

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

Advice as at 8 November 2021

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Department  
of Health

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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's website - [www.dhhs.vic.gov.au/coronavirus](http://www.dhhs.vic.gov.au/coronavirus).

## Disclaimer

Nothing in this Guidance Note will, nor is intended to, limit or diminish an employee's right, benefit or entitlement under an enterprise agreement, an award, or the *Fair Work Act 2009* (Cth). Nor does it limit or absolve an employer's legal or statutory obligations.

## 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 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 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 of both the timing and the duration of the recall and wherever practicable.

## State of Emergency and restrictions

Up-to-date advice on restrictions and supports is available on the Department of Health's [website](#).

## General advice for employers and employees

It is essential that employers and employees are as informed as they can be regarding COVID-19. Employers should make available – and encourage employees to read – the information and advice available about COVID-19. The Department of Health's [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 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 is also monitoring advice provided by the World Health Organisation.

The Department of Health – 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 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 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’s [website](#). Information is also available on the Commonwealth Government’s Smart Traveller website - <https://www.smartertraveller.gov.au/>.

### Employees undertaking domestic (interstate) travel

There is no entitlement to paid Special Leave to cover a period of mandatory self-quarantine associated with personal domestic (interstate) travel which commenced on or after 1 March 2021.

## Leave and payment for periods of absence from work

### 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).

Updated Burnet modelling released on 17 October 2021 provides details of the impact of the Victorian roadmap on COVID-19 case numbers, with evidence of sustained Victorian Public health service system pressures beyond January 2022 and with peaks forecasted in early December 2021. This modelling informs services planning for staff leave over a period that is typically quiet but is anticipated to be busy this year. Consideration will therefore need to be given to ensuring that staff are available to maintain critical functions or services (eg, COVID wards, ICUs, Emergency Departments), or to implement the Government's response to an outbreak of COVID-19.

Therefore, in some circumstances the employer may not be able to approve leave requests or may need to recall employees to duty during periods where leave has previously been approved.

Where it is necessary and required to recall employees from approved leave or not approve leave requests, employers must ensure that as far as is reasonably possible they have taken steps to minimise risks to employees and clients by:

- Considering the requirements of relevant enterprise agreements, including consultation requirements, and engaging with the relevant union(s) to seek a collaborative approach to the maintenance of critical functions during this time.
- Assessing the risks to employees and taking reasonable steps to mitigate them as required by Victorian Occupational Health and Safety legislation.
- Considering the employee's family and personal circumstances, including caring responsibilities.

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 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 employers

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

Employers must adhere to the provisions of the relevant industrial instrument when proposing to cancel an employee's already approved leave or when proposing to recall an employee from leave. **Depending on the industrial instrument and its terms, employers might not have a unilateral right to cancel pre-approved leave.**

## Cashing out of accrued annual leave

Under the National Employment Standards, employees whose employment is covered by an Award or Enterprise Agreement can only cash out accrued annual leave where the Award or Enterprise agreement specifically allows it to be cashed out, and only in accordance with the relevant terms specified in that Award or Enterprise Agreement.

Different Awards and Enterprise Agreements apply different limits on the amount of accrued annual leave that may be cashed out, how often and when it may be cashed out, and how much accrued annual leave must remain in the employee's balance after an amount of accrued annual leave is cashed out.

Examples of the terms applying to the cashing out of accrued annual leave include:

Health and Allied Services, Managers and Administrative Workers Agreement	<ul style="list-style-type: none"> <li>Cashing out only by agreement with employee</li> <li>Each agreement to cash out is separate</li> <li>Only in conjunction with taking at least one week's leave</li> <li>Must retain at least four weeks' leave as balance</li> </ul>
Mental Health Agreement – Nurses and Health Professionals	<ul style="list-style-type: none"> <li>Written request and agreement</li> <li>Each agreement to cash out is separate</li> <li>Must retain one year's accrual</li> <li>Can't cash out more than two weeks' leave in any 12-month period (does not apply to part-time employees)</li> </ul>
Mental Health Agreement – Health and Allied Services	<ul style="list-style-type: none"> <li>Only where employee has accrued more than four weeks' leave</li> <li>By agreement</li> <li>Must retain at least four weeks' leave as balance</li> </ul>
Health Professionals Agreement	<ul style="list-style-type: none"> <li>Written request and agreement</li> <li>Must retain at least four weeks' leave as balance</li> <li>Can't cash out more than four weeks' leave in any 12-month period (exceptions may apply to part-time employees in some circumstances)</li> </ul>
Medical Specialists Agreement / Doctors in Training Agreement	<ul style="list-style-type: none"> <li>No provision for cashing out annual leave</li> </ul>
Nurses and Midwives Agreement	<ul style="list-style-type: none"> <li>Written request and agreement</li> <li>Each agreement to cash out is separate</li> <li>Can't cash out more than two weeks' leave in any 12-month period (exceptions may apply to part-time employees in some circumstances)</li> <li>Must retain at least six weeks of accrued annual leave</li> </ul>
Medical Scientists, Psychologist and Pharmacists Agreement	<ul style="list-style-type: none"> <li>By mutual agreement</li> </ul>

	<ul style="list-style-type: none"> <li>• Must have in excess of eight weeks' accrued annual leave before cashing out</li> <li>• Can only cash out accrued annual leave in excess of eight weeks'</li> </ul>
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Employees who are not covered by an Award or Enterprise Agreement can also make an agreement with the employer to cash out their accrued annual leave if the:

- Agreement is in writing;
- Employer pays the employee the same amount the employee would receive if they had taken the annual leave; and
- The employee retains at least four weeks' accrued annual leave after the cashing out of an amount of accrued annual leave.

## 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-quarantine (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.

## Time off to attend a COVID-19 vaccination appointment

For employees required to be vaccinated because of a public health order or at the direction of their employer due to the nature of their role/work or the setting in which it is performed:

- Time off without loss of pay to travel to and from a vaccination centre (if required to travel away from the usual place of work) and be vaccinated.
- If it is not practical or possible to receive the vaccination in paid time, employers should use their discretion to identify and provide supports to employees to receive the vaccination outside of their ordinary working hours by providing up to four hours' pay on a case-by-case basis.
- Employers should also consider supporting the reimbursement of any reasonable travel expenses, where significant travel is required by an employee to access a vaccination site.
- Long term casuals who have been working with their public sector employer on a regular and systematic basis, and who are anticipated to continue to be employed on a regular and systematic

basis, may also have their attendance at a vaccination site facilitated within ordinary hours and without loss of pay.

For all other employees (including regular casuals):

- Employers may facilitate an employee's attendance at a vaccination site (including reasonable travel time) by providing access to paid time off for up to four hours or an equivalent payment at the employee's base rate of pay to attend a vaccination appointment. This payment is inclusive of reasonable travel time.

Requests for paid time off must be approved in advance.

Where onsite vaccinations are, or have been, provided by the Employer, time release will only be provided to attend that onsite service and the paid time off for up to four hours (or equivalent payment) referred to above does not apply.

Employees who access up to four hours of paid time off should return to work as soon as possible after receiving their vaccination unless they suffer an adverse reaction (see below).

## Where an employee experiences an adverse event after receiving a COVID-19 vaccine

Employees may experience minor side effects after receiving the COVID-19 vaccination. There is some overlap between an expected adverse event following immunisation (AEFI) following the COVID-19 vaccination and the presenting symptoms of COVID-19. This can lead to uncertainty around requirements for testing and isolation in a person with symptoms following vaccination.

The Department of Health has issued Recommendations for testing and isolation following COVID-19 vaccination which provide guidance on distinguishing AEFIs from other symptoms of illness that an employee may experience.

Where an employee is required to isolate in the circumstances described in the Recommendations for testing and isolation following COVID-19 vaccination, the employee has access to paid Special Leave for the requisite period of isolation.

Paid Special Leave should also be made available to an employee who suffers an AEFI that does not require them to isolate, but does result in them being unable to attend work because of the symptoms experienced. To access paid Special Leave in this circumstance, the employee is required to provide evidence in accordance with the requirements described for Personal (Sick) Leave in the enterprise agreement covering the employee confirming that the reason for not attending work is due to an AEFI that does not require them to isolate. In this instance, paid Special Leave will be capped at a maximum of two days per COVID-19 vaccination received, including where a 'booster' shot is mandated for and received by that employee.

Employers should retrospectively authorise paid Special Leave to an employee who has already received a COVID-19 vaccination as part of the Group 1A or Group 1B vaccinations and took Personal Leave for any absence that resulted from an AEFI that did not require them to isolate. The evidentiary requirement may be waived in such cases (for example where obtaining such evidence after the event would be impractical) and the employee may have their Personal Leave recredited. Employers should assess such situations on a case-by-case basis.

## 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 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.

## Where an employee becomes sick while at work

Where an employee becomes sick at work after exposure to a person infected with 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 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 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 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 COVID-19 may themselves become subject to Victoria's Chief Health Officer's self-quarantine (self-isolate) or absence from work requirements.

## 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 or 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.**

## 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 immediate family or household who has contracted a personal illness or injury; or
- having come into close contact with a person who has contracted 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. 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 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).
  - Where a casual employee who was prioritised in Group 1A or Group 1B to receive a COVID-19 vaccination, or a casual employee who is subject to a mandatory COVID-19 vaccination requirement, suffers an AEFI that does not require them to isolate but does result in them being unable to attend work because of the symptoms experienced, a maximum of two days of paid Special Leave per COVID-19 vaccination received, or four days of leave in total per employee across all COVID-19 vaccinations received by the employee in 2021. To access paid Special Leave in this circumstance, the casual employee is required to provide evidence in accordance with the requirements described for Personal (Sick) Leave in the enterprise agreement covering the employee confirming that the reason for not attending work is due to an AEFI that does not require them to 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.
- 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-five (25) days (pro-rata) or equivalent in 2021.

Employers may require the casual employee to provide a statutory declaration or other reasonable evidence to substantiate the requirement to self-quarantine (self-isolate). 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.

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.

## Employees voluntarily returning from leave

Employers should consider requests/proposals from employees to return early from leave (including parental leave), or to make themselves available to accept shifts while on leave when resources are otherwise not readily available, provided that:

- it is safe for the employee to do so;
- it does not conflict the employee's rights and the employer's obligations under the relevant industrial instrument; and
- there will be no detriment to the employee's leave or other entitlements.

## 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 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 about 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 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 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. **However, given the Burnet modelling released on 17 October 2021 mentioned above:**

- it may not be appropriate to provide employees with the opportunity to work from alternative work locations; and
- it may be necessary to temporarily direct employees to undertake alternative duties, which are within their skills and qualifications to maintain critical public service functions and services.

## 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 to implement the Government's response to an outbreak of 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 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.

An employee should not be financially disadvantaged as a result of any redeployment. Where an employee is redeployed to meet a COVID-19-related need, the employee should be given written advice confirming that they will return to their prior role/duties once the COVID-related need has resolved.

## 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 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 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.

## Consulting on workloads and overtime

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

Employers have 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.

# 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 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's [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's [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 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 COVID-19 would be characterised as a ‘disability’ for the purposes of anti-discrimination laws.

## **Employees undertaking overseas travel**

In all cases where employees may be travelling overseas, employers should ensure those employees receive relevant advice on minimising the risk of exposure to 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 COVID-19. If unwell, the employee should isolate from others whilst awaiting assessment.

## **Overseas travel on official business**

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:

- 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.
- Availability and the level of travel insurance provided, especially coverage of medical and evacuation costs should an employee become unwell with COVID-19 in the countries to be visited.
  - Implications for the employer if an employee (well or unwell) has 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 must be advised that 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.

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

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

Therefore, the Department of Health recommends that employers and employees be mindful that travel restrictions may be applied by State and Territory Governments, including at short notice.

## 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 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 COVID-19.

## Questions and Answers

### What should employers do to reduce their risks around COVID-19?

To slow the spread of coronavirus (COVID-19), employers need to ensure the following measures in a workplace:

- Have a COVIDSafe plan.
- Provide and promote hand sanitisers, including at building entrances.
- Increase environmental cleaning, including between changes of staff.
- Regularly clean with disinfectant high-touch surfaces (at least twice daily) including desks, doors and door handles, keyboards and lifts, lift buttons and handrails.
- In a change room, provide adequate supplies so staff do not share items, such as towels and soap bars, and encourage staff to wash their hands after changing.
- Open windows and adjust air conditioning to enhance airflow.
- Ensure the highest hygiene practices are in place among food handlers and canteen staff.
- Purchase supplies to help limit infection, for example alcohol sanitisers and soap.

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 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 if your employee can't attend work because they are caring for someone who has or is suspected to have 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 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 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?

All flexible working options should be considered. Paid Special Leave of up to a maximum total of twenty-five (25) days in 2021 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 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.

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

Consider whether the employee can access their paid Annual Leave, Long Service Leave or other paid or unpaid leave entitlements, including Personal/Carer's leave entitlements if the employee is unwell or is caring for an immediate family or household member.

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

Employees will need to request to work from home (where practicable) 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 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**