

Coronavirus COVID-19: Employer Guide

AMMA has been working with many of its members to manage issues relating to the COVID-19 coronavirus. While this is an evolving situation, AMMA has prepared the information in this document as a 'current state' overview of key employment considerations, as at 16 March 2020, including steps AMMA members are taking to prevent the spread of the COVID-19 disease

Precautionary and preventative measures

Outlined below are a number of precautionary and preventative measures AMMA members are taking to safeguard against the spread of COVID-19 in the workplace.

Not all of these measures will be applicable or appropriate for your organisation, but they provide an overview of how seriously others are treating the current situation. AMMA recommends you approach precautionary and preventative measures practically and with regard to your own assessment of what impact COVID-19 could have on your organisation.

All worksites

- Provide employees with up-to-date information about COVID-19, including the steps your organisation is taking and the steps employees should be taking to prevent the spread of the disease
- Advise employees you expect them to observe the Australian Government's directions on self-isolation
- Reinforce to employees you expect them to disclose if they have any COVID-19 symptoms, or have been in contact with known or suspected cases of COVID-19
- Cancel any non-essential domestic or international business travel for all personnel
- Prohibit employees from attending conferences or large group meetings
- Require employees to report if they have travelled internationally during past two weeks, and to where
- Implement comprehensive cleaning requirements and hygiene standards for all worksites (e.g. extra cleaning duties, extra cleaning personnel, hand sanitiser availability)

Remote worksites

(e.g. offshore installations, mine sites, work camps)

- Reduce the number of non-essential personnel on site
 - Cancel any non-essential travel to the site
 - Require employees to complete a self-assessment questionnaire before travelling to site, highlighting the current state of the employee's health and any contact with a confirmed or suspected COVID-19 case
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- Require employees to undertake temperature screening before mobilising to site, ideally at an airport or heliport rather than at the site itself
 - Review cleaning regimes, especially for common-use areas
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Offices

- Limit the number of face-to-face meetings between employees and with external personnel
 - Facilitate employees working from home where feasible
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Further to these precautionary and preventative measures, there are a number of other steps your organisation can take to maintain a state of preparedness in relation to COVID-19:

- Appoint a person in your organisation to monitor official sources of information about COVID-19 and who will update relevant personnel of any changes to official information. Recommended sources of official information are set out below.
- Review any commitments you have made to regulators (e.g. NOPSEMA, DMIRS or other government departments) by way of safety cases or hazard response plans for managing the outbreak of illnesses or other similar circumstances. Ensure relevant personnel are aware of the commitments made and that your organisation is ready to enact those measures if needed. Also consider whether your safety cases and hazard management plans need to be updated to address a potential outbreak of COVID-19.
- Consider your response plan for dealing with a confirmed case of COVID-19 in the workplace, particularly if you have employees based at remote work sites.
- Consider whether your organisation will adopt travel restrictions beyond those confirmed by the Australian Government. Some AMMA members are broadening their travel restrictions to include countries that have confirmed high numbers of COVID-19 infections (or which may have under-reported actual numbers of COVID-19 cases) and are requiring employees to self-isolate after visiting those countries.

Managing your employees

Following below is a list of the most common questions we are being asked by AMMA members in relation to managing employees through the COVID-19 situation.

Please keep in mind that employers have broad discretion to enact measures such as 'special paid leave', and that decisions about whether to do so should be approached from the standpoint of the welfare of the employee in question and the welfare of your broader workforce.

Your organisation will have obligations under legislation to mitigate risks to employees' health and safety in the workplace. How you manage employees who are impacted by COVID-19 is likely to be relevant to your health and safety obligations overall. Employers should also be aware of the obligations that may arise under public health legislation on them and their employees.

Q. Can I stand down employees without pay?

A. At this stage, it is unlikely you can stand down employees without pay. There are limited circumstances where a stand down may be initiated; in relation to COVID-19, these circumstances may only arise under the Fair Work Act if there is a stoppage of work for which you cannot be held responsible. Your employment contracts or enterprise agreements may also impose additional requirements to those in the Fair Work Act. AMMA's view is these stand down provisions are not yet applicable to COVID-19 issues.

Q. What should I pay employees who are observing a period of self-isolation after business-related travel?

A. If an employee is required to self-isolate following a period of business-related travel, you should continue to pay that person during the self-isolation period. This should be normal pay, and not any form of paid leave. This would be the case irrespective of when the employee returned to Australia. We are aware of many AMMA members that are adopting this position.

If the employee is ultimately found to have contracted a case of COVID-19, you can then pay the employee from their accrued Personal Leave for the period of the illness.

Q. What should I pay employees who are observing a period of self-isolation after a period of personal travel?

A. The answer to this question depends on when the employee returned to Australia. As of Monday 16 March 2020 all persons returning to Australia from an overseas location are required to self-isolate because of a direction from the Australian Government. This action is supported by public health legislation in most states and territories.

If the employee does not have a confirmed case of COVID-19, your options include:

- facilitating that employee working from home and continuing to pay that person as per normal;
- approving available forms of accrued paid leave for the period of self-isolation, including annual leave or long service leave; or
- continuing to pay the employee as per normal, regardless of whether any work is performed (this would generally be referred to a 'special paid leave').

Where an employee returned to Australia prior to 16 March 2020 and was required to self-isolate by your organisation, and not by the Australian Government, it is unlikely you can require the employee to use accrued paid leave for the isolation period. It is AMMA's view you will need to pay the employee 'special paid leave' for the isolation period if they cannot work from home.

Employers also need to consider the circumstances of employees who were overseas on personal travel prior to 16 March 2020 and were not able to return to Australia prior to 16 March. This should be a reasonably defined or known cohort of employees and employers may wish to consider what 'transitional' arrangements they put in place to address the circumstances of such employees. These transitional arrangements may include each of the options outlined above.

Employers should also develop a position on how they will treat employees who choose to travel overseas for personal reasons after 16 March 2020. Such employees will be required to self-isolate for 14 days upon their return to Australia.

The options employers have to address the situation of this group of employees includes:

- facilitating employees working from home and continuing to pay them as per normal;
- approving available forms of accrued paid leave for the period of self-isolation, including annual leave or long service leave; or providing leave without pay.

Q. Can employees use accrued Personal Leave during periods of self-isolation?

A. If an employee is required to self-isolate because they have a confirmed case of COVID-19, the employee can access their accrued Personal Leave. However, AMMA does not recommend approving Personal Leave outside of confirmed cases of illness. If you allow an employee to access Personal Leave in circumstances where the employee is not sick, you may be required under the National Employment Standards to provide that employee with further entitlements to personal leave for future illnesses. If you want to pay employees who are not sick, AMMA recommends offering other forms of accrued paid leave or providing 'special paid leave'.

Q. Should we continue to pay casual employees who cannot work because of COVID-19?

A. AMMA is aware of advice being provided to employers that employees' casual loadings are structured to provide compensation for time off work due to illness and other factors. While this is technically correct, AMMA recommends its members assess this question from the point of view of risk management and the need to discourage presenteeism. While there are ongoing discussions with the Australian Government about whether it will fund some form of special paid leave for casual employees impacted by COVID-19, at this stage the only income support announced for casual employees is a fast-tracking of Centrelink's 'sickness payments'.

Q. Can we cancel employees' future annual leave bookings as part of our overall response to COVID-19?

A. You should review your employees' future annual leave bookings and consider whether it remains appropriate to allow that leave to be taken. Some AMMA members are offering to subsidise the cost of cancelled overseas travel rather than managing the impact of employees self-isolating after returning from overseas.

Q. What action should we take with employees who work extended roster patterns and we know reside offshore during their time off?

A. Employers should initiate discussions with any of their employees who they know are normally resident overseas during their rostered time off. Given the likelihood that the requirement for 14 days self-isolation is going to operate on an indefinite basis, any employee who chooses to locate themselves outside of Australia is going to have ongoing problems meeting their obligation to be ready, willing and able to work at the commencement of each work cycle. Such employees would be well advised to relocate their usual place of residence to Australia, at least for the duration of the COVID-19 emergency.

Sources of information

For the most up-to-date medical advice and information about COVID-19, please refer to the Australian Government Department of Health website: <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert>

For the most up-to-date information about travel restrictions and the status of COVID-19 internationally, please refer to the Department of Foreign Affairs and Trade website: <https://www.smartraveller.gov.au/news-and-updates/coronavirus-covid-19>

The World Health Organisation is also regularly updating its advice about COVID-19: <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> . The WHO has also issued practical guidance for employers to ready their workplaces to protect against the spread of COVID-19: <https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf>

Further assistance

AMMA will continue to update its members on material developments in relation to the COVID-19 coronavirus. If you have any specific questions about COVID-19 issues in your organisation, please contact one of the following AMMA consultants.

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