no private individual information should be shared with other employees or third parties.

What do I do if one of my employees is experiencing some of the COVID-19 symptoms but has not been diagnosed?

Symptoms of COVID-19 include: shortness of breath, fever, sore throat and coughing.

If the employer has a reasonable suspicion that an employee has contracted COVID-19, the employer must not direct the employee to come into work.

If the employee is at work, the employee should immediately leave work and call the COVID-19 hotline on 1800 675 398 and/or seek immediate medical assistance. An employer may request a medical clearance from the employee before returning to work.

An employee who has developed some of the symptoms can be considered unfit for work and entitled to access paid personal/carers (sick) leave. If the medical test comes back clear, and the employee has otherwise recovered from the symptoms enough to return to work, the employee can return provided they are fit for work.

In the event testing for COVID-19 is unavailable and the employee continues to remain unwell, the employee can continue to use personal/carer's leave. If the employee doesn't have a sufficient personal-leave accrual, they can access unpaid personal leave or, alternatively, you and the employee can agree to the employee accessing annual leave, long service leave or accrued RDOs.

What if one of my employees has been identified as having had close contact with someone diagnosed with COVID-19?

According to the latest guidance (as of 18 March 2020) provided by the Department of Health and Human Services (DHHS), a person will need to self-quarantine if they have come in close contact with a person who has a confirmed case of COVID-19.

Close contact is defined as:

- Spending more than 15 minutes face to face with a person who is a confirmed case in the 24 hours before they showed symptoms or once they showed symptoms; or
- Sharing a closed space for more than two hours with a person who is a confirmed case in the 24 hours before they showed symptoms or once they showed symptoms.

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If the employee is required to self-quarantine, but is otherwise well, the employee and employer may reach an agreement in relation to the period of self-quarantine. If it is feasible for the business, an employee can work from home.

Subject to the specific circumstances, where an employer and employee agree that an employee is unfit for work because of an illness after close contact with a confirmed case, this period can be considered personal/carer's leave. (If symptoms develop, the employee can access personal leave).

Alternatively, the employer and the employee can agree for the employee to take accrued annual leave, long service leave, banked RDOs or unpaid leave.

Where an employee is experiencing hardship and they receive Incolink redundancy contributions, they may be able to access Incolink benefits. Incolink is currently looking at different ways to assist the affected employees. We will continue to update our members with the necessary information.

For employees who have been in the construction industry for more than seven years, a lump-sum payment may be available through CoINVEST. Employees should be directed to contact CoINVEST to access those entitlements.

What if one of my employees has been identified as being in casual contact with someone diagnosed with COVID-19?

Current guidance from the DHHS (as of 18 March 2020) is that a person who has only been in casual contact with a confirmed case of COVID-19 must monitor themselves for 14 days from the time after the casual contact. These people are not required to self-quarantine.

Casual contact is defined as

- Spending fewer than 15 minutes face to face with a person who is a confirmed case in the 24 hours before they showed symptoms or once they showed symptoms; or
- Sharing a closed space for fewer than two hours with a person who is a confirmed case in the 24 hours before they showed symptoms or once they showed symptoms.
- If the employee does not have any symptoms of COVID-19 (i.e. fever, shortness of breath, sore throat and coughing), the employee may continue to attend work.

In such cases, an employer and employee may agree to take some prudent steps to avoid the spread of the virus. These may include allowing the employee to work from home or enabling the employee to take some form of leave (whether paid or unpaid).

To ensure a healthy and safe workplace, an employee who shows symptoms of COVID-19 should immediately leave work and call the COVID-19 hotline on 1800 675 398 and/or seek immediate medical assistance. It is imperative that employees adhere to medical advice and government directives. Employees should maintain regular communication with their manager in relation to their ability to work and to attend the workplace.

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What if one of my employees has returned from overseas in the last 14 days?

All people returning to Australia from travel overseas must follow the Australian Border Force and the DHHS's directions to isolate or quarantine.

The Victorian Premier has also announced that Victoria will be placed in a State of Emergency. This allows the Victorian Police to enforce self-quarantine measures and to impose penalties on individuals or bodies corporate that do not comply with requirements to quarantine. This will affect employees who are returning from overseas travel and employees who have either direct contact or been diagnosed themselves.

If any of your employees are returning from overseas on or after 16 March 2020, the employees cannot come back into workplace for at least 14 days after returning to Australia.

If members have an employee who is required to quarantine, an agreement can be reached in relation to the self-quarantine period. Options can include taking additional annual leave days, drawing down accrued long-service leave, utilising banked RDO days, working from home if it's feasible for your business or a period of unpaid leave by agreement of both parties.

If the employee, while on the period of quarantine, becomes unwell and would be unfit to work, they can access their personal leave entitlement while unwell.

What if one of my employees is required to look after their dependent as their school or childcare has shut down?

As a result of COVID-19, there may be disruptions to schools and childcare services.

If an employee is at work and they are required to collect their child from school or childcare because the facility was closed due to COVID-19, the employee may utilise their personal/carer's leave to collect their child. In this circumstance, it can be considered an unexpected emergency and the personal/carer's leave entitlement may be utilised to collect the child and provide immediate care.

If the school or childcare centre remains closed for days or weeks following the initial closure, the employee will not be able to use their personal/carer's leave. If your child is not sick, personal/carer's leave can only be utilised in situations where there is an unexpected emergency.

Where a child (or other dependent) becomes unwell, personal/carer's leave can be accessed to care for that child.

Where an employee has children that need ongoing care due to a school or childcare closure, the employee should seek to arrange alternative care. If an employee is unable to find suitable care, the employee and employer may come to an agreement to use their annual leave, long-service leave, banked RDOs or go on a period of unpaid leave.

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Alternatively, an employer and employee may reach an agreement to reduce working hours and pay pro-rata for the period of reduced hours. Any such arrangement should be in writing and signed by both the employer and employee.

What if I have been directed by the government to temporarily close my business operations?

We all must act in accordance with any lawful government directives and guidelines. This may include future mandatory local lock-downs, quarantines, exclusion areas or travel restrictions which stop work.

The stand-down provisions in the Fair Work Act allow employees to be stood down without pay in certain limited circumstances. These include situations where an employee cannot usefully be employed because a stoppage of work for any cause for which the employer cannot reasonably be held responsible. See further, question 9.

Employers should be aware that a contract of employment or enterprise agreement may modify the ability to stand down employees under the Fair Work Act. Members should seek further advice from the Master Builders IR Department on (03) 9411 4555.

If you are required by the government to stop working on a particular site, cease your operations or lose access to your premises because of a lock down, as an alternative to a stand down of workers you should consider:

whether you can reasonably redeploy your employees elsewhere

whether any of your employees can work from home

whether any other arrangements can be made so that the work can continue

agree to allow employees to access paid or unpaid leave.

Where an employee is experiencing hardship and they receive Incolink redundancy contributions, they may be able to access Incolink benefits. Incolink is currently looking at different ways to assist the affected employees. We will continue to update our members with the necessary information.

For employees who have been in the construction industry for more than seven years, a lump sum payment may be available through CoINVEST. Employees should be directed to contact CoINVEST to access those entitlements.

What if I (the employer) have made a call to shut down the site?

We understand that there is genuine concern for health and safety onsite. However, it is probably not in the interests of the employer or employees to close a worksite unnecessarily and without direction from government authorities.

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If the employer decides to close a worksite, the employer should direct its employees to work at another worksite if possible. If work is not available in another location, the employer may direct employees not to attend for work and send them home with pay. Alternatively, an employer can try to come to an agreement with employees for them to use available paid leave accruals. Any agreement reached with an employee to take paid leave during any such period should be in writing.

In what circumstances may I stand my employees down with no pay?

Members are understandably concerned about both short-term and the long-term implications that COVID-19 will have on their business. Before any employee is stood down with no pay, the employer needs to carefully consider the terms of the applicable enterprise agreement and/or the contract of employment.

The stand-down provisions in the Fair Work Act allow employees to be stood down without pay in certain circumstances. A stand-down with no pay may be applied in a situation where an employee cannot usefully be employed for a reason that is outside the employer's control. This is a high bar and will not apply merely to a down-turn in work or economic conditions.

The ability to stand down employee may be available in circumstances where the employer is directed by the government to cease its operations on-site, there are local travel restrictions or exclusions zones which result in a stoppage of work.

Even where employers stand down employees, we suggest that you seek to reach agreement with employees to access a form of accrued paid leave (i.e. annual leave) for the period of the stand down or agree to go on unpaid leave.

Employers should be aware that a contract of employment or enterprise agreement may modify the ability to stand down employees under the Fair Work Act. Any members contemplating a stand-down should seek further advice from the Master Builders IR Department on (03) 9411 4555.

What if my employee does not have COVID-19 but does not want to come to work?

Some employees are particularly anxious in relation to COVID-19 for various reasons. For instance, an employee may have a particular health condition that places them in a higher risk category in relation to COVID-19. As a result, such employees may not want to come into work, despite not having COVID-19 and being otherwise healthy.

In these circumstances, employers should consider whether they can accommodate an employee's request and either allow them to work from home or alternatively, to allow the employee to take annual leave, long service leave, banked RDOs or unpaid leave.

Employers that contribute to Incolink may be able to refer anxious and concerned employees

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to Incolink Wellbeing & Support Services.

What if my employee wants to travel overseas?

If an employee wants to travel overseas, and the Government permits the travel the employer cannot prevent the employee from embarking on their trip if they approve the annual leave. If the employee travels overseas, the employer should make clear that the employee will need to factor the current 14-day self-quarantine period into their leave application.

An employee required to self-quarantine may be able to take annual leave, long service leave, banked RDOs or a period of unpaid leave.

What do I do if someone is unwell in the office but says they don't have COVID-19?

If an employee is showing signs of an illness, they should not be at work.

In situations where an employee is unwell, but they do not show the COVID-19 symptoms (i.e. fever, shortness of breath, sore throat and coughing), they may be requested to go home and not return to work until they are fit for work. Employees can access personal (sick) leave in these circumstances.

What impact is COVID-19 going to have on my casual employees?

If any of your employees are engaged on a casual basis, those employees are unlikely to be entitled to personal leave, annual leave or long-service leave. This is the nature of casual employment and the reason why casual employees receive a casual loading.

Employers should recognise that COVID-19 is likely to have a major financial impact on their casual workforce. As such, we suggest that employers work together with casual employees in accommodating work from home or agreeing to an alternative arrangement if possible.

Some casual employees may be able to seek financial assistance through Centrelink.

Additional points in relation to COVID-19

We encourage all of our members to work together with employees during this difficult time. For further guidance, you can call the DHHS hotline on 1800 675 398. You can access more information and resources on the DHHS' website or the Treasury's website.

Employers whose employees are feeling anxious and stressed and who contribute to Incolink may be able to refer their employees to the Incolink Wellbeing & Support Services.

If any of your employees are experiencing difficulties getting food or necessities, they can call 1800 675 398 for support.

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