

Employer Tips for Responding to Covid-19

Health and safety considerations

Employers must manage the health risks to workers and other people affected in the workplace, taking them seriously and treating employees in good faith. Employers should plan ahead and work with their staff and, if applicable, their unions to address likely scenarios arising from COVID-19.

Some practical tips for meeting your obligations:

- Engage with your staff about what steps they could take and implement these they are reasonable and practicable and affordable.
- Ensure that there is regular cleaning of shared spaces such as kitchens and toilets.
- Ensure that you have soap and/or sanitiser in bathrooms and that employees are using it
- If your staff are on the road, provide them with hand sanitiser so they can sanitise hands before and after going on customer sights
- Encourage your employees and clients to not shake hands. A nod of the head or wave will suffice at this time.
- Allow social distancing between employees / clients – e.g. recommended distance is 2 metres.
- Consider using video meetings with clients, where you can. (e.g. Skype, or Zoom, or similar technology is readily available and often free)
- If an employee is sick, ask them to stay at home. The illness doesn't have to be Covid-19 related.
- If an employee shows signs of sickness at work, send them home. That's what their sick leave is for.
- Consider providing the flu vaccination for your employees – it won't protect them from COVID-19 but will protect them from other strains of the flu and place less demand on our health system as we move into winter.

Employers are required to take all reasonably practicable steps to eliminate or minimise risk and protect workers at all times from workplace hazards. Relevant risks/hazards to consider here are both the actual virus itself, and the mental health issues that may arise for employees given the stress of such an uncertain situation.

Leave and pay: various scenarios

Source: MBIE Guidelines

When considering how to treat the absence of an employee due to illness, whether this is related to COVID-19 or not, employers need to comply with the leave entitlements in the employees employment agreement (collective or individual) and these entitlements must be no less than what are provided for under the Holidays Act 2003.

A range of possible scenarios could arise within your workforce and you need to consider each person's circumstances on their own merit. There is no "one-size fits all" approach when it comes to dealing with illness, because each person will respond differently.

There are however clear guidelines that must be followed if an employee's absence is COVID-19 related.

The following scenarios are taken from the Ministry of Business Innovation and Employment.

If an employee is sick with COVID-19 or any other illness (or has a dependent who is sick):

- The employee should not be required to work. Furthermore, if the employee has COVID-19, they should be **directed not to work** (whether at home or in the office) until they have been advised by public health staff that they no longer be in self-isolation.
- Check the entitlements of the employee as set out in their employment agreement. Your employment agreement may specify a 6-month period of continuous employment before they have access to paid sick leave, or it may waive that stand-down period.
- If the employee has run out of sick leave or does not yet have an entitlement, they can request annual leave or alternative holidays that are available to them (an employer should most likely agree to this but isn't required to). Just remember you cannot instruct an employee to take Annual Leave if they are sick. The employee must request to use their annual leave.
- If the employee does not yet have a sick leave entitlement, they are most likely to also not yet have a current annual leave entitlement. If an employee requests to anticipate some of their accruing annual leave (i.e. to take leave in advance), you may consider this, however, ensure that the employee retains at least two weeks' worth of entitlement to take when their 12-month anniversary arrives.
- If you allow a person to anticipate any paid annual leave, you will need to inform them that should they leave your employment for any reason before they have

accrued the leave they have anticipated, they will need to re-pay the difference between what they have taken and what they have accrued at that time.

- Ultimately, in this situation, the period off work may need to be treated as unpaid sick leave.

If an employee has been directed to self-isolate in accordance with Ministry of Health guidelines, but they are not sick:

- They should not be required to attend their workplace or mix with their colleagues/customers.
- Employers and employees should consider whether working from home is practicable during the self-isolation period. In that case, the employee would be paid normally.
- If an employee cannot work from home, then this is not a sick leave situation. In this case MBIE guidance recommends that the employer and employee consider paid special leave or the use of other forms of leave by agreement.
- Ultimately, whether it is reasonable for an employer to withhold pay from an employee who is in compulsory self-isolation will depend on what is “fair and reasonable” in all the circumstances. This inherently means a “one-size-fits-all” approach will not be appropriate, but again, there are some general principles to consider:
 - If an employee was already overseas before the 14-day compulsory self-isolation requirement was imposed (so did not know that this would apply to them before they went on holiday), it is more likely to be unjustified for an employer to direct the employee to stay home without some form of pay for 14 days. Current MBIE guidance suggests that the expectation is that the employee will remain at home on pay, to help to ensure that self-isolation requirements are adhered to.
 - If an employee was overseas for work, and then returns home to a compulsory self-isolation period, they should almost certainly be paid for the 14 days (whether they can work from home or not).
 - If an employee chooses to continue with an overseas trip which is not required for work purposes and not necessary (purely for leisure, for example) from 16 March onwards, and does so knowing that a 14-day compulsory self-isolation requirement will apply on their return, an employer is more likely to be justified to direct that the 14-day period is unpaid. However, other forms of

leave, and the possibility of working from home during that 14-day period, should still be explored first.

- It is important that employers consider each case on its own merits and that they engage with employees as soon as practicable to identify and agree on how the absence will be managed. If your workplace is unionised, you should commence engaging with their unions now, before a situation arises, so that there is an agreed response in place to deal with any employee who has to self-isolate.

If an employee is required to stay at home because their child is required to self-isolate, but neither the employee nor their child is unwell:

- The employer and employee should consider if working from home is possible (in which case normal pay would apply).
- Note depending on the level of illness of the child and amount of care that the employee may need to provide will also dictate whether you can ask the employee to “work” from home. Paid sick leave is available for time off work to care for dependents, so check an employee’s entitlement when considering these requests.
- If working from home is not possible or they do not have any remaining paid sick leave entitlement, including for dependents, then the employer and the employee should consider other forms of paid leave that may be available (or which could be taken in advance).
- It is possible that this may ultimately be a leave without pay situation if working from home is not possible and no leave entitlements are available.

If an employee wishes to self-isolate but there is no requirement for them to do so under Ministry of Health guidelines:

- The employee must notify their employer if they:
 - believe they are at risk of spreading or catching COVID-19 and why, and
 - are concerned that attending their workplace places them at risk of exposure to COVID-19 and why.
- If the employer agrees there is a reasonable belief or concern about COVID-19, they must do what is reasonably practicable to address the risk.
- Ways to address risk could include:
 - Mitigations in the workplace, for example providing health or hygiene support.
 - Agreeing when paid leave (including paid special leave) or unpaid leave will be used.

- An employer may need to institute a policy where they instruct some employees to not come to work (and pay those employees normally), in order to manage the risk.
- Allowing employee to work from home, if that is feasible for the type of work that the employee undertakes.
- Where the employer does not agree there is a reasonable belief or concern, the employer must tell the employee this and provide their reasons for this view.
- The employer may agree the employee will come to the workplace (or work from home) and the employee will be paid normally. The employer and employee may also agree to other arrangements, for example paid special leave. If an employee does not agree to one of these options, they will likely need to take unpaid leave.