

COVID-19 Frequently Asked Questions for Employers

The presence of COVID-19 in Tasmania presents significant challenges and questions for employers.

We have prepared a list of 10 frequently asked questions that should give you a good starting point when working with your employees and making plans for the next few weeks or months.

1 What are employees pay entitlements if they have contracted COVID-19 and are unfit to work?

They are entitled to personal leave, unless they are a “true” casual employee.

- a) If personal leave is exhausted, then the employee may access their annual leave and (in some cases and with approval) long service leave.
- b) Where paid leave is exhausted, agreements about unpaid leave can be made.
- c) Casual employees do not have an entitlement to personal leave. A person is not a “true” casual employee if they are employed on a regular and systematic basis but instead would be classified as part time and hence entitled to personal leave.

2 Do employees need to give evidence (ie. a medical certificate) where they take personal leave as a result of COVID-19?

Only if required by the Employer. In the current environment, evidence other than a medical certificate may be appropriate.

- a) Employees are only required to give evidence of their illness if required by the employer. The requirement is “evidence would satisfy a reasonable person” that they have an illness. Normally, this is by a medical certificate.
- b) Given the potential issues with seeing a GP at short notice, and other social distancing measures that are being implemented, we suggest that Employers be flexible and pragmatic about granting personal leave where requested by staff even if they do not have a medical certificate.

3 Can you require employees not to attend work if they appear sick?

Yes.

- a) Employers have an overarching duty to ensure the health and safety of all workers and others who may be affected by the workplace – this includes clients, suppliers and any other person who comes into contact with your employees in the course of the business. The duty requires employers to take all reasonably practicable steps.
- b) Directing a potentially contagious employee not to attend work is necessary to provide a safe workplace, and is reasonable.
- c) In the current environment, employees displaying symptoms of COVID-19 should be directed not to attend work.

4 Can you require employees not to attend work, even if they do not appear to be sick?

Almost certainly yes, in the current environment:

- a) The current information is that COVID-19 may be transmissible without symptoms.
- b) As such, even if an employee is not physically unwell, it would still be reasonable to adopt the Government's recommendations regarding self-isolation for certain people even if they are not showing symptoms.
- c) This includes:
 - i) anyone who has been in close contact with someone who has tested positive for COVID-19; and
 - ii) anyone who has returned from any overseas travel within the last 14 days.
- d) The basis for a direction by employers to not attend work should match the advice of the Government's up to date recommendations.

5 Can we require clients, suppliers or other people who physically interact with our business to comply with distancing measures or other health requirements?

Yes.

- a) Your work health and safety duties extend to ensuring the health of your workers whilst “at work”, which includes any place they might be expect to go whilst at work. This includes any property they are visiting during open homes, appraisals and for other work requirements.

6 What do you need to pay full time and part time employees who you have directed not to attend work?

If:

- a) they are unfit for work, then they should be paid personal leave;
- b) they are fit for work, and can carry out their duties remotely, they should be paid their ordinary salary. This may include the situation where they have been directed to stay home purely as a “precautionary measure” but they cannot complete all their duties remotely (that is, they are fit for work but there is no work for them to do). See question 7 below.

7 Can I require an employee to take personal leave where they have been directed not to attend work as a precaution, but they are still “fit for work”?

In short – no, but you should consult with your employees about duties they can perform.

- a) In this situation, an employee would claim that they were “fit for work” and were not absent “because of an illness”. If personal leave was paid, then the employee could claim it back.
- b) As such, in the current circumstance, we recommend consulting with the employee about this situation if it arises.
- c) After consultation, it might be appropriate to either agree to make temporary adjustments as far as possible. For example, it may be that an agreement can be reached to allow the employee an

extended absence on annual leave while they carry out reduced duties.

8 What do you need to pay employees who are looking after family members who have been told to self-isolate?

Personal leave:

- a) Full time and part time employees are entitled to access paid personal leave to provide care or support to an immediate family member or member of their household due to a personal illness or emergency affecting the member.
- b) “True casual” employees are not entitled to paid personal leave.

9 Are there any circumstances where you don't need to pay full time and part time employees who are directed not to attend work (e.g. what if the office needed to be closed)?

If there is a “stoppage of work” as a result of matters that you cannot reasonably control, employers can stand down employees without pay where that employee cannot be usefully employed.

- a) Whether there is a “stoppage of work” and whether the employee can be “usefully employed” will depend on individual circumstances.
- b) This is an extraordinary measure and legal advice should be received before taking this step.

10 Could an employee make a worker's compensation claim if they contract COVID-19 while at work?

Yes.

- a) Employers are liable to pay worker's compensation where, in any employment, a worker suffers an injury which is a disease.
- b) If an employee contracted COVID-19 in the course of their employment they could make a worker's compensation claim.
- c) However, proving that the virus was contracted in the course of employment and not otherwise will be a difficult exercise.

If you have any questions, please contact our **Employment & Safety** team:

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