



**Coronavirus and Australian Workplace Laws  
&  
Candidate Pre-Screening and Pandemic Recruitment  
Contingency Plan**

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HR Global Solutions is distinct in its ability to help clients solve their most complex problems, from strategy to implementation. We are differentiated by our capability to execute the advice we provide to help clients in the markets where they operate today and where they want to be in the future. Delivering this kind of value requires the skills to integrate a broad range of talent and skills – across human capital, strategy & operations, and technology – aligned to the unique needs of our clients' industry sectors, businesses, and organisations. Services include:

## Australian Workplace Laws

This flyer contains advice relating to:

- When can employees be stood down without pay?
- Other options that an employer may consider instead of stand down include
- What if an employer needs to let employees go?
- When can employers' direct employees to stay away from their usual workplace under workplace health and safety laws?
- What if an employee cannot attend work because their child's school has closed due to concerns about coronavirus?
- What happens if an employee or their family member is sick with coronavirus?
- What if an employee is stuck overseas or is required to be quarantined or to self-isolate?
- What if an employee wants to stay home as a precaution?
- What if an employer wants their employees to stay home as a precaution?
- What about casual employees and independent contractors?
- Can an employer change an employee's regular roster or hours of work?
- What if an employer needs to let employees go?
- Can employees be directed not to travel?
- When can employees work from home?
- Emergency Management Hotline
- Gary Busby – Business Financial Advisor - Gary has more than four decades of financial guidance and planning across all business sectors, and is well placed to provide support and guidance for businesses through the Coronavirus Business Interruption
- Andrew Schoenfeld – HR/IR Specialist - Andrew has 3 decades of Employment Law, Workplace Health & Safety and Workers Compensation Law experience. Andrew's speciality in Workplace law is across all States and Commonwealth jurisdictions

This advice is critical for employers at the very initial stage, when determining what actions can be taken by business from an Employment Law aspect and will not affect the financial business support packages announced by both State and Federal Governments.

### When can employees be stood down without pay?

Some examples of when employers may be able to stand down employees include:

- if there was an enforceable government order or direction requiring the business to close (which means there is no work at all for the employees to do, even from another location)
- if a large proportion of the workforce was required to self-quarantine with the result that no useful work was able to be performed in the business by the remaining employees/workforce
- if there was a stoppage of work due to lack of supply for which the employer could not be held responsible.

Employers cannot generally stand down employees simply because of a deterioration of business conditions or because an employee has coronavirus.

### Examples of when employers may be able to stand down employees include:

- if there was an enforceable government order or direction requiring the business to close

HR Global Solutions has never experienced such an enormous demand for services and solutions during this Pandemic crisis.

**HR Global Solutions can only provide advice relating to employment law and best practice. HR Global Solutions as of 10pm last night enacted our emergency management team, to provide employers with the best practice advice and support, consisting of:**

- Steve Walters – Solicitor - Steve has 3 decades of Industrial Relation and Workers Compensation Law experience. Steve has always had a speciality in Compensation and Workplace law in both State and Commonwealth jurisdictions
- Mark McKenney – Council - Mark has over 3 decades of experience as a Commonwealth Advocate, lawyer and as an Associate to a Justice of the Federal Court of Australia. Mark has always had a specialty in industrial relations and employment law practising in all Courts and Tribunals in both State and Commonwealth jurisdictions

(which means there is no work at all for the employees to do, even from another location)

- if a large proportion of the workforce was required to self-quarantine with the result that no useful work was able to be performed in the business by the remaining employees/workforce
- if there was a stoppage of work due to lack of supply for which the employer could not be held responsible.

Enterprise agreements and employment contracts can 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.

Employers are not required to make payments to employees for the period of a stand down but may choose to pay their employees. Employees accrue leave as normal.

An employee is not taken to be stood down during a period when the employee is taking paid or unpaid leave that is authorised by the employer or the employee is otherwise authorised to be absent.

#### **Other options that an employer may consider instead of stand down include:**

- seeking employees' agreement to take paid (or unpaid) leave for a period
- in limited circumstances, directing employees to take paid annual leave
- in limited circumstances, negotiating with employees to change regular rosters or hours of work
- terminating the employment of the employees, in which case the employer may have to provide redundancy pay.

The Fair Work Act includes requirements that employers have to meet before they can terminate an employee's employment, such as providing notice of termination. An employee is also protected from being dismissed because of discrimination, a reason that is harsh, unjust or unreasonable or another protected right. Employers are prohibited from exerting undue influence or undue pressure on employees in relation to making certain agreements or arrangements

#### **What if an employer needs to let employees go?**

Some employers may need to make employees' positions redundant in response to a business downturn. If an employee's job is made redundant, their employer may have to give them redundancy pay. The Fair Work Act has requirements that employers have to meet before they can terminate an employee's employment, such as providing notice.

Under the Fair Work Act, an employee is protected from being dismissed because of a temporary absence due to illness or injury. The Fair Work Act also includes protections against being dismissed because of discrimination, a reason that is harsh, unjust or unreasonable or another protected right. These protections continue to operate in relation to employees impacted by coronavirus.

#### **When can employers' direct employees to stay away from their usual workplace under workplace health and safety laws?**

Under the model WHS laws, employers must do everything that is reasonably practicable to eliminate the risk of a worker contracting COVID-19 at the workplace, or where this is not reasonably practicable, they must minimise the risk of a worker contracting COVID-19 at the workplace. This means employers must provide a work environment that is without risk to health and safety, including access to facilities for good hygiene such as adequate supply of soap, water and toilet paper; and make sure these are kept clean, properly stocked and in good working order.

If those supplies are not available, for the purposes of the model WHS laws, it would not be reasonably practicable for an employer to provide them. For example: If there are no supplies of masks in Australia, an employer cannot be required, to provide a mask. In those circumstances, an employer should consider what alternative measures or approaches can be taken to eliminate or minimise risk. If there are no supplies of hand sanitiser, a PCBU should consider providing access to soap rather than hand sanitiser.

Ultimately however, if an employer is unable to obtain necessary supplies to provide a work environment that is without risks, they should consider whether the risks posed to workers and others at the workplace are so great that workers should not be required to attend the workplace and perform work. This will need to be determined on a case by case basis.

#### **What if an employee cannot attend work because their child's school has closed due to concerns about coronavirus?**

Employees who cannot come to work because they need to care for a child whose school has closed will ordinarily need to use paid leave entitlements to be paid for their absence.

Paid carer's leave is available to full-time or part-time employees where the employee needs to look after a family member or a member of their household who requires care or support because of a personal illness or unexpected emergency affecting the member. A school closing on short notice and for a short period due to concerns about coronavirus (for example, because someone at the school has tested positive) is an unexpected emergency for this purpose.

Casual employees are entitled to 2 days of unpaid carer's leave per occasion. Full-time and part-time employees can take unpaid carer's leave if they have no paid sick or carer's leave left.

An employee must give their employer reasonable evidence of the unexpected

emergency if their employer asks for it. This will also apply to situations relating to coronavirus.

**Other arrangements that may be available include:**

- working from home (if this is a practical option and consistent with any applicable award, enterprise agreement, employment contract or workplace policy) or other flexible working arrangements
- taking annual leave
- taking any other leave (such as long service leave or any other leave available under an award, enterprise agreement or employment contract)
- taking any other paid or unpaid leave by agreement between the employee and the employer.

**What happens if an employee or their family member is sick with coronavirus?**

Employees who are sick with coronavirus cannot attend the workplace for a period due to the workplace health and safety legal obligations that both employers and employees have.

Employers can direct employees who are sick with coronavirus not to come to work. Employers can do this if they're acting reasonably and based on factual information about health and safety risks, which includes relying on the Australian Government's health and quarantine guidelines.

Full-time and part-time employees who cannot come to work because they're sick with coronavirus can take paid sick leave. If an employee needs to look after a family member or a member of their household who's sick with coronavirus, or suffering an unexpected emergency, they're entitled to take paid carer's leave. An employer cannot require an employee to take sick or carer's leave. However, in these circumstances, the employee isn't entitled to be paid unless they use their paid leave entitlements.

Under the Fair Work Act, casual employees are entitled to 2 days of unpaid carer's leave per occasion. Full-time and part-time employees can take unpaid carer's leave if they have no paid sick or carer's leave left. Employers should consider their obligations under any applicable enterprise agreement, award, employees' employment contracts or workplace policies, which may be more generous.

**What if an employee is stuck overseas or is required to be quarantined or to self-isolate?**

Employees should contact their employer immediately if they're unable to attend work because they cannot return from overseas, are required to enter quarantine or to self-isolate because of coronavirus.

The Fair Work Act does not have specific rules for these kinds of situations, so employees and employers need to come to their own arrangement. This may include:

- working from home or another location (if this is a practical option), noting they should review any applicable enterprise agreement, award, employment contracts or workplace policies
- taking sick leave if the employee is sick
- taking annual leave
- taking any other leave available to them (such

as long service leave or any other leave available under an award, enterprise agreement or employment contract)

- arranging any other paid or unpaid leave by agreement between the employee and the employer.

Where an employer directs a full-time or part-time employee to stay home in line with advice, for example in line with the Australian Government's health and quarantine advice, and the employee isn't sick with coronavirus, the employee should ordinarily be paid while the direction applies.

However, if an employee cannot work because they're subject to an enforceable government order or direction requiring them to self-quarantine, the employee isn't ordinarily entitled to be paid (unless they use leave entitlements). In this case, their inability to work is because of a government order or direction, not because of their employer.

If an employee cannot work due to travel restrictions (for example, they are stuck overseas), they're not entitled to be paid (unless they use paid leave entitlements).

**What if an employee wants to stay home as a precaution?**

Employees who want to stay at home as a precaution (but who are not directed to by their employer or as a result of an enforceable government order or direction) need to come to an arrangement with their employer that best suits their workplace. This may include requesting to work from home (if this is a practical option) or taking some form of paid or unpaid leave, such as annual leave or long service leave. Normal leave application processes in the workplace apply. If the employee doesn't enter into an arrangement with their employer or use paid leave, they're not entitled to payment in these circumstances.

Employees who don't work because they have a reasonable concern about an imminent risk to their health or safety are not taking industrial action. This is provided they're not failing to comply with a direction to perform other appropriate and safe work.

**What if an employer wants their employees to stay home as a precaution?**

Under workplace health and safety laws, employers must ensure the health and safety of their workers and others at the workplace as far as is reasonably practicable. Workers also have responsibilities under those laws.

If an employee is at risk of infection from coronavirus (for example, because they've recently travelled from overseas, or have been in close contact with someone who has the virus), employers should request that they work from home (if this is a

practical option - see below) or not work during the risk period.

Where an employer directs a full-time or part-time employee not to work due to workplace health and safety risks but the employee is ready, willing and able to work, the employee is generally entitled to be paid while the direction applies. However, if an employee cannot work because they're subject to an enforceable government order or direction requiring them to self-quarantine, the employee isn't ordinarily entitled to be paid (unless they use leave entitlements).

Under the Fair Work Act, an employee can only be stood down without pay if they cannot be usefully employed because of equipment break down, industrial action or a stoppage of work for which the employer cannot be held responsible. The most common scenarios are severe and inclement weather or natural disasters.

Standing down employees without pay is not generally available due to a deterioration of business conditions or because an employee has coronavirus. Enterprise agreements and employment contracts can have different or extra rules about when an employer can stand down an employee without pay. Employers are not required to make payments to employees for the period of a stand down but may choose to pay their employees.

Employers need to balance their legal obligations, including those relating to anti-discrimination.

### **What about casual employees and independent contractors?**

Casual employees don't have paid sick or carer's leave entitlements under the National Employment Standards and usually are not entitled to be paid when they don't work (for example, if they miss a shift because they are sick due to coronavirus or because they are otherwise required to self-isolate). Casual employees are paid a casual loading instead of paid leave entitlements. Employers should also consider their obligations under any applicable enterprise agreement, award, employees' employment contracts or workplace policies.

Independent contractors are not employees and don't have paid leave entitlements under the Fair Work Act. However, there are special provisions that deem contract outworkers in the textile, clothing and footwear industry to be employees for the purposes of most protections under the Fair Work Act. Where these provisions apply, the contract outworker should be treated as an employee.

### **Can an employer change an employee's regular roster or hours of work?**

Employers need to consult employees about a change to their regular roster or ordinary hours of work under their award or enterprise agreement. In particular, employers have to:

- provide information about the change
- invite employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities)
- consider their employees' views about the impact of the change.

Awards and enterprise agreements may also set out

extra rules about changing rosters or ordinary hours of work.

Changes to an employee's start and finish times (for example, in order to avoid crowds during peak hours) might be possible under the span of hours provisions in an award or enterprise agreement. Some awards and enterprise agreements also allow the span of hours to be varied by agreement.

Reducing a permanent employee's ordinary hours usually requires the employee's agreement.

An employer and employee may agree to an 'individual flexibility arrangement', which allows them to vary terms in their award or enterprise agreement relating to when work is performed. Individual flexibility arrangements only apply to an individual employee, must be in writing, and are subject to a number of safeguards to ensure the agreement has been genuinely made and the employee is left better off overall.

### **What if an employer needs to let employees go?**

Some employers may need to make employees' positions redundant in response to a business downturn. If an employee's job is made redundant, their employer may have to give them redundancy pay. The Fair Work Act has requirements that employers have to meet before they can terminate an employee's employment, such as providing notice.

Under the Fair Work Act, an employee is protected from being dismissed because of a temporary absence due to illness or injury. The Fair Work Act also includes protections against being dismissed because of discrimination, a reason that is harsh, unjust or unreasonable or another protected right. These protections continue to operate in relation to employees impacted by coronavirus.

### **Can employees be directed not to travel?**

Employers can direct employees not to undertake work-related travel if this is necessary to meet workplace health and safety obligations or is otherwise a lawful and reasonable direction.

Employers are unlikely to be able to direct an employee not to undertake private travel.

### **When can employees work from home?**

Working from home arrangements are usually agreed between an employer and employee. An employer who wants to direct an employee to work from home should review their obligations under any applicable enterprise agreement, award, employment contract or workplace policy. Employers should also consider the nature of the work involved and the suitability of the employee's home. Workplace health and safety laws still apply even when an

employee is working from home.

Where employees are required to record their hours of work (for example, in relation to annualised wage arrangements under some awards), this needs to continue when they're working from home. Employers and employees are encouraged to discuss how this should occur.

## Candidate Pre-Screening and Pandemic Recruitment Contingency Plan

HRGS are following and monitoring the official guidance from State & Federal Government, World Health Organization (WHO) and the Centres for Disease Control (CDC) carefully. We are doing everything that is required to ensure that we are supporting the health and wellbeing of our clients, to help stop the spread of Coronavirus COVID – 19 into their workplaces.

**We have increased precautionary safety measures, including the below questionnaire relating to the Coronavirus COVID – 19:**

- Do you have a fever or symptoms of lower respiratory illness such as cough, shortness of breath, or difficulty breathing?
- Are you currently awaiting coronavirus (COVID-19) test results?
- Have you recently travelled to another Country with known local spread of COVID-19?
- Have you recently travelled to an area within Australia with known local spread of COVID-19?
- Have you come into close contact (within 6 feet) with someone who has a laboratory confirmed COVID – 19 diagnosis in the past 14 days?
- Have you come into close contact (within 6 feet) with someone who is believed or currently being assessed for COVID – 19 diagnosis in the past 14 days?

**Pandemic Recruitment Contingency Plan**  
**HRGS has teamed up with the Department of Human Services to help fund the recruitment process for a four-week full-time/part-time Job Placement, with all candidates pre-screened prior to referral, including and not limited to:**

- Coronavirus COVID – 19
- Right to Work Screening
- Reference Checks
- Criminal Record Checks
- Credit Checks
- Professional and Education Verification
- Occupational Health Screening
- Social Media Screening

These candidates may not have the necessary prior experience you generally look for, but as you will notice from the above, they have been thoroughly pre-screened to ensure that they are job ready and able to fill the immediate vacancy. You may elect to offer candidates ongoing employment after the initial placement period, Jobactive providers have access to

the Employment Fund, which is a flexible pool of funds that can be used to help eligible job seekers build the experience and skills to obtain and keep jobs.

## Emergency Management Hotline

All employers should consider whether their obligations are impacted by any applicable enterprise agreement, award, employees' employment contracts or workplace policies before making any decisions.

**HR Global Solutions can provide assistance to employers, when considering all available options.**

HR Global Solutions Emergency Management Hotline is available 24/7 by calling **+61 3 8563 9524**, fees for services will apply.



Empowering Business. Real World Solutions



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