

# Coronavirus Disease (COVID-19) – Guidance Note on Employment- Related Matters

Advice as at 22 December 2020

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This Guidance Note provides specific advice to Victorian public health sector entities 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 Service's website - [www.dhhs.vic.gov.au/coronavirus](http://www.dhhs.vic.gov.au/coronavirus).

## Disclaimer

Nothing in this Guidance Note is intended to limit or diminish an employee's right, benefit or entitlement under an enterprise agreement, award or the *Fair Work Act 2009* (Cth).

## Consultation

Employers are reminded that they **must comply with their obligations** under all relevant industrial instruments to consult with their employees and their employees' unions on matters as required by those industrial instruments, and generally as a good people management principle. That consultation must be managed locally where the matters are local – for example, changes to rosters or roster patterns, or assignment to different work or work locations.

Employees (and their unions) will be better placed to respond quickly and positively to proposed workplace changes arising from the coronavirus (COVID-19) where they feel they are informed and have had an opportunity to contribute to how those changes will be implemented. **Again, local matters of change and consultation must be managed locally.**

The Department of Health and Human Services continues to liaise with health sector unions to ensure that consultation on organisational change proposals is managed in a sensible and practical way.

### Recalls to duty

Employers should be mindful that where they are asking their employees to cancel previously agreed leave arrangements to help meet patient demand, they must consult with those staff and provide advance notice both of the timing and the duration of the recall and wherever practicable.

## State of Emergency and restrictions

Advice on up-to-date restrictions and supports is available on the Department of Health and Human Service's [website](#).

## General advice for employers and employees

It is essential that employers and employees are as informed as they can be regarding the coronavirus (COVID-19). Employers should make available – and encourage employees to read – the information and advice available about the coronavirus (COVID-19) on the Department of Health and Human Service's website. The Department of Health and Human Services' [website](#) provides up-to-date information for a range of audiences as well as fact sheets, posters and other materials that can be used to help in making information available more broadly.

The Department of Health and Human Services is continuing to work with the Commonwealth Government and our state and territory peers to monitor and identify appropriate actions and advisories that may affect employees of Victorian public health sector entities. The Department of Health and Human Services is also monitoring advice provided by the World Health Organisation.

The Department of Health and Human Services – and the Victorian Government more broadly – will be working with all stakeholders – including unions, professional associations and peak bodies – to ensure appropriate information is provided to Victorian public health sector entities and their employees and to respond to promptly to issues, questions and concerns that may arise.

A selection of common ‘Questions and Answers’ are set out later in this Guidance Note.

## **Contractors and their staff**

While the information in this Guidance Note focusses primarily on arrangements between Victorian public health sector entities and their employees, the information provided in this Guidance Note may provide useful information for the companies and business that supply services to Victorian public health sector entities on a contract basis (contractors) – particularly those which place their staff within public hospitals and health services or whose staff regularly visit or attend public hospitals and health services in undertaking their work.

Both the Victorian public health sector entities and the contractors have occupational health and safety obligations to ensure the workplace is safe and without risks to the health of employees and others. This includes assessing and managing infection risk possibilities in both directions – that is, the risk of bringing the coronavirus (COVID-19) into the hospital or health service as well as coming into contact with it there.

Victorian public health sector entities are encouraged to work with contractors to reduce infection risks.

## **Employees arriving or returning from overseas destinations**

The Commonwealth Government has imposed various general restrictions on travel both into and out of Australia during the coronavirus (COVID-19) pandemic. Because this situation is fluid, employers and employees should check the status of the Commonwealth Government’s advice regularly through the Department of Health and Human Services’ [website](#). Information is also available on the Commonwealth Government’s Smart Traveller website - <https://www.smarttraveller.gov.au/>.

## **Leave and payment for periods of absence from work**

Employers should ensure that they apply the appropriate leave types to their employees’ absences from work during the coronavirus (COVID-19) pandemic by following the guidance below.

### **Payment during absences from work**

Where an employee is absent from work on paid leave, an employee’s salary during their absence should be calculated as follows:

- If the leave of absence is covered by an existing leave entitlement (for example, Personal/Carer’s Leave) under a relevant enterprise agreement, payment for the period of absence will be calculated in accordance with the provisions of the enterprise agreement;
- If the leave of absence is paid Special Leave granted at the discretion of the employer under this Guidance Note (or otherwise), generally payment for the period of absence will be calculated by reference to the rate of pay the employee ordinarily receives in the course of their duties, excluding payment for overtime, stand by, travel allowance, incidental expenses or any other payment of a temporary character, unless a better entitlement is available under a relevant enterprise agreement.

Notwithstanding the above, where paid Special Leave is provided, employers should seek to avoid either advantaging or disadvantaging employees in the level of payment an employee will receive during that period of paid Special Leave. For example, if the employee is unable to work

due to self-quarantining (self-isolation) requirements, and would have been in receipt of shift penalties had they been able to work, the employer should pay the employee those shift penalties as if the shifts had been worked. The level of payment the employee would have received if the period of absence had been taken as Personal/Carer's Leave, rather than as paid Special Leave, may provide a useful guide under some industrial instruments.

### **Where an employee has an illness**

In all cases, where an employee is absent from work because they have or have contracted an illness (whether the coronavirus (COVID-19) or another illness), it is expected that the employee will use their Personal Leave in the first instance. Where the employee has exhausted their Personal Leave and other paid leave entitlements, access to paid Special Leave may be considered on a case-by-case basis.

### **Employees who become sick while at work**

Where an employee becomes sick at work after exposure to a person infected with the coronavirus (COVID-19) that employee should absent themselves from work. Alternatively, an employer may direct that employee to absent themselves from work. The period of the employee's absence will be informed by Victoria's Chief Health Officer's self-isolation guidelines and/or by the employee's medical practitioner(s). Access to paid and unpaid leave will be in accordance with the advice set out above.

An employee who contracts coronavirus (COVID-19) through their work can exercise their rights to make a WorkCover claim.

### **Where the employee is required to self-quarantine (self-isolate)**

Employees who are required to isolate or quarantine in accordance with Victoria's Chief Health Officer's requirements must not attend work and will be able to access paid Special Leave from their employer during the isolation or mandatory quarantine period. However, paid Special Leave will not be granted upon return to Australia from any overseas travel.

The employer and employee may also consider 'working from home' arrangements for some or all of the self-quarantine (self-isolation) or mandatory quarantine period where practical and appropriate.

### **Where the employee is otherwise required to be absent from work**

Where an employee is not required to isolate but is required to absent from work in accordance with Victoria's Chief Health Officer's advice – such as in the case of a suspected case of coronavirus (COVID-19) – the employee will be able to access paid Special Leave from their employer during the period they are required to not attend work. This includes an employee who was required to be tested for coronavirus (COVID-19) and is required to be absent from the workplace while awaiting the result of that test and who is otherwise well.

In such circumstances, the employer and employee may also consider 'working from home' arrangements for some or all of the relevant period where practical and appropriate.

### **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-quarantine, it is expected that employees will use their Personal/Carer's Leave (where appropriate) or another type of paid or unpaid leave. Access to paid Special Leave may be considered on a case-by-case basis.

The employer and employee may also consider 'working from home' arrangements for some or all of the relevant period where practical and appropriate.

Employers and employees should note that an employee who is a carer for a family or household member who is diagnosed as having coronavirus (COVID-19) may themselves become subject to Victoria's Chief Health Officer's self-quarantine (self-isolate) or absence from work requirements.

### **'Higher risk' employees**

Employers should adopt a flexible approach to granting leave (including paid Special Leave) to – or agreeing to alternative or flexible working arrangements for – employees who fall into the following 'higher risk' categories:

- Aboriginal and Torres Strait Islander people 50 years and older with one or more chronic medical conditions;
- People 65 years and older with chronic medical conditions;
- People 70 years and older;
- People with compromised immune systems.
- Pregnant women >28 weeks gestation.

Further information for 'higher risk' employees is available on the Department of Health and Human Services' [website](#).

### **Where there is no requirement for an employee to self-quarantine (self-isolate)**

In absence of the employee:

- contracting a personal illness; or
- having a caring responsibility for a member of their immediately family or household who has contracted a personal illness or injury; or
- having come into close contact with a person who has contracted coronavirus (COVID-19) requiring a period of self-quarantine (self-isolation); or
- having a requirement to self-quarantine (self-isolate) due to returning from overseas travel;

the employee is expected to attend work as usual unless on approved leave or other working arrangements have been agreed with their employer.

Similarly, employer decisions on requiring employees to be absent from work 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, the Commonwealth Government and/or the Department of Health and Human Services. While employers must undertake their own risk assessments, their decisions and conduct may be unlawful under discrimination laws – even if they arise from a genuinely held concern regarding the coronavirus (COVID-19) – unless made on appropriate and reasonable grounds.

Employers should also be aware of the [Aboriginal Cultural Safety Framework](#) and ensure that cultural safety is included in their decision making.

### **Casual employees and independent contractors (fee-for-service)**

Casual employees and independent contractors engaged directly by Victorian public health sector entities may also be affected by the self-quarantine (self-isolation) and absence from work requirements mentioned above. Alternatively, a casual employee or independent contractor may fall into a 'higher risk' category.

Typically, casual employees and independent contractors do not have paid Personal Leave or Annual Leave entitlements to draw upon, nor would they normally have access to paid Special Leave.

Nonetheless, casual employees and independent contractors provide a valuable resource to these entities and face the same infection risks as the entities' direct employees.

Where a casual employee or independent contractor is required to self-quarantine (self-isolate) or otherwise be absent from work, or the casual employee falls into a 'higher risk' category, the employer may make arrangements with that person 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 that person.

Employers should use their discretion in assessing whether to provide casual employees with paid Special Leave or other financial assistance on a case by case basis, taking into account:

- Where a casual employee has been employed and working for the hospital on a regular and systematic basis for at least three (3) months, 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-quarantine (self-isolate) 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-quarantine (self-isolate).
- For casual employees who have been employed and working for less than three months, or who have not been working for the hospital 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.
- In either case above, where the casual employee will be absent from work due to their falling into a 'higher risk' category, their access to paid Special Leave or other financial assistance should be capped at twenty (20) days (pro-rata) or equivalent.

Employers may require the casual employee to provide a statutory declaration or other reasonable evidence to substantiate the requirement to self-quarantine (self-isolate) or their status as being in a 'higher risk' category. Where evidence is required, a casual employee must provide it to be eligible for paid Special Leave. Where the casual employee's requirement to self-quarantine (self-isolate) relates to a return from overseas travel, employers may have regard to the timing of and destination(s) visited or transited through during that travel in making a decision to provide support to the employee.

The above arrangements are separate from the Maintenance of Employment (see below) arrangements established by the Department of Health and Human Services to mitigate disadvantage for part-time and casual 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.

## **Maintenance of Employment**

The Department of Health and Human Services has issued advice and Frequently Asked Questions directly to all public health entities regarding the Employment Stability Payment. The Employment Stability Payment is aimed at supporting casual and part-time employees whose normal weekly hours and patterns of work may have been disrupted by coronavirus (COVID-19)-related changes to the quantity or frequency of patient services provided by their employer. The advice reflects the Department of Health and Human Services' intention to avoid creating disadvantage, while not creating advantage, to employees in the context of their usual (or average) work pattern. Employers should apply the advice with that intention in mind. This might require employers to consult and to act cooperatively with each other in assessing potential disadvantage to employees.

The Employment Stability Payment was phased out in stages from 23 November 2020 with all access to the payment ceasing from 14 December 2020. Notwithstanding the formal cessation of this arrangement, employers are still asked to be mindful of any scenarios in which a part-time or casual employee may continue to experience a negative impact on their normal pattern of hours due to COVID-19-related restrictions or limitations on the employer's normal activity and make a reasonable adjustment to any such employee's pay to reduce disadvantage.

Both the Commonwealth Government and Victorian Government have implemented arrangements for employees of residential aged care facilities to assist those employees to work at a single site where practicable. These arrangements also seek to maintain pay and other benefits for employees during the coronavirus (COVID-19) pandemic.

## 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.

Employers must – as far as is reasonably possible – eliminate, or otherwise minimise risks. Victorian public health sector entities are – or operate in – a high-risk environment in terms of infection risk and this level of risk must be appropriately addressed. They are also environments where vulnerable people seek care and attention.

Employers should communicate and work with their employees to identify risks in the workplace. This includes understanding which of their employees may themselves be vulnerable to infection and adverse consequences from the coronavirus (COVID-19). Employees who fall into 'higher risk' categories are more at risk of experiencing severe symptoms.

Where appropriate, employers should offer strategies and options to reduce risks for these employees, including working from home arrangements where practical, temporary transfer to other duties, or other flexible arrangements. In some cases, employers and employees may reach agreement on the taking of paid leave to mitigate the risks.

Similarly, employees working in these environments 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 may 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.

The *Occupational Health and Safety Act 2004* (OHS Act) 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 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. Workers should be reminded to always practice good hygiene and other measures to protect themselves and others against infection. This includes:

- Washing their hands often, with soap and water, or carrying hand sanitiser 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, such as hugging).



## Physical distancing

Consistent with the advice of Victoria's Chief Health Officer, employers and employees should implement measures to reduce the risk of transmission and protect vulnerable people.

Further information on physical distancing and other ways to keep you and others safe and well is available on the Department of Health and Human Services' [website](#).

## Personal protective equipment (PPE)

Part of the employers' responsibilities in minimising risk is providing appropriate personal protective equipment (PPE) such as gloves, gowns, masks, eye protection and respirators. Information on the use of PPE can be found on the Department of Health and Human Services' [website](#).

Employers and employees should be aware of and follow this guidance on PPE.

## Employer holds a reasonable belief that an employee may have contracted coronavirus (COVID-19)

Where the employer has a reasonable belief that the employee has a medical condition which is a danger to themselves or another person, they may exercise any power provided to them under the relevant enterprise agreement or other relevant legislation to require the employee to absent themselves from the workplace. In making a decision to direct an employee to be absent from their workplace, the employer must be mindful of their obligations under Victorian occupational health and safety legislation, the *Fair Work Act 2009* (Cth), anti-discrimination protections and any other legal obligations relevant to the circumstances.

Access to paid or unpaid leave will be provided in accordance with the guidance set out earlier in this document.

## Minimising Unlawful Discrimination and Vilification

Employers have a responsibility to ensure that employees are not unlawfully discriminated against – knowingly or unknowingly – by their managers, their colleagues or 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 particular geographical region, employees from that region (or perceived to be from – or connected 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 toward others at work. Any inappropriate workplace behaviour by Employees may be subject to misconduct investigation.

Further, it is likely that contracting coronavirus (COVID-19) would be characterised as a 'disability' for the purposes of anti-discrimination laws.

## Assigning and managing work

Employers may need to adopt policies and arrangements that allow a dynamic response to how work is to be performed and by whom. Employers should also be alive to concerns and reservations that staff may have about working with patients exposed to or infected by the coronavirus (COVID-19).

If employees can work from home, they should be supported to work from home or from alternative work locations for appropriate periods, however, it is now considered safe for many workers to opt to gradually return to COVIDSafe workplaces, including "higher risk" employees, subject to local risk

assessment. Employers should consider the consultation requirements and any additional entitlements under the relevant enterprise 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 commensurate with their qualifications, training, skills and classification level for a period or periods.

Employers should ensure that employees have access to up-to-date information from the Commonwealth Government and the Department of Health and Human Services about the coronavirus (COVID-19), and employees should familiarise themselves with that information.

## **Employee concerns over attending/performing work**

Providing the workplace is safe, employees are expected to report for work as usual. Employers should ensure that employees are aware that they will be expected to report for work unless they are on approved leave. 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 application and approval processes in the workplace.

Some employees may feel anxious about coming to work during this period. This may include employees who fall into 'higher risk' categories. 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 should be 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 may arise from being directed to attend to do so anyway, or to face any threat of discipline 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 a 'higher risk' category regarding coronavirus (COVID-19) (such as a relevant pre-existing illness or medical condition, or pregnancy) – 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 may reach agreement on the taking of paid leave.

Employers should also be aware of the [Aboriginal Cultural Safety Framework](#) and ensure that cultural safety is included in their decision making.

Employers who run Employee Assistance Programs or similar should ensure that employees who have concerns about their wellbeing are aware of these programs and are able to access them.

Where employees can work from home, employers should offer employees the opportunity to do so to reduce their risk of coming into contact with the coronavirus (COVID-19). Similarly, employers should try to accommodate employees' requests for such arrangements. 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 coronavirus (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.

In some cases, it may be necessary to temporarily direct employees to undertake alternative duties, which are within their skills and qualifications in order to maintain critical public service functions and services. In other cases, the employer may need to recall employees to duty during periods where leave has previously been approved. Where it is necessary and required to redirect employees to alternate duties or recall employees from approved leave, employers must:

- consider the requirements of relevant enterprise agreements, including consultation requirements, and engage with the relevant union(s) to seek a collaborative approach to the maintenance of critical functions during this time;
- consider the skills and capabilities of the employees proposed to be redirected to ensure they are qualified and capable of performing those duties;
- consult with (where practicable) and advise the employees of the timing and duration of the reassignment/recall and what duties are required to be performed;
- ensure any employees redirected are remunerated in the accordance with the requirements of the relevant enterprise agreement;
- assess the risks to employees and take reasonable steps to mitigate them as required by Victorian Occupational Health and Safety legislation;
- provide as much notice as practicable of any changes to work locations and duties (noting the circumstances of operating in a pandemic);
- consider the availability of appropriate and safe travel options to and from any alternative location;
- consider the employee's family and personal circumstances, including caring responsibilities;
- consider the continuation of any workplace reasonable adjustments or flexible working conditions wherever possible.

## **Clinical areas**

Areas such as Intensive Care Units, emergency departments and pathology laboratories are among those that are likely to experience higher than usual demand because of the coronavirus (COVID-19). Employers should identify employees with skills that can be utilised in or support these areas.

Where employees are identified as potential 'surge' staff, they should be familiarised with the relevant environment and undergo appropriate training in the use of equipment including PPE relevant to the environment, the duties they will be asked to perform and the nature of their contact with patients.

## **Non-clinical areas**

Where staff can work from home, they should be supported to work from home to reduce their risk of coming into contact with the coronavirus (COVID-19). Similarly, employers should try to accommodate employee's requests for such arrangements. Obviously, operational considerations will be relevant to authorising any alternative working arrangements.

## **Return to work including for 'higher risk' employees**

It is now considered safe for many employees to gradually return to COVIDSafe workplaces, including "higher risk" employees, subject to local risk assessment. Employers should continue to support employees who can work from home to continue to work from home.

A robust workplace risk assessment on the risks of exposure and potential infection of coronavirus (COVID-19) is recommended for "higher risk" employees before their return to work. These employees should not be assigned to work in areas where the risk is considered to be high and should be re-deployed from areas where suspected and confirmed coronavirus (COVID-19) patients are being treated.

Decisions around resource allocations are complex, and health services should develop their own local plans, including physical distancing, cleaning infrastructure, transport to and from work, workstation mapping, flexible working policies, and technology to assist workers to return to work safely.

## Consulting on workloads and overtime

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

Employers have a both 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. Some enterprise agreements require employers to consult in advance where higher workloads are expected but this is good practice to adopt for all employees.

Employers must continue to meet their industrial and legal obligations on consultation.

## Managing fatigue

Managing fatigue will be essential for a surge period that may last many weeks. Employers must comply with all legal obligations to provide a safe working environment and to avoid placing excessive or onerous workloads on their employees. This includes obligations arising from enterprise agreements and from legislation such as the *Safe Patient Care (Nurses to Patients and Midwives to Patient Ratios) Act 2015* (Vic).

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.

Employers should also consider discussing leave plans with employees who are likely to be in high demand if the pandemic escalates and encourage opportunities for the taking of some period(s) of leave in advance of increasing demand where possible to allow employees to 'refresh' beforehand.

As demand does escalate, employers and employees should also consider the possibility of 'rotations' through different duties and clinical areas – intermixed with some leave breaks – during the high-demand phase to provide some relief from what will be a high-pressure and high-intensity environment.

## Managing leave requests

Employees are and remain entitled to request and to take leave in accordance with their awards and enterprise agreements, and in accordance with the *Fair Work Act 2009* (Cth).

Where approval is discretionary under the relevant industrial or statutory terms 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 the coronavirus (COVID-19) – this should be made clear, and all alternatives to disallowing the requested period of leave be explored and discounted. The employer may also seek to negotiate a different period of leave, or for the leave to be taken at a different time.

Employers should also be aware of the [Aboriginal Cultural Safety Framework](#) and ensure that cultural safety is included in their decision making.

## Leave entitlements

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. For example, employers may wish to accept 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 during a pandemic. Employers need to consider how best to manage employees once they have exhausted their Personal/Carer's Leave entitlements. Access to paid Special Leave may be considered on a case-by-case basis.

## Leave cancellations by employees

Given the travel restrictions now in place, some employees are likely to want to cancel or defer previously approved periods of Annual Leave or Long Service Leave that are yet to occur. Similarly, employees who have had their travel cut short by – or otherwise impinged on travel restrictions or self-quarantining (self-isolating) requirements – may wish to have (some of) their Annual Leave or Long Service Leave recredited. Employers should be flexible in accommodating employees' requests to cancel leave requests.

Recrediting of leave may also apply where employees in 'higher risk' categories were required to be absent from work and had already accessed other leave types, where the employee commenced that absence before 19 April 2020 (when access to paid Special Leave for this purpose was first announced).

Exceptions may occur where the employee has an excessive Annual Leave balance and the approved period of leave was part of leave plan to reduce the excessive balance or where recruitment action has occurred, and a replacement employee has been engaged to cover the agreed period of leave.

Employees' requests to convert a period of Annual Leave or Long Service Leave to paid Special Leave should be considered on a cases-by-case basis informed by other information contained in this Guidance Note.

Employers should be mindful that they may be asking their employees to cancel previously agreed leave arrangements to help meet patient demand, so corresponding flexibility with employees' request to cancel previously agreed leave arrangements will help to engender cooperation on this front.

## Leave cancellations by employers

Where it is necessary to cancel an employee's previously approved leave, or to recall the employee during a period or previously approved leave, the employer must follow the steps set out under 'Maintenance of critical functions' above.

## Leave arrangements for school or childcare centre closures or where remote learning is in practice

There may be instances of temporary school or childcare centre closures. Employers and employees should refer to the Department of Education and Training's [website](#) for up to date information.

Where an employee is unable to attend work because they are required to care for one of more of their children as a result of a school and/or a childcare centre being closed in whole or in part on the

advice or direction of Victoria's Chief Health Officer, paid Special Leave may be considered on a case-by-case basis.

**Paid Special Leave arrangements will not apply to employees seeking to be absent from work where the school and/or childcare centre the employee's child(ren) attends is not the subject of a closure by at the advice or direction of Victoria's Chief Health Officer but the employee chooses to keep their child(ren) at home.**

## Employees undertaking overseas travel

Significant travel restrictions remain in place at the direction of the Commonwealth Government. This includes the enforced quarantine of travellers returning from overseas for a self-isolation period of fourteen (14) days. Travellers are required to quarantine in the Australian state they arrive in, irrespective of where they live. Employers and employees should visit the Commonwealth Government's [Smart Traveller website](#) for the latest travel advisories.

Facts sheets relating to confirmed cases, suspected cases and close contact are available on the Department of Health and Human Services' [website](#). This applies to all travellers, including Australian citizens.

In all cases where employees may be travelling overseas, employers should ensure those employees receive relevant advice on minimising the risk of exposure to coronavirus (COVID-19). This includes engaging in good hand hygiene and cough/sneeze etiquette. Employees should monitor their health closely while they are away and seek urgent assessment of any symptoms of coronavirus (COVID-19). If unwell, the employee should isolate from others whilst awaiting assessment.

## Overseas travel on official business

**The Department of Health and Human Services does not believe that overseas travel for any work-related purpose is advisable at this time. The Commonwealth has placed significant restrictions on all international travel. Where the proposed travel may be possible under the Commonwealth Government's restricted travel arrangements, any proposed travel can only occur where approved by the entity's Chief Executive Officer.**

Where work-related travel is deemed necessary, employers should undertake a risk assessment for that work-related travel and 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, the elderly or those with pre-existing medical conditions or are immunocompromised. Travellers in high risk groups are more likely to become severely unwell if they contract coronavirus (COVID-19).
- Ensuring travel restrictions and advice are reviewed not only for the destination country, but also for countries that the employee may 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 which may precede an increased travel advice rating from the Commonwealth Government. Employees should consider how this could disrupt their travels.
- Availability and the level of travel insurance provided, especially coverage of medical and evacuation costs should an employee become unwell with coronavirus (COVID-19) in the countries to be visited.

- Implications for the employer if an employee (well or unwell) was to be quarantined on their return.

## **Overseas travel for education or research purposes**

The same advice applies for travel for education or research purposes as for travel on official business.

## **Personal travel**

Employees should be mindful that travel can only occur within the framework of restrictions that the Commonwealth Government has placed on overseas travel by Australian citizens and residents.

Where an employee has booked, is booking, or is otherwise planning overseas travel and has approval from the Commonwealth Government to undertake that travel, employers should ensure that those employees understand the implications this may have for them on their return from that travel. This includes any periods of self-quarantine (self-isolation) or absence from work suggested or required by Victoria's Chief Health Officer.

Employees must be advised that where they receive approval from the Commonwealth Government to travel and choose to go ahead with their travel arrangements, any period of self-quarantine (self-isolate) or absence of work required under 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 under the relevant industrial or statutory terms for the type of leave requested, 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 may 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.

## **Interstate travel on official business or for work-related purposes**

Individual states and territories can apply their own restrictions, including closing their state borders. Where border crossing restrictions are in place, employees travelling to such a destination may result in the employee having to complete with a self-quarantine (self-isolation) or mandatory quarantine period at their destination.

Therefore, the Department of Health and Human Services recommends against interstate travel by employees and recommends that Victorian public health sector entities defer any work-related travel, with exceptions to be approved by the entity's Chief Executive Officer. This includes travel for professional development (including Continuing Medical Education) or Sabbatical Leave purposes.

## **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 coronavirus (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 (COVID-19).

## Questions and Answers

### **What should employers do to reduce their risks around the coronavirus (COVID-19)?**

Employers have a duty to eliminate or reduce risks and hazards at work, monitor the health of employees and monitor the conditions at any workplace under their management and control.

Employers should remind employees and others entering their workplaces of the importance of high personal hygiene standards which are vital to protect against the spread of infection. We recommend the following:

- Display signage reminding people to wash their hands regularly and thoroughly and practice cough etiquette.
- Ensure there are hand sanitiser dispensers in meeting rooms and high pedestrian traffic areas such as reception areas.
- Remind employees that they should not present at work if they are unwell, and they should sneeze or cough into their elbows and not their hands.
- Employees who share equipment such as phones or laptops should wipe down this equipment with a sanitising wipe after use.
- Employees who use work vehicles should also ensure that they wipe down door handles, steering wheels, control stalks, dash switches/components and other surfaces they may have touched with a sanitising wipe after use.
- Support workers who can work from home to continue to work from home.
- Complete a robust workplace risk assessment on the risks of exposure and potential infection of COVID-19 for “higher risk” employees before these groups return to work.

### **What about employees who have returned from overseas or who may be contagious?**

All travellers returning from overseas will be placed in mandatory quarantine for a period of fourteen (14) days. Travellers are required to quarantine in the Australian state they arrive in, irrespective of where they live.

Each person quarantined will be supported with self-isolation care packages of food and other essentials.

### **Can an employee who was required to self-quarantine (self-isolate) return to work before the fourteen (14) days self-quarantine (self-isolation) period expires if they do not feel unwell, or have tested negative to coronavirus (COVID-19)?**

No. An employee might not experience symptoms immediately and testing earlier than fourteen (14) days does not obviate the need to remain in self-quarantine. Employers and employees should avoid introducing risk into their workplaces. However, working from home arrangements may be considered where reasonable, practicable and appropriate.

Further information on quarantine and isolation is available on the Department of Health and Human Services' [website](#).

### **Most employees in our administration area have agreed to work from home, but some employees cannot perform their roles from home. Can we ask those employees to take Personal Leave?**



No, you can't ask an employee to take Personal Leave if they are not injured or unwell. Similarly, you can't ask an employee to take Carer's Leave if an immediate family or household member is not injured or unwell.

Asking or allowing employees to take their Personal/Carer's Leave (where appropriate) in these circumstances will not exhaust their legal entitlement. They could seek to reclaim their entitlements later if they become unwell.

### **What are you asking patients and visitors to do?**

Many health services are displaying coronavirus (COVID-19) information material in their reception areas and/or in email footers that is consistent with guidance coming from the World Health Organisation. We suggest you consider this approach to indicate to patients and visitors that you have expectations about what they should do while in your workplace.

Posters and information sheets are available from the websites of the [Department of Health and Human Services](#), the [Commonwealth Government](#) and the [World Health Organisation](#).

### **What if employees are fearful of attending/performing work?**

Some employees will hold genuine fears for their own health and safety and these fears must be responded to. Responses include providing information, counselling, alternative work arrangements, flexible working arrangements and access to leave. Employees should be made aware of Employee Assistance Programs or similar where these are available. Where an employee falls into a 'higher risk' category, (capped) paid Special Leave may be available.

Fear may also cause some employees to behave inappropriately to colleagues or patients who have recently returned from overseas or who have family who have recently travelled overseas. You should monitor this and intervene where necessary to remind employees of their obligations to behave respectfully towards others at work.

### **What should healthcare workers in the higher-risk population do?**

Please practice stringent physical distancing and hand hygiene measures (especially in lifts and hospital thoroughfares).

You should also:

- avoid areas where there are suspected or confirmed cases of coronavirus (COVID-19);
- in times of increased community transmission of COVID-19, avoid higher-risk clinical areas such as intensive care units, emergency departments and urgent care centres, acute respiratory assessment clinics and birth suites.

Where this is not possible, always wear personal protective equipment when in contact with suspected or confirmed cases of coronavirus (COVID-19).

For those with heart or lung disease, avoid all patient contact with suspected or confirmed COVID-19 patients.

### **What should pregnant healthcare workers do?**

There is limited evidence at this time regarding the risk of COVID-19 in pregnant women. Based on currently- available information, pregnant women do not appear to be at higher risk of severe coronavirus (COVID-19) illness than the general population. However, due to changes in their bodies and immune systems, we know that pregnant women can be badly affected by some respiratory infections, including influenza.

Pregnant women >28 weeks gestation should therefore be considered potentially "higher risk" employees until further information is known.

Pregnant women should be encouraged to follow the standard advice to protect themselves against coronavirus (COVID-19), such as good hand hygiene and physical distancing practices. They should report possible symptoms (including fever, cough or difficulty breathing) to their healthcare provider. Pregnant women should also be encouraged to have the seasonal influenza vaccine, as this will help to prevent them and their baby from catching influenza.

Informed by public health advice, where there is high risk of exposure and/or potential infection of COVID-19, employers should assess the risks for pregnant health care workers. This includes, the measures available to mitigate risk, such as personal protective equipment; and consider alternative duties and patient allocation from 28 weeks' gestation especially if the healthcare worker is assigned to an area where the risk is high.

### **What if your employee can't attend work because they are caring for someone who has or is suspected to have the coronavirus (COVID-19)?**

In the first instance, employees should use their paid personal/carer's leave entitlements. If these are exhausted, your employees may wish to consider other alternatives, such as taking annual leave or leave without pay. Employers may request that the employee seeks medical clearance prior to returning to work. Access to paid Special Leave will be considered on a case-by-case basis. Working from home or other flexible working arrangements may be explored.

### **If an employee is required to self-quarantine and they are unable to work from home during the self-quarantine period, what leave entitlements are available?**

An employee who is not unwell but is required to self-isolate will be granted paid Special Leave to cover the required self-quarantine period.

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

When an employee on paid Special Leave becomes unwell, with coronavirus (COVID-19) or another illness or is required to care for a family or household member who becomes unwell, the paid Special Leave will cease, and the employee may access accrued paid Personal/Carer's Leave. Where the employee has exhausted their Personal/Carer's Leave and other paid leave entitlements, access to paid Special Leave may be considered on a case-by-case basis.

### **If an employee is required to care for a child, will they be able to work from home?**

Employers should be flexible in discussions with employees about how to handle the competing interests of work duties and childcare. Employees might be able to indicate blocks of time that they can dedicate to work. For instance, an employee might be able to work from 7am until 9am, go offline for a few hours, then be able to work from midday for a couple of hours.

### **If an employee cannot work full time but needs to keep working, what are their options?**

Employees have the option to discuss temporarily reducing their hours to less than 38 hours a week. For instance, a full-time employee may seek to drop down to three days a week or continue to work five days but work fewer hours each day. In these circumstances, an employee may request to top up their additional hours by using other forms of accrued leave (including paid Special Leave, Personal Leave, Annual Leave or Long Service Leave).

## **What if an employee can't attend work because schools and/or pre-schools are closed on the advice or direction of Victoria's Chief Health Officer?**

Paid Special Leave may be considered on a case-by-case basis.

Paid Special Leave will not be available where the employee's child is eligible to participate in supervised on-line learning on-site at their school. Exceptions to this rule may occur (such as where the school will not be able to meet the requirements of a child with 'special needs' under its on-site learning arrangement) and may be considered on a case-by-case basis.

## **What if an employee doesn't want their child(ren) to attend school or childcare centre due to coronavirus (COVID-19) concerns?**

Full-time and part-time employees may request to work from home where reasonable, practicable and appropriate, or adopt other flexible working arrangements. Alternatively, these employees may wish to use any paid or unpaid leave entitlements they may have.

Paid Special Leave will not be available in this situation.

Casual employees may request to work from home where reasonable, practicable and appropriate, or other flexible working arrangements.

## **Are employees entitled to be paid shift penalties if they wouldn't normally undertake shift work?**

Yes. Provided their enterprise agreement makes provision for undertaking shift work and the payment of shift penalties for the type of work they are performing, and provided they are rostered in accordance with the rostering/shift work provisions of their enterprise agreement. In such cases, the shift penalties set out in their enterprise agreement will apply.

## **Do you need to reconsider work-related international travel?**

The Department of Health and Human Services does not believe that overseas travel for any work-related purpose is advisable at this time. The Commonwealth has placed restrictions on all international travel. Where the proposed travel may be possible under the Commonwealth Government's restricted travel arrangements, any proposed travel can only occur where approved by the entity's Chief Executive Officer.

If the travel related to a conference, seminar or meeting, other participation options (for example, teleconference, videoconferencing or webcasting) should be considered and explored.

You should also review your insurance coverage for upcoming travel. Insurers have set 21 January 2020 as the cut-off date for coronavirus (COVID-19)-related claims, being the date when the virus became a 'known event' for insurance purposes.

## **What is the position regarding international travel for medical staff under Continuing Medical Education (including Sabbatical Leave) arrangements?**

The Department of Health and Human Services does not believe that overseas travel for any work-related purpose is advisable at this time. The Commonwealth has placed restrictions on all international travel. Where the proposed travel may be possible under the Commonwealth Government's restricted travel arrangements, any proposed travel can only occur where approved by the entity's Chief Executive Officer.

Employers should consider whether any scheduled international business travel is necessary in the current environment and considering current Commonwealth Government travel restrictions and advisories.

Staff should consider alternative options such as teleconferencing, videoconferencing and webcasting to minimise risk. Health services should review the insurance policy for the staff member who is travelling for work-related purposes.

### **What if your employee is quarantined, or unable to return from overseas or interstate?**

Consider whether the employee can access their paid Personal/Carer's leave entitlements (if unwell or caring for an immediate family or household member), annual leave or other paid or unpaid leave. Access to paid Special Leave will be considered on a case-by-case basis.

### **What if your employees want to stay at home as a precaution?**

Employees will need to request to work from home or to take some form of paid or unpaid leave. You should treat these requests as you would treat other applications for this type of leave. Operational requirements will form part of that consideration.

### **Working from home – what to check?**

You are likely to have a working from home policy or procedure in place. You should check that it meets your needs if employees are subject to quarantine. It is timely to review your IT Systems and business continuity arrangements to ensure the business can continue to operate if a large number of employees need to access IT systems remotely.

### **A reminder – you need to consult**

You should remember that you have obligations to consult on health and safety matters, including in relation to changes you put in place. For many employers a failure to do so may be a breach of your occupational health and safety responsibilities. While the Department of Health and Human Services is engaging with unions at a high level, it cannot address matters of a local nature. **Consultation with staff and unions on these local matters remain the responsibility of the relevant health sector entity**