



# Bus & Coach Industry COVID-19 Employer Guide

Managing the workplace in the face of COVID-19

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Bus Australia Network





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# INDEX

INTRODUCTION.....	6
1 Understanding the risk to your workplace .....	7
1.1 Workplace Health and Safety .....	7
1.1.1 Social distancing measures in the workplace .....	7
1.1.2 Providing information to employees .....	8
1.1.3 What should employer do to keep the workplace clean?.....	8
1.1.4 Violence and aggression in the workplace .....	8
1.2 Workers compensation.....	9
1.3 Bus Cleaning.....	10
2 Managing psychological impacts .....	10
2.1 Supporting general mental health and well-being .....	11
2.1.1 Workloads and fatigue.....	11
2.1.2 Coping with anxiety and stress .....	12
2.1.2 Maintaining mental health during isolation .....	12
3 Employer Obligations.....	13
3.1 Managing employees and leave entitlements.....	13
3.1.1 What do I do if an employee is feeling unwell and suffering flu/COVID-19 like symptoms?.....	13
3.1.2 What do I do if an employee is required to self- isolate under Federal or State law for 14 days because they have returned from overseas or interstate? .....	13
3.1.3 What do I do if an employee has been in contact with someone who has or may have COVID-19? .....	14
3.1.4 What happens if an employee’s immediate family member contracts the COVID-19 virus?.....	14
3.1.5 What if an employee cannot attend work because their child’s school or childcare centre has been closed due to COVID-19? .....	14
3.1.6 What if an employee may have contracted COVID-19 but they still wish to attend work?.....	15
3.1.7 What about casual employees?.....	15



**Bus Australia Network**



3.2 Employee directions ..... 15

    3.2.1 Can you send an employee home if you observe COVID-19 virus symptoms? ..... 15

    3.2.2 ..... What if you wish to direct an employee to not attend work but the employee is not showing signs of COVID-19 and is not required to isolate themselves under a federal or state government direction (and not subject to a stand down)? ..... 16

    3.2.3 Work related travel..... 16

    3.2.4 Can you give directions about non-work related employee travel? ..... 16

3.3 Visitors to workplaces ..... 16

4 Working from home..... 17

    4.1 When can employees work from home?..... 17

    4.2 Ensuring the health and safety of your staff working from home..... 17

    4.3 Expectation around working remotely ..... 17

    4.4 Insurance..... 17

5 Changing or scaling down operations..... 18

    5.1 Varying hours or rosters ..... 18

    5.2 Reducing operations ..... 18

    5.3 Redundancies..... 18

6 Business shut down ..... 20

    6.1 Stand down where a business IS subject to an enforceable government directive to close ..... 20

    6.2 Stand down where a business is NOT currently subject to an enforceable government directive to close ..... 20

7 JobKeeper wage subsidy payment..... 22

    7.1 Direction to work fewer days or hours ..... 22

    7.2 Direction to perform different duties ..... 22

    7.3 Direction relating to location of work..... 22

    7.4 Request to work different days or times ..... 22

    7.5 Request to take annual leave ..... 22



**Bus Australia Network**



8 Other alternative options .....	23
8.1 Renegotiating employee wages and conditions .....	23
8.2 Varying or terminating an enterprise agreement.....	23
8.3 Agreed leave of absence .....	23
9 Modern award changes .....	24
9.1 Modern Awards - Latest Changes effective 13 April 2020 .....	24
9.2 General modern award changes.....	24
9.2.1 Two weeks' unpaid pandemic leave .....	24
9.2.2 Double annual leave at half pay .....	24
9.3 Changes to specific modern awards .....	24
9.3.1 Clerks – Private Sector Award.....	24
10 Discrimination and Privacy .....	26
10.1 Discrimination, bullying .....	26
10.2 Privacy considerations .....	26
11 Resources and Contacts.....	27
<a href="http://www.ozebus.com.au/covid">Industry Covid-19 Hub www.ozebus.com.au/covid</a> .....	27



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## INTRODUCTION

### COVID-19 Employer Guide

The impact of COVID-19 on Australia and the resulting impacts on Australian businesses and their operations is unprecedented. The Australian Government on the advice of health officials has implemented significant changes to ordinary life in order to try to stay ahead of the curve and as a result for many employers, decisions made now are about survival and will shape the future.

With the concept of 'business as usual' completely redefined, what should employers be considering and doing to manage through the COVID-19 outbreak? There is no set playbook for how to deal with this crisis however the focus of this information booklet is on covering and answering some of the most common workplace relations and work health and safety (WHS) issues that are arising for employers as well as common questions that are being asked.

This information booklet is designed to assist bus businesses address the key safety and employment issues, outlining the base position and then additional questions that may arise. Employers should, however, at all times be conscious of their particular legal obligations that will apply under the Fair Work Act 2009, respective State and Territory WHS legislation and workers compensation legislation, enterprise agreements, awards, contracts and policies and should seek further advice where necessary.

*The Bus Industry Confederation wishes to acknowledge the Australian Chamber of Commerce and Industry who has enabled the Bus Industry Confederation to use their materials.*

The content of this publication is for general information purposes only, it may not be applicable to your organisation and does not constitute legal advice. You should seek advice before acting or relying on any of the content contained in this document.



# 1 Understanding the risk to your workplace

## Be alert, not alarmed!

Monitor the Department of Health [website](#) daily for up-to-date information about travel restrictions and situations in which isolation is recommended. This website also contains specific resources for workplaces and information for employers. For example employers should be aware of those who the Department of Health has identified as most at risk of serious infection: older people over the age of 60 and Aboriginal and Torres Strait Island people over the age of 50, those with listed chronic health conditions such as chronic renal failure, coronary heart disease, chronic lung disease and people at any age with significant immunosuppression as defined.

### 1.1 Workplace Health and Safety

Employers have a duty to provide and maintain, so far as is reasonably practicable, a working environment that is safe and without risks to the health of employees. This includes taking measures to control the risk of potential exposure to COVID-19.

Assessing risks associated with COVID-19 in the workplace, implementing appropriate control measures and monitoring the effectiveness of those control measures is a task that needs to be undertaken on an ongoing and regular basis.

Managing the risks arising from COVID-19 may involve:

- Closely monitoring official advice, such as updates from the Department of Health.
- Communicating with your workers about measures to minimise the risk of exposure.
- Ensuring workers are aware of how to spot COVID-19 symptoms (fever, cough, sore throat and shortness of breath) and making sure workers do not come to work if they are unwell.
- Providing clear advice to workers about actions they should take if they become unwell or think they may have the symptoms of COVID-19.
- Considering whether workers can work from home and facilitating this where possible.
- Considering whether work activities put other people at risk.
- Ensuring physical distancing between workers and others of at least 1.5 metres.

- Making sure your workers know how to comply with hygiene guidance in their day-to-day activities by providing training.
- Encouraging all workers to frequently wash their hands with soap or by using an alcohol-based hand sanitiser and to practise good hygiene.
- Ensuring your workplace is regularly cleaned and disinfected.
- Managing staff absences and reviewing workloads.
- Providing workers with information and links to relevant services should they require support.
- Reviewing your existing policies and practices.

Workers also have a duty to take reasonable care for their own and others' health and safety. This includes ensuring good hygiene practices, such as frequent hand washing, to protect against infections.

#### 1.1.1 Social distancing measures in the workplace

The following are some of the social distancing measures that can be enacted in the workplace.

- Ensuring employees keep 1.5 meters between themselves and others where possible.
- Hold meetings via video conference or phone call.
- Hold essential meetings outside in the open air with appropriate distancing.
- If conducting meetings inside isn't possible ensure all inside meetings have appropriate ventilation and air flow.
- Stagger break times (if possible).
- Consider personal protective equipment (PPE) (e.g. gloves and eye protection).
- Clean and disinfect high touch surfaces regularly.
- Limit the sharing of any equipment or tools and disinfect between users.
- Enact physical barriers and mark social distance measurements on floors.
- Limit or remove the exchange of cash.
- Limit the number of people who can travel in a lift at the one time.
- Regularly clean and disinfect surfaces that many people touch.



### 1.1.2 Providing information to employees

As the COVID-19 crisis continues to evolve employers should ensure they are in constant communication with their workforce about what is happening to their working arrangements and employment.

Employers have a duty under WHS legislation to provide information and consult with workers about health and safety in the workplace. You should provide regular updates to workers about the status of COVID-19 that are consistent with information provided by the Department of Health and other authoritative sources.

The Department of Health has published an information sheet for employers. As the situation and corresponding medical advice is constantly changing, it is critical that employers keep up to speed with the latest information.

We recommend that you provide regular updates on COVID-19 to employees so that they feel informed and well supported and in return, stay motivated to assist and adapt through this time.

We recommend any updates address:

- the current status of the virus in Australia
- impacts on the workplace and policies; and
- advice on good hygiene practices for work.

The Department of Health has published an [information sheet for employers](#). As the situation and corresponding medical advice is constantly changing, it is critical that employers keep up to speed with the [latest information](#).

Employers should provide information and brief all employees and any contract staff in the workplace (such as cleaning staff), on relevant information and procedures to prevent the spread of COVID-19.

Safework Australia has also provided some ready-made posters and signage and can be [downloaded here](#).

**Coronavirus Health Information Line Operates 24 hours a day, seven days a week 1800 020 080.**

### 1.1.3 What should employer do to keep the workplace clean?

If you are still operating at the workplace you should arrange regular workplace (environmental) cleaning, ensuring any areas of frequent use by workers or others are cleaned daily.

Frequently touched surfaces should be cleaned several times a day. This may include for example: light switches, handrails, taps, door knobs, Eftpos equipment, elevator buttons, tables and counter tops.

The Department of Health has produced a cleaning guide: [Environmental cleaning and disinfection principles for COVID-19](#).

If a worker has been exposed to a positive case of COVID-19 at the workplace, you will need to deep clean areas where the worker with the confirmed case has been. For advice on cleaning, see WHS authorities' contact information from your state and territory.

### 1.1.4 Violence and aggression in the workplace

Working in the community, communicating face-to-face with customers, providing care to people who are distressed, afraid or ill or providing services for people with unreasonable expectations or in such a way that leads to frustration can all be hazards for occupational violence and aggression.

These hazards are likely to be more notable during the COVID-19 outbreak due to the increased fear and anxiety amongst the general public increasing the risk to workers.

Employers should consider, in consultation with their workers, if their workers could be exposed to verbal, aggressive or violent behaviour, when this could occur, the frequency, the harm it could cause and how effective any controls currently in place still are. In particular, you may want to consider if you are providing any products or services that are in high demand or short supply.



Some possible control measures may include:

- Improving processes to reduce wait times and double handling
- Sending workers out in pairs
- Considering physical barriers to enforce social distancing and safe entry / exit in the event of aggressive behaviour
- Implementing increased security measures, e.g. by providing additional security on site for high risk work environments, video surveillance, duress alarms, and providing contacts for assistance in an emergency
- Providing instruction and training on de-escalating conflict
- Having clear policies and procedures outlining how the business will manage aggressive behaviour, including how to report an incident.

#### 1.4 Workers compensation

Workers' Compensation schemes are governed by the Commonwealth, States and Territories.

Arrangements differ across schemes however there are common threshold requirements that would apply in the case of COVID-19:

- that the worker is covered by the scheme, either as an employee or a deemed worker
- that they have an injury, illness or disease of a kind covered by the scheme, and
- that their injury, illness or disease arose out of, or in the course of, their employment.

Safe Work Australia notes "Compared to work-related injuries, it is more difficult to prove that a disease was contracted in, or caused by, particular employment. In the case of a virus such as COVID-19, establishing the time and place of contraction may become increasingly hard. Whilst the spread of COVID-19 is contained, it may be easier to establish whether contraction is work-related, for example, if in the course of their employment a worker travels to a high-risk area with a known viral outbreak or interacts with people who have contracted the virus. However, once the virus becomes more wide-spread in the local community, establishing the degree of contribution of a worker's employment to their contraction of the virus will inevitably be more difficult.

Whether a claim for workers' compensation for contracting COVID-19 is accepted will be a matter for the relevant

workers' compensation authority, applying their jurisdictions' workers' compensation laws. Workers' compensation authorities will consider each claim on its merits and to the individual circumstances and evidence."

If you would like to review the different scheme wording and thresholds relating to "disease", this can be found [here](#).

Employers should be very careful to guard against the risks of employees contracting COVID-19 at the workplace and should ensure that any mitigating steps they take in response to COVID-19 are measured.

Where employers are concerned about this issue we strongly recommend they seek specific legal advice based on their circumstances.



## 1.5 Bus Cleaning

Public transport is considered a high-risk environment for the spread of disease due to the amount of passengers in a confined space and the touching of surfaces.

Infection Control Cleaning can be undertaken to ensure service levels are maintained to reduce the risk of infection amongst passengers and staff. The Clinic Excellence Commission (CEC) of the NSW Government has provided model recommendations on cleaning and disinfection in public settings and can be downloaded [here](#).

Strong attention to surfaces most likely to be contaminated are<sup>1</sup>:

- All touch points in the Drivers compartment and dashboard (including handbrake control, blinker and wiper controls, switches and buttons)
- Radio handset
- Ticketing machines and readers
- All hand railings (including door railings)
- High level grab handles
- Seat grab handles and seat tops
- Spray on biocidal surface sanitizer to all surfaces (if available)
- Hand sanitiser and alcohol-based wipes for drivers (if available)
- Public toilets (where cleaning is undertaken by the Transport Operator)
- Toilet facilities at communal bus layovers (where cleaning is undertaken by the Transport Operator)
- On Demand Vehicles
- All touch points in the Driver's dashboard (including blinker and wiper controls, switches and buttons)
- Any driver tablets
- Any contactless payment machines
- The supply of hand sanitiser to passengers is ideal as they board.

It is the expectation that cleaning is implemented across all buses which limits the impact to customers to ensure the continued operation of services. [Download Department of Health recommendations on general environmental cleaning](#).



<sup>1</sup> Transport for NSW, 25/03/2020. Infection Control Cleaning Guidelines



## 2 Managing psychological impacts

The widespread response to panic buying in supermarkets is indicative of the real distress within the general community at the present time. The response to panic buying is not necessarily rational but based on fear and scarcity principles.

In the same way many of your staff will experience high levels of psychological stress, whilst at work.

The psychological stressors may include:

- Anxiety regarding ongoing income streams. The
- Passenger Transport Industry heavily utilises casual employees and this group is particularly vulnerable at times of forced shut down, reduction in shifts etc.
- Fear of infection
- Anxiety regarding social isolation. More people are dying daily from suicides today in Australia than from the virus. But we know that social isolation is a key determinant of suicides.
- Anxiety regarding health and safety of family members

The Bus Industry Confederation (BIC) recommends that you work closely with your workforce and ensure that you communicate clearly to them regarding their psychological health.

### Acknowledge that it is a difficult time.

- Provide access to services or managers that are skilled in listening to fears and concerns.
- Whilst we may not be able to allay fears and anxiety, we can be open, clear and transparent about sharing of information and providing support.
- We need to ensure that our employees:
  - Feel safe whilst at work through good hygiene practices.
  - Understand what will happen to their wages in the advent of a reduction in shifts/ closure of schools etc.
  - Are supported to ensure the safety of their family members.
- Engage with employees who have family members who are within the high-risk group: elderly, chronic medical conditions, Aboriginal and Torres Strait Islanders, Immune compromised and young children and babies

Discuss openly with them what you as an employer can do to support the safety of their family. Understand that the anxiety regarding the virus is heightened with this group and adapt your response and empathy with them.

- Understand your support if they are within the high-risk group. For these employees discuss the concerns and the options available to them and together work out an individualised plan on how to support them throughout this time.

### 2.1 Supporting general mental health and well-being

#### 2.1.1 Workloads and fatigue

While much of the focus has been on industries experiencing a decrease in workload, in some industries COVID-19 has resulted in unusually high workloads for some employees, who are being required to work additional hours.

Employers must ensure these additional hours are reasonable and in accordance with the employees' contract and any applicable industrial instrument.

Employers also need to identify any risk to the health and safety of their workers and take steps to eliminate or minimise such risks. Where there is a risk, appropriate control measures should be put in place to assist employees, such as checking in with employees to monitor actual hours worked, ensuring workers are taking breaks and have an adequate gap between working days or shifts.



### 2.1.2 Coping with anxiety and stress

The Australian Psychological Society has produced a fact sheet with tips for coping with coronavirus anxiety.

Key messages include:

- Learn the facts: Constant media coverage about COVID-19 can keep us in a heightened state of anxiety. Try to limit related media exposure and instead seek out factual information from reliable sources.
- Keep things in perspective: When we are stressed, it is easy to see things as worse than they really are.
- Take reasonable precautions: Being proactive by following basic hygiene principles can keep your anxiety at bay.
- Practice self-care: To help encourage a positive frame of mind, it is important to look after yourself.
- Tips for talking with children about the coronavirus.

The full fact sheet can be accessed [here](#).

### 2.1.2 Maintaining mental health during isolation

The Australian Psychological Society has produced a fact sheet with tips for maintaining your mental health during social isolation.

The challenges associated with social distancing and isolation, including separation from loved ones, loss of freedom and reduced income, may lead some people to experience feelings of anxiety, boredom, frustration and fear.

Key messages include:

- Stay connected using technology: Positive social connections are essential for our mental health and can help us cope in times of stress.
- Avoid difficult situations: Limit conflict with those you are isolated with by following some simple tips.
- Structure your day: While in isolation it is beneficial to plan out your days to restore a sense of purpose and normality to your daily life.
- Helping your child through self-isolation: Set a daily routine, maintain social relationships virtually, have fun with hobbies or craft activities at home.
- Seek additional support when needed: Telehealth services are available for GP support, psychology sessions or general counselling.

The full fact sheet can be accessed [here](#).



## 3 Employer Obligations

### 3.1 Managing employees and leave entitlements

#### 3.1.1 What do I do if an employee is feeling unwell and suffering flu/COVID-19 like symptoms?

The most common symptoms of COVID-19 are fever, tiredness, and dry cough. Some patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea. These symptoms are usually mild and begin gradually.

If an employee presents with these symptoms they should be isolated from others and provided a disposable surgical mask, if available for the person to wear. Employers should then ring the national COVID-19 hotline (1800 020 080) and follow the advice of health officials. Employers should then ensure the employee has transport to their home or to a medical facility.

#### **WHS Incident Notification**

*If an employee is suspected or found to have contracted COVID-19 at the workplace you may be required to notify your state or territory WHS regulator. The requirement to notify varies across each state/territory. You can check your states incident notification requirements on this Safe Work Australia information sheet or you can contact the WHS regulator in your jurisdiction.*

The health and safety of staff and those they come into contact with must be an employer's top priority. Employers should ensure that the area where the person was working and all the places they have been are cleaned by a person wearing appropriate PPE. This may mean evacuating those areas.

It is important to also identify all employees and persons at the workplace who had close contact with the infected person in the 24 hours before that infected person started showing symptoms. These employees should be sent home to isolate. The work area of these employees should also be thoroughly cleaned by a person wearing appropriate PPE. Again this may mean evacuating those areas.

During this entire process employees should be kept up to date with what is happening in the workplace and any specific risks to them.

Of course, an employee who is unwell and showing signs of COVID-19 can avail themselves of their accrued sick leave if they take time off work due to being ill with the COVID-19 virus.

Under the Fair Work Act, national system employees (other than those engaged on a casual basis), are entitled to 10 days each year paid sick leave (personal) for each year of service. This entitlement accrues on a progressive basis during each year of service and many employees will have an accrual in excess of 10 days.

There is no limit on the number of days of accrued leave that can be taken as personal leave.

#### 3.1.2 What do I do if an employee is required to self-isolate under Federal or State law for 14 days because they have returned from overseas or interstate?

The Australian Government has imposed a universal precautionary self-isolation requirement on all international arrivals in Australia (effective as at 11:59pm Sunday 15 March 2020).

This means that all employees - whether they be citizens, residents or visitors - will be required to self-isolate for 14 days upon arrival in Australia because of their possible or actual exposure to the COVID-19 virus.

Similarly, Queensland, Western Australia, South Australia, Northern Territory and Tasmania all require new entrants to self-isolate for 14 days (with some exceptions for "essential workers" such as healthcare and defence).

Technically an employee is not entitled to take sick/carer's (personal) leave under the Fair Work Act unless they are absent from work due to either a personal injury or illness, a need to care for a member of their immediate family or household who is sick or injured or due to a family emergency.



This means that an employee returning from travel who is required by government to self-isolate, but is not yet sick themselves cannot avail themselves of sick (personal) leave. This is because, to qualify for personal leave, an

employee must be “not fit for work” because of an illness or injury affecting them. It is unlikely that this pre-requisite will be met by persons who are not yet diagnosed as ill but merely require isolation.

However, employees covered by an applicable modern award (see Appendix 1) are likely to be able to access an entitlement to up to two weeks’ unpaid pandemic leave (see section 7.1).

On a practical level, however, it may make sense for employers to look to utilise practical solutions during the employee’s absence due to government imposed quarantine so that employees do not suffer from a loss of pay during the isolation period where possible, such as:

- allowing the employee to work from home (where feasible), during the quarantine period;
- allowing employees to avail themselves of other leave available to an employee (such as annual leave, long service leave or any other leave available under an award, enterprise agreement or contract of employment);
- any other paid or unpaid leave by agreement between the employee and the employer (e.g. personal leave, or discretionary paid leave); or

Note: Employers should be aware they may attract the risk of breaching the National Employment Standards in the Fair Work Act if they allow an employee to use personal leave where the employee is not in fact ill, even where the employee agrees to this approach.

Always be sure to also check any applicable modern awards, enterprise agreements, employment contract terms and company policies – as they may contain additional rules or entitlements which may apply to your workplace and employees.

### ***3.1.3 What do I do if an employee has been in contact with someone who has or may have COVID-19?***

If an employee has been “in contact with” someone who has or may have COVID-19 they may also be required to self-

quarantine because of their possible or actual exposure to the virus.

Similar to the position at 2.1.2, employees in these circumstances who need to quarantine but are not yet sick themselves cannot avail themselves of sick (personal) leave. This is because, to qualify for personal leave, an employee must be “not fit for work” because of an illness or injury affecting them. It is unlikely that this pre-requisite will be met by persons who are not yet diagnosed as ill but merely require isolation.

However, employees covered by an applicable modern award are likely to be able to access an entitlement to up to two weeks’ unpaid pandemic leave (see section 7.1).

Again, however we suggest discussing the matter with your employees and trying to utilize the practical solutions set out at 2.1.2 so that employees do not suffer from a loss of pay during the isolation period where possible.

### ***3.1.4 What happens if an employee’s immediate family member contracts the COVID-19 virus?***

An employee may use paid personal leave to take time off to care for an immediate family member or household member who is sick or injured or to help during a family emergency.

The amount of accrued paid carer’s leave that can be taken is not capped, subject to the employee’s accrued balance of personal leave at the time.

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) in order to care for a family member with a personal illness or injury or to help during a family emergency.

### ***3.1.5 What if an employee cannot attend work because their child’s school or childcare centre has been closed due to COVID-19?***

An employee may use paid personal leave to take time off to help during a family emergency. Previous case law around the meaning of a “family emergency” suggests that it is likely to include providing care to a child whose school has been forced to close with little or no notice as a result of COVID-19.



Therefore, an employee in this circumstance will likely also be able to access their paid personal leave for this purpose.

The amount of accrued paid carer's leave that can be taken is not capped. However, the circumstance of a school closing with little or no notice is unlikely to continue to exist for longer than a few days, after which time an employee will need to move to using their annual leave entitlement (or some other form of leave available to them) in order to be paid for any absence from work to care for a child.

Note: Casual employees are entitled to 2 days of unpaid carer's leave per occasion. Full and part time employee who have exhausted their accrued paid personal leave may access up to two days' unpaid carer's leave (or a longer period with the agreement of their employer) in order to provide care where their child's school has been forced to close with little or no notice.

### **3.1.6 What if an employee may have contracted COVID- 19 but they still wish to attend work?**

If an employee maintains that they are able to work (but are not sick and not able to work from home) then employers face a difficult scenario: the employee says they are fit to work, but the employer has concerns that the employee is not fit to work (perhaps because they may have been exposed to COVID-19 through travel or close contact with someone who has tested positive) without posing unacceptable safety risks to the workforce. Remembering that employers have a duty to provide and maintain, so far as is reasonably practicable, a working environment that is safe and without risks to the health of employees. As well as workers having a duty to take reasonable care for their own and others' health and safety.

The best means of resolving this impasse is to first discuss the issue with the employee and then if necessary direct the relevant employee to undergo testing if testing is available.

Employees can be directed to obtain medical clearance, which may include being tested for coronavirus, provided this is reasonable and based on factual information about health and safety risks.

Once the test is undertaken, if the employee is cleared, they are able to return to work (best practice would dictate the

employer pays the employee for the relevant period). If the employee tests positive, then they can be permitted to take personal leave for the duration of their absence.

### **3.1.7 What about casual employees?**

Casual employees are entitled to not attend work when they are unwell or injured. However, they are not entitled to any additional payment of sick leave for any shifts they do not work as they have already been paid an additional loading in lieu of other entitlements including sick leave. This means that a casual employee who is diagnosed with COVID-19 may be required to refrain from presenting to work without a legal entitlement to additional payments.

Furthermore, where shifts to casual employees are reduced either on account of business downturn or because the employee has been required to isolate (due to contact or recent travel), the employees will not be entitled to payment during this period.

Casual employees are entitled to 2 days unpaid carer's leave to take time off to care for an immediate family member or household member who is sick or injured or to help during a family emergency.

## **3.2 Employee directions**

### **3.2.1 Can you send an employee home if you observe COVID-19 virus symptoms?**

Employers have a legal responsibility to ensure the health and safety of those in the workplace, including visitors. Where an employer holds a reasonable belief that an employee is posing a health risk – such as showing symptoms of the COVID-19 virus – it would not be unreasonable to send the employee home on sick (personal) leave on the basis that they are unfit to work safely and without risk to the health of others in the workplace.

Employers should ask the employee to seek medical advice / testing and a clearance before returning to work. If the employee maintains they are able to work, consider whether it is practical for the employee to work from home for part or all of the period prior to obtaining the test results.



Once the test is undertaken, an employee may return to work if they are cleared. If the employee tests positive, see section 3.1.1 regarding any pay and leave obligations and entitlements that may apply.

During the COVID-19 outbreak, it may also be prudent to remind employees of their obligation to take reasonable care not to adversely affect the health and safety of other persons, and ask that they notify their employer immediately if they are suffering flu-like symptoms.

### **3.2.2 What if you wish to direct an employee to not attend work but the employee is not showing signs of COVID-19 and is not required to isolate themselves under a federal or state government direction (and not subject to a stand down)?**

If an employer directs an employee not to attend work, despite them being fit and able to do so (and not subject to any government isolation requirements) then we suggest best practice is for that employee to continue to get paid.

In this situation, it is also important to check and consider whether you can simply issue this direction (e.g. pursuant to the employee's contract or as a reasonable and lawful direction based on factual information about health and safety risks) – or whether you need employee agreement. Again, also check any applicable industrial instruments (such as enterprise agreements, awards), contract terms and company policies – and seek specific advice.

### **3.2.3 Work related travel**

Employers should make sure that travel policies clearly address where an employee can travel to, the reasons for travel and permission required.

Employees should be informed that travel policies are constantly under review and may be subject to regular change, particularly as state border arrangement change.

Employers should also carefully check any insurance cover for work-related travel.

### **3.2.4 Can you give directions about non-work related employee travel?**

Employers must be mindful not to give directions to employees that might extend to or impact the personal or private activities of the employee and which would not

otherwise affect their work. Only in exceptional circumstances would it be regarded as reasonable for an employer to direct an employee how to conduct themselves outside the workplace and have the right to extend its supervision over the private lives of employees. In

considering this issue, a court will look at whether there is a significant connection between the outside activity and the employee's employment.

It is possible that the current COVID-19 circumstances may give rise to such a sufficient connection, given subsequent quarantine at federal and state government's direction that an employee will now likely be subject to, meaning an employer may be in a position to potentially direct staff with respect to non- work related travel.

At a minimum employers should inform employees that when making travel plans (including interstate travel) they should understand the isolation requirements which they may be subject to on arrival and return.

### **3.3 Visitors to workplaces**

Taking extra precautions in allowing visitors to enter the workplace is important for employers in limiting exposure to COVID-19 in the workplace.

Employers have the right to ask visitors to provide information in advance as to whether they have flu-like symptoms, have been in contact with anyone infected with COVID-19, or travelled to a high-risk area.

If a visitor answers affirmatively to any of these questions, employers should strongly consider their work health and safety obligations and should request the visitor not come to the workplace until they have been asymptomatic for 14 days or can provide a clearance letter from a physician.

Employers may also ask any visitor to provide their contact information in the event that COVID-19 develops in the workplace and the visitor may have been exposed to the COVID-19 virus.



## 4 Working from home

Reducing face-to-face contact is an excellent measure to mitigate the impact of COVID-19. Depending on your location and the spread of COVID-19, your business may need to ask employees to work from home, or your employees may ask to work from home. With this however, comes practical implications to consider.

Firstly, not every position and every activity can be conducted from an employee's home, but in an increasingly service based economy, IT based jobs perhaps can more than ever before, and this will be an immediate consideration for many workplaces if the spread of COVID-19 virus worsens.

It is also important to remember that regardless of where your employees work, you are still responsible for their physical health and safety while at work, as well as their mental wellbeing.

### 4.1 When can employees work from home?

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 annualized wage arrangements under some awards), this currently needs to continue when employees are working from home.

### 4.2 Ensuring the health and safety of your staff working from home

In Australia, WHS laws still apply to businesses if workers are required to work from locations other than their usual workplace, for example from their home. Employers must still ensure, so far as is reasonably practicable, the health and safety of their workers. The worker also has a responsibility to take reasonable care for his or her own health and safety, including complying with reasonable instruction given by the employer or any policy and procedures provided.

Prior to going moving staff to work-from-home, employers should have a discussion with their staff 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:

- Workstation set up
- Work hours and breaks
- Physical environment (i.e. noise, heat, cold, lighting, security, electrical safety, home hygiene and home renovations, first aid etc.)
- Any manual tasks the worker has to carry out
- Psychosocial risks (i.e. isolation, reeducated support, fatigue, online harassment).

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.

It is also important to consider whether workers have the correct equipment to work from home. It may be for instance that at present only some staff have the technological capacity to work remotely. Considering what is needed to expand this capacity will involve consideration of available technology, cyber-security, cost factors and work, health and safety implications.

### 4.3 Expectation around working remotely

Employers should make sure that employees are aware of any on-going obligations around issues and policies such as confidentiality and safe work practices whilst working at home.

### 4.4 Insurance

It is important to remember that while employees are not working at their standard workplace, it is still an employer's responsibility to provide a safe work environment. Therefore, if an employee sustains an injury in the course of their work while at home, it is an employer's responsibility to ensure they are covered by workers compensation insurance. Bear in mind that psychological injury is also claimable under workers compensation.



## 5 Changing or scaling down operations

**The following section addresses the worst-case scenarios and suggests some contingency strategies that business may be considering to limit the impact of COVID-19.**

Note that if an employer qualifies for the JobKeeper scheme, and is entitled to JobKeeper payments for a particular employee, additional options will be available to that employer in relation to that employee/s (see section 7).

### 5.1 Varying hours or rosters

As a result of the spread of COVID-19 some employers may be considering varying operations, for example to reduce the risk of exposure for employees by altering start and finishing times or to address changes in demand patterns of consumers.

An employer's ability to vary hours and/or rosters will largely depend upon the applicable industrial instrument (e.g. enterprise agreement or award) or contract that applies to their employees.

For example some employers whose workforces are covered by an award or enterprise agreement may be restricted from altering work arrangements without first consulting with employees (and potentially also union/s).

We therefore strongly recommend if you are considering making certain variations to your operations that you get advice on your specific options and obligations prior to making any changes.

### 5.2 Reducing operations

As a result of the potential further spread of COVID-19 some employers may be forced to consider scaling down operations. For example by:

- placing a freeze on new hires;
- reducing any supplementary labour such as contractors or labour hire workers;
- reducing employee hours; or
- providing annual or long service leave in advance or at half pay.

An employer's ability to make such changes will largely

depend upon the applicable industrial instrument (e.g. enterprise agreement or award) or contract that applies to their employees.

We therefore strongly recommend if you are considering scaling down your operations that you seek advice on your specific options and obligations prior to making any changes.

### 5.3 Redundancies

Some employers may eventually decide that things have gotten so financially stringent that they are compelled to reduce the size of their workforce and as a result need to make some staff redundant.

Before making any employees redundant it is important to first consider:

- whether there are any options for redeployment within the business or associated entities; and
- your consultation obligations under any enterprise agreements or modern awards.

Most employees (who have at least one year of service with the employer) will be entitled to receive a minimum redundancy payment in accordance with the Fair Work Act (a general exception applies to employers with fewer than 15 employees in most (but not all) industries).

The amount of redundancy pay employees are entitled to will be based upon their continuous service, as well as any terms in any applicable enterprise agreement or award.

It is possible for employers to ask the Fair Work Commission to reduce an amount that would otherwise be payable on redundancy if:

- the employer finds other acceptable employment for the employee; or
- the employer cannot afford the full redundancy amount.



If as an employer you are considering redundancy of 15 or more staff, you must also give written notice to the Department of Human Services of the proposed dismissals.

Before taking steps to make an employee redundant we strongly suggest getting advice on your specific circumstances as any redundancies are likely to be highly scrutinised, can be disputed and should be considered as a last resort.



## 6 Business shut down

From 22 March 2020, the Federal Government and state and territories agreed to dramatically ramp up restrictions to control the spread of COVID-19. This ramp up has included closing business where large amounts of people tend to congregate, raising the risk of COVID-19 transmission. As a result, many businesses across the country have already been forced to close due to these enforceable government directives.

As the COVID-19 pandemic continues to take a worsening course many businesses still operating may be also be in a situation where they are forced to close due to a lack of stock or customers. This may include situations in which businesses are unable to trade due to a lack of vital supplies or stock becoming unavailable (for example medical and allied businesses that may require masks to safely work).

The following section addresses both scenarios with respect to an employer's ability to stand down their employees without pay.

Note that if an employer qualifies for the JobKeeper scheme, and is entitled to JobKeeper payments for a particular employee, additional options will be available to that employer in relation to that employee/s – including in relation to stand down (see section 7).

### 6.1 Stand down where a business IS subject to an enforceable government directive to close

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. (The other circumstances are industrial action and breakdown of machinery or equipment).

The Federal and State governments have announced a number of government enforced directives for businesses to close, generally in places of social gatherings such as pubs, gyms, places of worship, beauty salons and libraries.

As a result of these enforceable government directives 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.

### 6.2 Stand down where a business is NOT currently subject to an enforceable government directive to close

Employers not subject to a government directive must ensure that each of the three limbs of a stand down under the Fair Work Act are met before standing down employees.

Under the Fair Work Act an employer may stand down an employee:

- During a period in which the employee cannot be usefully employed;
- Because of a stoppage of work for any cause
- For which the employer cannot be reasonably held responsible.

While the regulator, the Fair Work Ombudsman, states on its website that employers cannot stand down an employee “just because the business is quiet or there isn't enough work”, (in our view) the COVID-19 outbreak could and is resulting in situations that meets the requirements for stand down under the Act, for example where a business imports and sells overseas goods which they are unable to currently receive or where a large proportion of the workforce has been forced to self-quarantine with the result that the remaining employees/workforce cannot be usefully employed.

There will however be no right to stand down if there is useful work available for the employee to do which is within the terms of the employee's contract of employment. It need not be work the employee normally carries out.



It is an essential part of stand down that the decision is a unilateral one of an employer to withhold work and payment even when employees are prepared to perform all duties.

Employees can be stood down for the period of time while the business is dealing with the issue AND employees cannot be usefully employed.

**Situations where stand down does NOT apply:**

- Where an employer refuses to pay an employee in response to the employee’s refusal to work (e.g. for safety reasons) in accordance with the contract of employment.
- If an enterprise agreement or contract of employment (rare) makes provision for stand down. In these circumstances the provisions in the agreement or contract will apply as opposed to the Fair Work Act. They may have different or extra rules about when an employer can stand down an employee without pay.
- An employee is taking authorised leave (paid or unpaid) or is otherwise authorised to be absent from their employment.
- If there is work available for some employees you cannot stand down all employees. Only those employees who cannot be usefully employed may be stood down.

In the event of a valid stand down under the Fair Work Act, an employer does not need to pay wages to stood down employees, but an employee accrues leave in the usual way (as though they have worked). Continuity is also not broken.

Even though stand down periods are unpaid, an employer may wish to consider some of the following options prior to ceasing employee pay outright:

- Options for redeployment to other parts of the business where available.
- Allowing employees to take paid leave (such as annual leave or long service leave) if requested.
- Allowing employees alternative leave arrangements such as extended annual leave at half pay or early long service leave (if permitted under any applicable award, enterprise agreement or contract).
- Special provisions for employees with insufficient accrued leave to cover the period of shut down (for example, allowing staff to purchase leave which is then dedicated on a pro rata basis from their annual

wage).

Stand downs are likely to be closely scrutinised and can be challenged by an employee or union in the Fair Work Commission if not implemented strictly in accordance with legal obligations, including the ordering of back pay to those employees who were unlawfully stood down, so we strongly recommend seeking advice prior to implementing a stand down.

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.



## 7 JobKeeper wage subsidy payment

New temporary amendments to the Fair Work Act were made on 8 April 2020 to support the practical operation of the JobKeeper scheme.

If an employer qualifies for the JobKeeper scheme, and is entitled to JobKeeper payments for a particular employee, additional options will be available to that employer in relation to that employee/s. This applies for the period from 30 March to 27 September 2020. Employers should wait until they have confirmation from the ATO that they are eligible before they seek to avail themselves of any of these options.

Note that the measures below apply despite any limitations in a 'designated employment provision' such as the stand down provisions of the Fair Work Act, a contract of employment, or a fair work instrument such as an enterprise agreement or award.

[See ACCI's JobKeeper Payment – Quick Employer Guide for full details about the JobKeeper scheme](#), including eligibility of employers and employees, options to support job retention and business recovery, and additional guidance in relation to implementing these options.

### 7.1 Direction to work fewer days or hours

An eligible employer may give a 'JobKeeper enabling stand down direction' to work fewer days or hours to an eligible employee who cannot be usefully employed for the employee's normal days or hours because of business changes attributable to the COVID-19 pandemic or government initiatives to slow COVID-19 transmission.

The amount of hours can be reduced to nil, that is, a complete stand down – effectively a lower bar to satisfy than the 'stand down' test in the Fair Work Act.

### 7.2 Direction to perform different duties

An eligible employer may direct an eligible employee to perform any duties within their skill and competency, so long as:

- the duties are safe
- the employee is licensed and qualified to perform the duties; and

- the duties are reasonably within the scope of the employer's business operations.

Employers should ensure the direction is not unreasonable in all of the circumstances, as employees may then be able to refuse.

### 7.3 Direction relating to location of work

An eligible employer may direct an eligible employee to perform duties at a place (including the employee's home) that is different from the employee's normal workplace, if:

- the place is suitable for the employee's duties;
- the place does not require the employee to travel an unreasonable distance; and
- performance of the employee's duties at the place is safe, having regard to the nature and spread of COVID-19; and
- reasonably within the scope of the employer's business operations.

For the direction to apply, employers should ensure the direction is reasonable in the circumstances, including taking into consideration any impact on caring responsibilities of an employee.

### 7.4 Request to work different days or times

Eligible employers can request employees perform work on different days or at different times during a period, compared with the employee's ordinary days or times of work. The request will be permitted where:

- performance of the duties on different days or at different times is safe, having regard to the nature and spread of COVID-19 and reasonably within the scope of the employer's business operations, and
- the agreement does not reduce the employee's number of hours of work compared with the employee's ordinary hours of work.

An employee cannot unreasonably refuse the employer's request for agreement to the changed arrangements.

### 7.5 Request to take annual leave

Employers can request that employees take annual leave, down to a balance of two weeks / 10 days. Employees must not unreasonably refuse such a request. There is also scope to agree to the taking of double annual leave at half pay.



## 8 Other alternative options

In many situations an employer may not be able to avail themselves of the ability to stand down employees or seek assistance from the JobKeeper Payments Scheme (for example because they don't meet the stand down test or because their staff don't meet the eligibility test). There are other options available to employers in such instances to protect employment and contribute to the maintenance of the business.

### 8.1 Renegotiating employee wages and conditions

Employers may seek to renegotiate salaries and working hours with their employees, noting that there remains the requirement to pay employees in accordance with the minimums contained in an industrial instrument or the National Minimum Wage.

This must be done with the consent of the employee. While employees may not ordinarily be willing to re-negotiate and vary their contractual entitlements, employees may be open to engage with the idea to protect their employment and help the business ensure that it can survive through and after COVID-19.

Any variation to a contract of employment should be in writing.

### 8.2 Varying or terminating an enterprise agreement

Employers may consider the possibility of varying an enterprise agreement to provide for further flexibilities, for example broader stand down provisions, reduced wages or other costs to the business, increasing the ability to enter into agreed leave without pay arrangements.

The variation must be approved by a majority of affected employees who cast a valid vote. The employer and employees may then make a joint application to the FWC within 14 days.

The requirements for varying an agreement are similar to those for approving a new agreement, including that the agreement as varied must pass the Better Off Overall Test (BOOT). There may be some scope to argue that the FWC can approve an agreement variation in cases where the

agreement does not pass the BOOT if, because of exceptional circumstances, approval of the agreement would not be contrary to the public interest. See FWC Fact Sheet: Varying an agreement for more information.

### 8.3 Agreed leave of absence

Employers may seek to make an agreement with all or some of their employees to take a period of leave without pay (LWOP).

In doing so, employers should communicate clearly with their employees so that they understand what the business is trying to achieve (e.g. to maintain employment, keep its doors open), and what the options are.

Relevant considerations are as follows:

- Employees might first be provided with the opportunity to take paid leave, e.g. annual leave and long service leave.
- Continuity of service will not be broken by the LWOP period. However, a period of leave, such as LWOP does not ordinarily count towards service, so service-based leave entitlements (e.g. annual leave) would not accrue. Employers may consider allowing employees to accrue service-based leave entitlements (thus being consistent with the position if the employee was stood down).
- An agreement with an employee to take LWOP should be in writing and signed by the employee, reflecting any agreed principles. Employers may consider allowing their employee to accept alternative employment during the period of LWOP (subject to any obligations such as in relation to use of confidential information).
- Employers should maintain communication lines during a period of LWOP, including to monitor employees' health and wellbeing, and answer any questions.

Employers also need to be mindful of additional considerations that may apply if an industrial instrument (e.g. award or enterprise agreement) applies.

For example, a proposal that a large number of employees take LWOP might be considered a major change for the purposes of a consultation clause. Employers should also consider whether there are any provisions regarding change to rostering arrangements, and whether there are any terms that would prevent LWOP arrangements.



## 9 Modern award changes

### 9.1 Modern Awards - Latest Changes effective 13 April 2020

The 4 Modern Award changes that may be in use across the operational and supply chain of the Australian bus and coach industry include:

- Passenger Vehicle Transportation Award 2020 ([Download](#))
- Passenger Vehicle Transportation Award 2020 - Explanatory notes ([Download](#))
- Manufacturing & Associated Industries and Occupations Award 2010 ([Download](#))
- Clerks - Private Sector Award 2010 ([Download](#))
- Vehicle Manufacturing Repair Services and Retail Award 2010 ([Download](#)).

### 9.2 General modern award changes

The Fair Work Commission on its own initiative has in response to COVID-19 temporarily varied 99 awards (full list contained in Annexure 1) until 30 June 2020 by introducing:

- Two weeks' unpaid pandemic leave; and
- The capacity for an employee to take twice as much annual leave at half pay.

These temporary changes aim to assist employers and employees through this unprecedented crisis.

#### 9.2.1 Two weeks' unpaid pandemic leave

All employees (full-time, part-time & casual) are entitled to two weeks' unpaid pandemic leave in full immediately if they are:

- Required to self-isolate; or
- Otherwise prevented from attending work by measures taken by government or medical authorities.

This leave is considered a workplace right under the Fair Work Act for the purposes of an adverse action claim if an employee is unlawfully prevented from taking this leave.

#### 9.2.2 Double annual leave at half pay

Employers and employees may agree to the taking of up to twice as much annual leave at half the rate of pay.

## 9.3 Changes to specific modern awards

### 9.3.1 Clerks – Private Sector Award

In response to COVID-19 the Australian Chamber of Commerce and Industry in conjunction with the Australian Industry Group applied to the Fair Work Commission to temporarily vary the Clerks Award until 30 June 2020.

Employers with employees covered by the Clerks Award should take note of the following temporary amendments:

- **Relaxation of classifications:** An employer may direct employees to perform all duties within their skill and competency, regardless of their ordinary classification with no reduction in the employee's pay so long as the duties are safe and the employee has any necessary licenses or qualifications to perform them.
- **Minimum engagement:** The minimum period of engagement of part-time and casual employees who are working from home with the agreement of their employer may be reduced from 3 hours to 2 hours.
- **Spread of hours:** The spread of ordinary hours for dayworkers (being employees other than shift workers) working from home has been extended to between 6am and 11pm Monday to Friday, and 7am to 12:30pm on Saturday.
- **Taking annual leave:** Employers and individual employees can agree to take up to twice as much annual leave at a proportionately reduced rate for all or part of any agreed or directed period away from work, including a close-down.
- **Directing annual leave:** An employer may direct employees, subject to considering the employee's personal circumstances, to take any annual leave that has accrued by giving at least 1 weeks' notice or any shorter notice period agreed. An employee must not be left with less than 2 weeks accrued annual leave after taking the leave.
- **Reducing ordinary hours:** An employer and its full-time and part-time employees in a workplace or section of a workplace may agree, by ballot with 75% approval by employees, to temporarily reduce the ordinary hours of work for a specified period between 28 March 2020 and 30 June 2020, but must not be reduced to fewer than 75% of the full time ordinary hours for a full time employee, or 75% of the part-time employee's agreed hours immediately prior to the implementation of reduced hours. The employee's hourly rate must be maintained but the weekly wage will reduce by the same proportion.



Employers cannot unreasonably refuse a request from an employee whose hours have been reduced to engage in reasonable secondary work, and must consider reasonable requests for training, professional development and/or study leave.

Notwithstanding this change, employers may still reach an agreement in writing with an employee to reduce the employee's hours or to move the employee temporarily from full-time to part-time hours of work, with a commensurate reduction in the employee's weekly wage.

- **Close down:** An employer may with one weeks' notice close down, for a period between 28 March 2020 and 30 June 2020. During a close-down, an employee can take annual leave and then will be given leave without pay for the remainder of the shutdown. Employees with insufficient accrued annual leave are required to take unpaid leave.



## 10 Discrimination and Privacy

### 10.1 Discrimination, bullying

Employers should be careful to balance their health and safety obligations to ensure the health and safety of all employees against a risk of practices which unlawfully discriminate against employees or harass them (for example on the grounds of race or disability).

It is likely, in our view, that contracting COVID-19 would be characterized as a 'disability' for the purposes of anti-discrimination laws.

Whilst arrangements based on risk assessments which are critical to discharging an employer's work health and safety obligation to ensure a safe workplace are likely to be defensible, employers should be alert and aware that conduct may be unlawful even if it arises from a genuinely held concern about COVID-19 (e.g. changes to the provision of services for certain types of customers).

Employers will be vicariously liable for the conduct of their employees who discriminate against or harass other employees, unless the employer can show it has taken reasonable steps to avoid the conduct.

Reasonable steps include:

- having a policy which deals with discrimination and unlawful harassment;
- having a procedure to handle complaints of unlawful discrimination and harassment;
- conducting training on those policies and procedures;
- directing employees not to engage in any kind of discrimination or harassment; and
- acting promptly in relation to any complaints of unlawful discrimination in accordance with the appropriate policies and procedures and then taking actions to avoid such conduct occurring again.

Employers can minimise the risk of unlawful discrimination claims by ensuring that any decisions made as to a workers' attendance or requesting medical clearance are consistent with publications of the Department of Health and communicating this with employees.

### 10.2 Privacy considerations

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.



## 11 Resources and Contacts

Please go to the COVID-19 Bus & Coach Industry Hub to review other material available from various government and authority websites.

### Industry Covid-19 Hub

[www.ozebus.com.au/covid](http://www.ozebus.com.au/covid)

If you need any further assistance or advice related to COVID-19 the Bus Industry Confederation is here to assist.

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