

Coronavirus (COVID-19)

Helpful information for employers, employees and individuals

The coronavirus pandemic places considerable pressure on workplaces, as employers struggle to balance health and safety concerns, their obligations to employees and the continuity of business operations in challenging circumstances.

Likewise, employees may be concerned for their own health and wellbeing, and face uncertainty regarding their entitlements should they need to self-isolate, care for a family member or the business activities come to a standstill.

The following guidelines consider some of these situations noting that each case is unique, and employers and employees should obtain legal advice regarding their rights and responsibilities.

Employers and employees - workplace health and safety

Employers have a primary duty of care to ensure, as far as reasonably practicable, the health and safety of workers it engages. The duty extends to an organisation's employees, contractors, outworkers, apprentices, trainees, work experience students, volunteers and visitors.

Employers can take steps to minimise the risk of COVID-19 in the workplace by communicating directions to employees that reflect Government and World Health Organisation's recommendations. Basic personal protective measures include:

- washing hands frequently with alcohol-based hand rub or soap and water;
- maintaining social distancing;
- avoiding touching eyes, nose and mouth;
- practising respiratory hygiene (sneezing into a bent elbow or tissue);
- regularly cleaning surfaces such as benchtops, doorknobs and desktops.

Employees who have travelled to or from COVID-19 affected areas within the past 14 days, or have been in contact with somebody suspected of having or being diagnosed with COVID-19, should self-isolate for 14 days and obtain medical clearance before returning to work.

Employers are encouraged to review policies for flexible and remote working to help minimise the risk of COVID-19 generally, and deal with absences due to quarantine requirements.

This is an evolving situation and directions may change as authorities monitor outcomes and obtain new information. It is integral for us all to stay abreast of new developments and directions issued by Federal Government, State Governments and the World Health Organization.

Leave entitlements - general sick leave

Generally, standard paid sick leave and carer's leave for full-time and part-time workers applies, where relevant, and employees may be requested to provide evidence when requesting sick leave. Under current circumstances however, employers might be mindful of placing additional pressure on an already-stretched health system and the unnecessary exposure of a worker to other unwell people.

If workers have displayed symptoms of coronavirus but have not been exposed or tested, employers may require them to self-isolate for a period of time taking into account advice received from health authorities.

If a full-time or part-time employee is directed to stay home by an employer acting in accordance with Government health and quarantine advice, the employee should generally be paid while the direction is in place.

If the employee is subject to a government order or direction to self-quarantine, the employer is not likely required to pay the employee, although the employee may utilise accrued leave entitlements. Alternatively, workers who are in mandatory isolation but able to work, may negotiate remote working conditions with their employers and be paid their ordinary wage.

If an employee or family member has coronavirus

An employer may send an employee home if they suspect that they have been exposed to coronavirus.

Employees who have contracted coronavirus must not attend work and may be directed to provide a medical clearance before returning. In such circumstances, full-time and part-time workers may use accrued sick leave entitlements.

Employees are also entitled to paid carer's leave if they need to look after a family member with coronavirus or have an unexpected emergency.

If sick leave and / or carer's leave is exhausted a worker may request to use other accrued leave such as annual leave or long service leave.

The *Fair Work Act 2009* provides that an employer may not terminate an employee due to their absence because of an illness or injury.

Stand down provisions

The *Fair Work Act 2009* contains provisions enabling an employer to stand down employees 'during a period in which the employee cannot usefully be employed' due to a range of circumstances which include, 'a stoppage of work for which the employer cannot reasonably be held responsible.'

The employer is not required to pay the employee during a stand-down period.

Similar provisions may also be included in awards, enterprise agreements and employment contracts.

Determining the application of stand-down provisions can be complex and may only arise in limited circumstances. Employers are urged to seek legal advice if they propose relying on them.

Contractual obligations in the wake of coronavirus

Certain circumstances may enable parties to be relieved from fulfilling their obligations under a contract. Many commercial agreements include 'force majeure' clauses which bring the contract to an end if a situation occurs that is out of the parties' control like a natural disaster, war or public emergency. The words used in such a clause will determine whether a pandemic such as coronavirus will enable the contract to come to an end.

Failing the inclusion of a force majeure clause, general contract law provides that a contract may be 'frustrated' by events beyond the parties' control which make performance of the contract impossible or illegal. Case law provides various examples of frustration.

You should seek professional advice if you wish to rely on the doctrine of frustration or a force majeure clause to end a contract.

Federal Government's stimulus package - help for business and individuals

To address the potential economic impact of the coronavirus the Australian Government initially declared an economic response package of \$17.6 billion with business income support and payments filtering through to the wider community; and \$2.4 billion to support the health system and help manage further outbreaks and a commitment to cover 50% of the states' and territories' costs for testing and treating patients with, or who are suspected of having contracted the virus.

Although details are yet to be confirmed, the following financial assistance is anticipated:

Increased asset write-off and accelerated depreciation deductions

The instant asset write-off threshold has increased from \$30,000 to \$150,000 and has been extended to all businesses with an aggregated annual turnover of under \$500 million until 30 June 2020.

The backing business incentive enables eligible businesses to deduct 50% of the cost of an eligible asset on installation (available until 30 June 2021).

Cashflow assistance for businesses

Wage subsidies of 50% for eligible businesses for up to 9 months (from 1 January to 30 September 2020) to help retain apprentices and trainees.

A tax-free payment of up to \$25,000 to support cashflow back to business for eligible businesses with turnover less than \$50 million that employ staff during the economic downturn associated with coronavirus.

Stimulus payments to lower income Australians

A one-off tax-free stimulus payment of \$750 to social security, veteran and other income support recipients and eligible concession card holders to support growth.

Assistance for severely affected regions

Financial assistance of \$1 billion to help regions and communities disproportionately affected by the coronavirus to recover.

Federal Government's second stimulus package - released 22 March 2020

The Government has subsequently announced a second stimulus package which, combined with the original package above totals \$189 billion, representing 9.7 per cent of annual GDP.

Briefly, the response will support businesses to manage short-term cashflow challenges, provide support to individuals, severely impacted communities and regions and ensure the continued flow of credit in the Australian economy.

Key features of the second stimulus package include:

- A second \$750 stimulus payment to eligible recipients.
- Increasing cashflow assistance payments for eligible employers to up to \$100,000 with access extended to not-for-profits and charities.
- Temporary relief to financially distressed businesses to assist them get through temporary periods of insolvency by providing higher thresholds and more time to

respond to creditor demands and temporary relief from directors' personal insolvent trading liability.

- Establishing loan guarantee arrangements between Government and participating banks to cover immediate cashflow needs of SMEs.
- Temporarily expanding eligibility to income support payments and a time-limited Coronavirus supplement of \$550 per fortnight (to new and existing recipients).
- Allowing eligible individuals and sole traders to access up to \$10,000 from their superannuation in the 2019-20 financial year and up to \$10,000 the following financial year.
- Lowering social security deeming rates.

For more information and to keep up to date with the Government response visit treasury.gov.au/coronavirus

We're here to help

Coronavirus presents enormous challenges and the domino effect on the economy of a pandemic such as this, will in turn put even more strain on health and wellbeing, and cannot be ignored.

We hope you find this information useful, noting that the circumstances we are facing are unique, and the directions issued to address the complications of COVID-19 are constantly evolving. We urge you to keep up to date with developments by closely monitoring reliable sources of information.

Please call us on 02 9747 5244 or email info@sanfordlegal.com.au if you need more information or assistance.