

Coronavirus Disease (COVID-19) – Guidance Note on Employment-Related Matters for the Community Services Sector Advice as at 16 March 2020

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This Guidance Note provides specific advice for the Community Services Sector on employment-related matters. For general and up-to-date advice regarding the Coronavirus Disease (COVID-19), please visit the Department of Health and Human Services (DHHS) website - www.dhhs.vic.gov.au/coronavirus.

General advice for employers and employees

It is essential that employers and employees be as informed as they can be regarding COVID-19. Employers should make available – and encourage employees to read – the information and advice available about COVID-19 on the DHHS website. The DHHS [website](#) provides up-to-date information for a range of audiences as well as fact sheets and other material that can be used to help in making information available more broadly.

DHHS and Victoria's Chief Health Officer are continuing to work with the Commonwealth Government and our state and territory peers to monitor and identify appropriate actions and advisories that might affect employees of Victorian public health sector entities. DHHS and Victoria's Chief Health Officer are also monitoring advice provided by the World Health Organisation.

The Victorian Government will be working with all stakeholders – including unions, professional associations and peak bodies – to ensure appropriate information is provided so that employers and their employees are able to respond promptly to issues, questions and concerns that might arise.

This Guidance Note will be posted on vcoss.org.au. The material in this Guidance Note will be continuously updated based upon the most up to date advice from relevant authorities, and as circumstances change. Please check the website for updates so that you can access the most up-to-date information.

Employees exposed or at risk of exposure to Coronavirus

Employees are expected to self-isolate where recommended or required in accordance with the advice of Victoria's Chief Health Officer.

We are mindful that this is a fluid environment so employers and employees should regularly check the DHHS [website](#) for up-to-date information.

Current advice - employees exposed to coronavirus

In accordance with the current advice of Victoria's Chief Health Officer, anyone who has been in close contact with a confirmed novel coronavirus case should remain at home for fourteen (14) days following exposure.

Current advice - employees returning from overseas travel

Victoria's Chief Health Officer has travel restrictions in place for several countries. Advice on the latest travel restrictions can be found through the DHHS [website](#).

Current advice from Victoria's Chief Health Officer is that people returning from identified countries should (or in some cases, must) isolate themselves for fourteen (14) days after returning from named 'high-risk' countries. For return from some other named countries, Victoria's Chief Health Officer advises that while self-isolation is not required, people who are healthcare workers or residential aged care workers cannot attend work for fourteen (14) days after their return from those named countries.

Employers and employees should refer to the Commonwealth Government's [Home isolation guidance](#).

As this situation is fluid, the countries named by the Commonwealth in each of the categories is subject to change. You can check the status of the Commonwealth Government's advice regularly through the DHHS [website](#).

Payment during periods of self-isolation or absence from work – ongoing and fixed term employees

Employers will need to consider the specific provisions in their industrial instruments in relation to various forms of the leave. The below advice provides a framework for decision making and consideration to how various forms of leave should be assessed in the current environment.

Employees who have contracted COVID-19

Where an employee is not fit for work because of a personal illness affecting the employee, including infection with the coronavirus, the employee may access their accrued personal/carer's leave entitlement.

Where the employee does not have enough accrued personal leave to cover a period of absence associated with a coronavirus infection, either other paid and unpaid leave entitlements can be used (such as Annual Leave), or access to further paid Special Leave will be considered appropriately by employers on a case-by-case basis.

Where the employee is a carer for an affected family/household member

Where an employee is absent from work to care for a family or household member who is required to self-isolate, the employee may make arrangements with the employer to work from home for some or all of the self-isolation period where reasonable, practical and appropriate in light of the caring responsibilities of the employee.

Otherwise, the employee may either access their accrued personal/carer's leave entitlement (including where the member of their household or immediate family member is diagnosed with COVID-19) or another type of accrued leave, or access to paid Special Leave will be considered appropriately by employers on a case-by-case basis.

Employers and employees should note that an employee who is a carer for a family or household member who is diagnosed as having the coronavirus might themselves become subject to the Commonwealth Government or DHHS self-isolation or absence from work requirements.

Where the employee is required to self-isolate

An Employee who is required to self-isolate in accordance with the advice of Victoria's Chief Health Officer but is not unwell or has not been diagnosed with COVID-19 may be required by their Employer to work from home for some or all of the self-isolation period where reasonable, practical and appropriate.

Accordingly, an employee who is not unwell but is required to self-isolate on the advice of Victoria's Chief Health Officer or DHHS will be granted paid Special Leave to cover the required self-isolation period (subject to the exception for voluntary employee travel to a known risk area below).

In these circumstances the employer may require the employee to provide a statutory declaration or other reasonable evidence to substantiate the requirement to self-isolate. Where evidence is required an employee must provide it to be eligible for the special leave.

Where during any self-isolation period on paid Special Leave, the employee becomes unwell (whether with COVID-19 or another illness) or is required to care for a member of the Employee's immediate family or household member, the paid Special Leave will cease and the Employee may access accrued paid personal/carer's leave.

Where the employee chose to commence travel involving travelling to or transiting through a country or countries after the country or countries were listed in the Commonwealth Government's advisory (or identified on the [Smarttraveller website](#)), it is expected that employees will use their personal/carer's leave or another type of accrued leave. Access to additional paid Special Leave will not be available in this case.

Where the employee is otherwise required to be absent from work

Where an employee is not required to self-isolate but is required to remain absent from work in accordance with Victoria's Chief Health Officer's advice, the following will apply:

- Where the employee is required to remain absent from work due to overseas travel that commenced before the country or countries visited or transited through was added to the Commonwealth Government's advisory (or identified on the [Smartraveller website](#)), the provisions above apply for the period they must remain absent from work under Victoria's Chief Health Officer's guidelines for the relevant country or countries.
- Where the employee is otherwise required by their employer to be absent from the workplace in accordance with Victoria's Chief Health Officer's guidelines, the provisions above apply for the period they must remain absent from work under those guidelines.
- Where the employee chose to commence travel involving travelling to or transiting through a country or countries after the country or countries were listed in the Commonwealth Government's advisory (or identified on the [Smartraveller website](#)), it is expected that employees will use their personal/carer's leave or another type of accrued leave. Access to additional paid Special Leave will not be available in this case.

In any of the above circumstances, the employer and employee might also consider working from home arrangements for some or all of the relevant period where reasonable, practical and appropriate.

If there is no requirement by law or direction by Commonwealth Government or DHHS to self-isolate

In absence of the Employee contracting a personal illness, having caring responsibility for a member of their immediately family or household or a requirement to self-isolate, Employees are expected to attend work as usual unless on approved leave or other working arrangements have been agreed with the Employer.

Similarly, Employer decisions about requiring employees to self-isolate or to otherwise adjust their working conditions to maintain a safe workplace must be based on and informed by the advice of Victoria's Chief Health Officer and the Employer's own risk assessments. Conduct may be unlawful under discrimination laws even if it arises from a genuinely held concern regarding the COVID-19 virus. Decisions need to be made on appropriate and reasonable grounds.

Casual employees

Casual employees are also affected by the self-isolation and absence from work requirements above.

Typically, casual employees do not have paid personal or annual leave entitlements to draw upon.

Nonetheless, casual employees are a valuable resource for the community service sector and face the same infection risks as other employees.

Where a casual employee is required to self-isolate or otherwise be absent from work, the employer may make arrangements with the employee to work from home for some or all of the relevant period where reasonable, practical and appropriate in light of the health or caring responsibilities of the employee.

Where work from home arrangements are not reasonable, practical or appropriate, the following will apply.

Where a casual employee has been or is working in the community service sector on a regular and systematic basis, and is anticipated to continue to be employed on a regular and systematic basis, paid special leave will be provided to cover any required period of self-isolation or period required to be absent from work (subject to the exception for voluntary employee travel to a known risk area). The amount of paid special leave provided will be reflective of the likely work pattern for the employee concerned had they not been required to self-isolate.

For casual employees who have not been, or are not, working in the community service sector on a regular and systematic basis, employers should use their discretion in assessing appropriately whether or not to provide paid special leave or other financial assistance on a case by case basis.

The employer may require the employee to provide a statutory declaration or other reasonable evidence to substantiate the requirement to self-isolate. Where evidence is required an employee must provide it to be eligible for the special leave.

Independent contractors

Independent contractors are also affected by the self-isolation and absence from work requirements above and face the same infection risk as direct employees.

Employers are encouraged to consider the financial impact on independent contractors and find accommodations that avoid or mitigate their financial disadvantage where they are required to be absent from the workplace through no fault of their own.

Safe working practices

Employers and employees have mutual obligations to ensure the workplace is safe and without risks to the health of employees and others.

The *Occupational Health and Safety Act 2004 (Vic)* (OHS Act) provides that employers must – as far as is reasonably practicable – eliminate, or otherwise minimise risks to health and safety.

The OHS Act also requires employees to take reasonable care for their own health and safety and the health and safety of others who may be affected by their acts or omissions at the workplace. Employees must also co-operate with their employer with respect to any action taken by the employer to comply with the OHS Act.

Employees must take appropriate precautions by following policies and procedures aimed at reducing risk and by informing their employer of risks in and to the workplace, including where their own personal circumstances might contribute to those risks. Employees must comply as far as is reasonably possible with lawful and reasonable instructions given to them by their employer so that the employer can comply with its responsibilities.

Employees also have a duty to take reasonable care for their own health and safety and to not adversely affect the health and safety of others. Employees should be reminded to always practice good hygiene and take other measures to protect themselves and others against infection. This includes:

- Washing their hands often, with soap and water, or carrying hand sanitiser (where permitted) and using it as needed.
- Covering their mouth when coughing or sneezing, but not using their hands to do so.
- Seeing a health care professional if they start to feel unwell.
- If unwell, avoiding contact with others (including shaking hands or other touching).

Further information can be found at <https://www.worksafe.vic.gov.au/safety-alerts/exposure-coronavirus-workplaces>.

Personal Protective Equipment

Part of the Employer's responsibilities in minimising risk is providing appropriate personal protective equipment (PPE) such as gloves, masks and eye protection for employees who provide frontline services.

However, the provision of such equipment will be commensurate with the level of risk faced by an employee in terms of the duties the employee performs and the direct environment in which those duties are performed. This is particularly relevant and important at this time as the nature of the public health threat posed and response required will place pressure on the availability and supply of these items worldwide. The health sector will be prioritised where there is availability and supply resources.

Employee notification

Employees (including casual employees) and independent contractors are required to notify the employer immediately if they:

- have travelled to an affected area since 1 February 2020;
- have been exposed to coronavirus, and/or

- are suffering, or have suffered, flu-like symptoms since 1 February 2020.

If the answer to any of these questions is yes, employers should respond according to Victoria's Chief Health Officer's guidelines, including where provided for by directing the employee not to attend work during the risk period.

Access to work at home arrangements, paid or unpaid leave will be in accordance with the advice set out above.

Other exclusions from the workplace

Employers should consider excluding other people from their workplaces including visitors, contractors and volunteers who would be required under Commonwealth or DHHS guidance to self-isolate or otherwise not attend the workplace.

Appropriate signage and other notices should be visible and relevant information should be otherwise be made available to those likely to be affected by such restrictions.

Minimising Unlawful Discrimination and Vilification

It is likely that COVID-19 would be characterised as a 'disability' for the purposes of anti-discrimination laws.

Employers have a responsibility to ensure that employees are not unlawfully discriminated against, knowingly or unknowingly, by their managers, their colleagues and the organisation. Employers should remain aware of the potential for heightened unlawful discrimination in the workplace during a time of heightened public health concerns and possible pandemic.

Employers should be aware that if an infectious disease originates from a geographical region, employees from that region (or perceived to be from or connect to that region) may be at an increased risk of experiencing unlawful discrimination from others. Employers should monitor this and intervene where necessary to remind employees and clients of their obligations to behave respectfully towards others at work. Any inappropriate workplace behaviour by Employees may be subject to a misconduct investigation.

Assigning and managing work

Employers might need to adopt policies and arrangements that allow a dynamic response to how, when and where work is to be performed and by whom. Employers should also be alive to concerns and reservations that staff might have about working with members of the public exposed to or infected by the coronavirus.

Employers may require staff to work from home or from alternative work locations for periods of time. Employers should consider the consultation requirements and any additional entitlements under the VPS Agreement which may apply. Employers may test or trial some arrangements in advance to ensure systems and ways of working are practical in the event of changed directions. Employees may be required to undertake different duties for a period of time, within an employee's skills and classification level.

Employers should ensure that employees have access to up-to-date information from the Commonwealth Government and DHHS about COVID-19 and employees should familiarise themselves with that information.

Employee concerns over attending/performing work

Provided the workplace is safe, other than in the circumstances set out above, employees are expected to report for work as usual. Employees should discuss any concerns with their employer. If employees request to work from home or to take some form of paid or unpaid leave, these requests are subject to the normal leave or flexible work application process in the workplace.

Some employees may feel anxious about coming to work during this period. Encouraging their participation in planning processes and providing clear and regular communication is crucial to alleviating employee concerns and minimising unnecessary absenteeism.

While employers have the right to issue lawful and reasonable directions to their employees, that right must be exercised with caution and some flexibility adopted.

If an employee is refusing to come to work – or to perform certain tasks, or perform them in the way directed – because they hold genuine fears for their health and safety, the stress that might arise from being directed to do so, or concern about possible disciplinary action, may itself adversely affect their health.

Where an employee has a legitimate concern for their own health and safety – for example, where an employee falls into an ‘at risk’ category (such as pregnancy or where the employee has a pre-existing medical condition) regarding COVID-19 – the employer should seek to accommodate the employee through a temporary transfer to other duties or other flexible arrangements. In some cases, employers and employees might reach agreement on the taking of paid leave.

Where possible, employers should try to accommodate employees’ requests to work from alternative locations – including working from home – to reduce their risk of coming into contact with the coronavirus. Obviously, operational considerations will be relevant to authorising any alternative working arrangements.

Maintenance of critical functions

In some circumstances it may not be appropriate to provide employees with the opportunity to work from alternative work locations because employees are required to attend the workplace in order to maintain critical functions or services or implement the Government’s response to an outbreak of COVID-19. In such circumstances, employers must ensure that as far as is reasonably possible they have taken steps to minimise risks to employees and clients.

Consulting on workloads and overtime

While employers can ask their employees to work additional hours, those additional hours must be reasonable.

Employers have a practical – and in some cases, a legal – obligation to consult with their employees where there is likely to be a prolonged increase to employees’ working hours and/or workloads. Consulting in advance where higher workloads are expected is good practice. Employers must continue to meet their industrial and legal obligations.

Managing fatigue

Managing fatigue will be essential for a surge period that might last for a considerable period of time. Employers must comply with all legal obligations to provide a safe working environment and to avoid placing excessive or onerous workloads on their employees.

Employers should consider all available options to meet increased or changed service needs including offering additional hours to part-time and casual employees, offering paid overtime or time-off-in-lieu arrangements or engaging additional resources.

Managing leave requests

Employees are and remain entitled to request and to take leave in accordance with their industrial instruments and the *Fair Work Act 2009* (Cth).

Where approval is discretionary for the type of leave requested, that discretion should be exercised cautiously and in consultation with the employee. If leave is to be disallowed for operational reasons – such as staffing shortages or higher workloads influenced by COVID-19 – this should be made clear and all alternatives to disallowing the requested period of leave be explored and discounted. The employer might also seek to negotiate a different period of leave or for the leave to be taken at a different time.

Evidentiary requirements

Many employees will require leave during a time of heightened threats to public health for a variety of reasons. In a pandemic or other emergency that affects public health, employees may find that access to medical practitioners is

limited. Employers should establish local procedures for recording and approving applications for leave during this period, which are, at a minimum, consistent with the documentary evidence requirements outlined in their industrial instruments.

Employers may wish to consider a more flexible approach to the evidentiary requirements set out in their industrial instruments, given access to medical practitioners may be limited or visiting a medical practitioner may otherwise not be advisable, for example, by accepting statutory declarations in place of the requirement for the provision of a medical certificate.

It is important that processes are established, in advance, to protect vulnerable employees and to ensure sick employees do not report for work. Employers need to consider how best to manage employees once they have exhausted their personal/carers leave entitlements.

Employees undertaking overseas travel

In all cases where employees might be travelling overseas, employers should ensure those employees receive broad advice on minimising the risk of exposure to coronavirus. This includes good hand hygiene and cough etiquette. Employees should monitor their health closely whilst away and seek urgent assessment for any symptoms of coronavirus. If unwell, the employee should isolate them self from others whilst awaiting assessment.

Employers and employees should also visit the Commonwealth Government's [Smartraveller website](#) for the latest travel advisories.

International work-related travel

Employers should defer any work-related travel at this time.

Where work-related travel is proposed, employers should undertake a risk assessment for any work-related travel by employees and should consult openly and directly with those employees.

In undertaking a risk assessment, specific considerations should include:

- Whether the staff member is in a high-risk group or travelling with someone who is. This includes young children, elderly or those with pre-existing medical conditions or immunocompromised. Travellers in high risk groups are more likely to become severely unwell if they contract coronavirus.
- Ensuring travel restrictions and advice are reviewed not only for the destination country but also countries that the employee might transit through. Employees should be mindful not only of the case numbers being reported in these countries, but also the level of health care available in these countries if they were to become unwell and variable travel restrictions for entry and exit from the country.
- Travel disruptions by airlines and travel/tour operators may precede an increase in travel advice from the Commonwealth Government. Staff should consider how this could disrupt their travels.
- Travel insurance coverage of medical costs should an employee become unwell with coronavirus in the relevant country.
- Implications for the employer if an employee (well or unwell) was to be quarantined on their return.

Overseas travel for education or research purposes

Employers should express caution to employees who have booked, are booking or are otherwise planning overseas travel for education or research purposes that while not required or initiated by the employer, would normally carry the imprimatur of, or be funded (or reimbursed), by the employer. This includes travel for professional development.

It is recommended that such travel be postponed, particularly if it is to – or requires transit through – a country identified by the Commonwealth Government as a 'risk' country.

The employer should work with the employee to identify alternatives to that travel or to reschedule it for a time when the risks have reduced. The same risk assessment criteria mentioned above for work-related travel are applicable.

In some cases, the employer might refuse authorisation for the employee to undertake such travel where the risks to the employee and the organisation are deemed very high. No such decision should be made without consulting the employee first and explaining the employer's assessment of the risks involved.

The employer needs to be mindful of costs the employee would incur if required to cancel/modify their travel arrangements.

Personal travel

Where an employee has booked, is booking or is otherwise planning overseas travel to a 'risk' country for personal purposes – whether that be for a holiday or for family purposes – employers should ensure that the employee understands the implications this might have for them on their return from that travel. This includes any periods of self-isolation or absence from work suggested or required by Victoria's Chief Health Officer.

Employees must inform their employer if they are intending to travel to a 'risk' country. Where employees choose to go ahead with their travel arrangements, any period of self-isolation or absence of work required by Victoria's Chief Health Officer's guidelines must be met from their own paid and unpaid leave entitlements. Access to paid Special Leave will not be available in this case.

As mentioned above, where approval for the related leave is discretionary, that discretion should be exercised cautiously and in consultation with the employee. The reasons for disallowing the period of leave should be made clear and all alternatives to disallowing the requested period of leave be explored and discounted. The employer might also seek to negotiate a different period of leave or for the leave to be taken at a different time. The employer needs to be mindful of costs the employee would incur if required to cancel/modify their travel arrangements.

Employee Assistance Programs and debriefing

Employers who run employee assistance programs or similar should ensure all employees are aware of these programs and can access them if they have concerns about how COVID-19 is affecting them, their family or their colleagues.

Employers should ensure that appropriate peer-support and debriefing is available for employees directly involved in the testing and treatment of patients suspected to have and who have contracted the coronavirus.