

Employers get ready - Industry Specific Planning for COVID-19

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In brief - With hourly updates on infection rates and with limited consistent advice about the epidemic, it can be hard to know how employers should respond. This article provides information for the education, health services and aged care, transport, and construction and mining industries, and the obligations employers have to employees, including leave and stand downs, legislative requirements and business continuity planning.



WHAT WE KNOW ABOUT COVID-19

In the general population COVID-19 presents as a minor illness. The most concern should be held for people who don't have access to good medical care, those over 70 years of age and those with underlying illness or disease (particularly respiratory illness or heart disease ('high risk groups')). People who are working in front line medical roles, in aged care, disability & community services and education might also be at higher risk of repeated exposure.

For this reason, it is important that employers keep up to date with the latest information. As a starting point, employers should be regularly checking the [World Health Organisation website](#), the [Federal Government website](#) and State Health Department websites for the most up to date information.



LEGAL OBLIGATIONS

In assessing your response to COVID-19 employers might think about the virus just as they would other workplace risk. Specifically:

- **Work Health and Safety Laws** require that employers must ensure, so far as reasonably practicable, the health and safety of workers and others in their workplaces. This may include taking reasonably practicable steps to protect against the risk of infection, particularly of people in high risk groups. Employees have similar duties to ensure their safety and the safety of others.
- **Fair Work Act 2009 (Cth)** - Employers are prohibited from taking adverse action against employees for a prohibited reason, including discrimination due to temporary illness. Employers also have obligations regarding personal and carer's leave provisions in the National Employment Standards. Employers are required to consider flexible workplace requests. The Act includes stand down provisions. Union right of entry may also be relevant, particular where employers are trying to limit non-essential workplace visitors.
- **Anti-Discrimination Laws** - Employers have obligations to prevent discrimination based on imputed disability (including illness) and race.

- **State Public Emergency Laws** - Under these new laws, individuals and organisations may be subject to financial penalties for failing to undertake mandatory self-isolation.
- **Privacy Laws** - The employee records exemption in the *Privacy Act 1988* (Cth) applies only to the use and disclosure of employees' personal information directly related to a current or former employment relationship and may not apply to the use and/or disclosure of personal information in the context of COVID-19. There is however, a permitted general situation exemption which applies to the use and disclosure of personal information involving a serious threat to the life, health or safety of any individual, or to public health or safety, such as in the case of the potential spread of a communicable disease.
- **Industrial Instruments** - Employers should review their industrial instruments to ensure any actions they take in terms of leave, stand-down and flexible work arrangements taken are in line with these instruments.



ACCESS TO LEAVE

Subject to an employer's obligations as outlined in the *Fair Work Act* and industrial instruments, employees who are unable to present to work may be entitled to access:

- Personal or carer's leave if they are unwell or if they need to care for a member of their household.
- Their annual leave, provided there is agreement from the employee and they have exhausted their personal leave.
- TOIL, if policies and/or industrial instruments allow.
- Long service leave.

Before an employee accesses leave, an employer might consider allowing an employee to access leave at half pay to stretch the entitlement further.

If an employee has no leave available, in limited circumstances an employer might allow them to take leave in advance or work out other arrangements to keep such employees engaged until new start payments are available.

Advice should be sought before non-standard leave arrangements are implemented and to ensure that stand-down provisions are implemented to minimise risk.



TRAVEL ADVICE

Information on mandatory self-isolation can be found [here](#).

In view of the recent self-isolation requirements for returning travellers, we recommend that employers consider cancelling non-essential international work related travel.

Where workers have personal international travel plans they should be asked to discuss those plans with their manager so that arrangements can be made to manage the risk of infection on their return. It should be made clear that employees can only return to work after 14 days if they have had no symptoms and they have a clearance from their doctor.



COVID-19 INFECTIONS

Workers should be directed to inform Human Resources or their manager if they or someone in their household or someone they have had close contact with is suspected of having contracted COVID-19.

Workplaces might consider implementing a single point of contact (whether that be a specific email address or a team) to report infections and possible infections.



BUSINESS CONTINUITY PLANNING

As the pandemic evolves, based on current estimates, businesses should plan for up to **60%** of the workforce to be subject to self-isolation at some point.

Now is the time for workplaces to test the effectiveness of workplace continuity strategies and work from home support systems. Consideration should be given to how essential services will continue, particularly in client facing roles and how clients, workers and the community will be protected if your ability to deliver services is reduced.

From an employee/HR perspective business continuity plans might include:

- **Consideration** of flexible working arrangements for employees, to permit working from home to prevent spread of the virus in the workplace or in the community. Ensure that working from home policies are up to date;
- **Updating** travel, fitness for work, leave and possible “quarantining” of employees policies and procedures;
- **Training** around workplace hygiene and cleaning protocols; and
- **Ensuring** the mental health and wellbeing of employees who are ill, quarantined or otherwise concerned. Promoting employee assistance programs. Clear communication to employees will provide reassurance that any risk to their welfare and the business is being managed and the employer stands ready to respond.
- **Planning** for how employees might be supported to take extended paid leave, whether that be through providing additional leave, purchased leave, half-pay leave or other measures which may enable employees to financially manage an extended stand-down period.

Employers should ensure that such plans are clearly communicated with staff so that expectations are clear.

INDUSTRY SPECIFIC RECOMMENDATIONS



Education Industry

Given the high exposure rates in schools and higher education institutions, there is a possibility they will be closed at some point.

The Department of Education has released the following guidance:

- [Coronavirus \(COVID-19\) information for schools and early childhood education and care services, students and parents](#)
- [Coronavirus \(COVID-19\) information for universities and vocational education facilities, students and staff](#)
- [Coronavirus \(COVID-19\) information sheet for child care providers and services](#)
- [Coronavirus regulatory information for DSAs and school providers](#)
- [Information for schools on exemption to travel restrictions for Years 11 and 12 International Students](#)
- [Coronavirus regulatory information for universities VET, ELICOS and higher education providers](#)
- [Delivery of online education to students based in China](#)

Employers in the education sector might consider:

- Implementing a business continuity plan and a Pandemic and Infectious Diseases Plan that is consistent with the advice from the Department of Education, Department of Health and the [World Health Organisation](#).

- Appointing a contact person/team to which workers, families and students can report to if they are diagnosed with, or exposed to, COVID-19;
- Ensuring a consistent approach is taken across the organisation to requests for leave, information around infection and communication with the community;
- Alternative methods and locations of learning, including online lectures, tutorials and assessment might be implemented;
- Cancelling all school trips and student exchanges;
- Preparing for staff absenteeism and ensuring that casual teachers are available should staff be unable to attend at work;
- Cancelling school social events which are likely to attract more than 500 attendees;
- Considering cancelling assemblies and other school events;
- Implementing social distancing in classroom and other settings;
- Considering whether sporting fixtures should continue if those events attract large crowds or there is a risk of infection between competitors;
- Informing families that pastoral teams can assist children experiencing anxiety;
- Developing a plan to manage boarders or college residents who contract COVID-19;
- Providing regular updates to families and staff;
- Asking families to notify the school of any planned international travel and inform that quarantine measures may be imposed;
- How staff and students might be returned to school after an exposure (e.g. will a medical clearance be required); and
- Asking families to inform the school if their child or any family member has been in contact with someone with COVID-19 or if anyone in their family is part of a high risk group so that you might consult with the family about appropriate response measures.



Health Services and Aged Care Industries

These industries will likely have significant exposure to the virus. Temporary reductions in the available workforce are likely to occur. Contingency plans should be drawn up **now** to determine absolute need, how that need will be met, and communications around meeting that need.

State Health Departments have released the following information:

- [*Health professionals, including pathology providers and healthcare managers*](#)
- [*2019-nCoV National Guidelines for Public Health Units*](#)
- [*Weekly epidemiological reports*](#)
- [*Australian Health Sector Emergency Response Plan for Novel Coronavirus \(COVID-19\)*](#)

For aged care, community, disability care and in-home care organisations, in the event that clients need to self-isolate and they still require care, employers might consider implementing the [recommendations](#) issued by the Department of Health for those who are caring for people with COVID-19. The Department of Health has issued recommendations for the use of personal protective equipment when caring for people with COVID-19. State Health Departments have issued [guidelines](#) for the management of COVID-19 in healthcare settings.

In addition, the Aged Care Quality and Safety Commission has also released guidelines on its ["Proportionate risk-based regulatory response"](#) to COVID-19.

In view of these risks posed by COVID-19 we suggest that health care organisations consider:

- Implementing a business continuity plan and a Pandemic and Infectious Diseases Plan as you would do for other medical outbreaks (e.g. influenza) that is consistent with the [World Health Organisation and Department of Health advices](#);
- Appointing a contact person/team to which workers can report to if they are diagnosed with, or exposed to, COVID-19;
- Ensuring a consistent approach is taken across the organisation to reported cases, response and leave requests;
- Reviewing and assessing new and/or additional training needs for staff (e.g. manual handling and infection control);
- Ensuring staff are aware of what symptoms they should be looking out for (in themselves and clients) and who they should report their suspicions/concerns to ensure the wellbeing and appropriate medical treatment of residents, staff and visitors;
- The measures you need to put in place if staff numbers reduce or if people refuse to attend for work generally and/or refuse to attend to particular clients due to concerns they may contract the virus;
- Establishing “isolation zones” in advance should a resident or client need to be placed in quarantine;
- Where agency staff are utilised, engaging with the agency to ensure continued compliance with work health and safety consultation obligations;
- Where contractors come into your homes, ensuring you have processes in place to understand where else they provide services in case of outbreaks in other places they work;
- Increasing the frequency and extent of cleaning around workplaces. Consider whether it is appropriate to offer additional protective equipment to cleaning staff (e.g. masks, gloves, clothing and shoe coverings and disposable or single use cleaning products and accessories);
- Providing hand sanitiser in common areas and in entry foyers for visitor use and to travelling workers;
- Visitation policies, particularly for family and children of residents so as to try to address the risk of infection;
- Consulting with staff about whether they or members of their family are in a ‘high risk’ group and take steps to address that risk; and
- For in-home care in particular, considering whether clients should be asked to provide additional information regarding their exposure to COVID-19.



Transport Industry

Employees in the transport industry, including airports, ports, and public transport all have exposure to large gatherings of people and therefore an increased risk to contracting the virus.

Employers in the transport industry should be approaching the emerging pandemic like any other workplace risk, including:

- Undertaking a risk assessment;
- Consulting workers so that the possible risk is well understood. You need to understand whether they or their families are part of a ‘high risk group’;
- Providing clear communication in regards to risk identification and mitigation strategies. Such communications, consultation and strategies should be documented and regularly reviewed as further information becomes available.

As well as these risk assessments, we recommend employers in the transport industry consider:

- Implementing a business continuity plan and a Pandemic and Infectious Diseases Plan that is consistent with the [World Health Organisation and Department of Health advices](#);
- Appointing a contact person to which workers can report to if they are diagnosed with, or exposed to, COVID-19; and
- Ensuring a consistent approach is taken across the organisation.



Property Construction Resource Industries

Working in a high risk environment requires a continual focus on the risks and reasonably practicable controls. The Work Health and Safety Laws around Australia requires the Person Conducting a Business or Undertaking (PCBU) to:

- Eliminate the risks to health and safety, so far as is reasonably practicable; and
- If it is not reasonably practicable to eliminate risk to health and safety, to minimise those risks as far as is reasonably practicable.

Each workplace will be different and will need to consider what reasonably practicable steps can be taken. Employers should consider the updates provided by SafeWork Australia [here](#).

In regards to the *Construction Industry* if you are the principal contractor managing a construction project, with numerous sub-contractors, your WHS Management Plan must reflect the current risk assessment and controls for COVID-19.

Employers should consider implementing guidelines for recommended infection controls, information updates, isolation periods, travel guidance and when workers should not attend work should be prepared.

Workers should be advised they are required to take reasonable care for themselves and to not adversely affect the health and safety of others.

Continuous consultation and communication with the workers at the construction project should be considered.

In regards to the *Mining Industry*, whether you are operating an open cut or underground mine you should assess the risks of COVID-19 upon your workforce, contractors and business continuity.

Undertaking a risk assessment is paramount in any mining environment to ensure the PCBU has taken all reasonably practicable steps to either eliminate or minimise the risk of exposure to the virus.

Operating an underground mine requires adequate rigor in the risk assessment to identify the appropriate controls where ventilation systems operate to support the underground mining environment.

In an underground mine, be it coal or metalliferous, the risk assessment and controls should take steps to manage all workers, (including contractors), prior to them entering the underground mine.

The recommended controls for employers to consider are:

- workers being consulted on the self-identification of symptoms so they may seek professional health care prior to attending the mine site;
- workers being advised at pre start meetings that if they are feeling unwell to immediately seek advice from a health care professional;
- covering their mouth if coughing or sneezing; and
- using hand sanitizer where appropriate.



HOW CAN COLIN BIGGERS & PAISLEY HELP?

Colin Biggers & Paisley have national employment and safety teams that can provide accurate and timely advice to employers as this matter evolves. We have already enacted our business continuity plans. We expect things to continue as business as usual for the duration. We will be available to you at any time to provide advice and support.

We have conducted a webinar series, which can be accessed [here](#), where we talk more about the COVID-19 pandemic.

If you would like assistance managing COVID-19, or you would like to read more about Colin Biggers & Paisley's national employment and safety teams and our practice's response to the virus, click [here](#), or contact our team below.



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At Colin Biggers & Paisley, we are committed to supporting our teams, our clients and our community as we face the uncertainties that lie ahead. Our business continuity plan will enable us to continue to service our clients as this emergency evolves. By supporting our people and their families, our clients and community, we will get through this together.

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