



# Reopening your workplace.

A guide for Australian employers and businesses.

# Contents

**Page 3** Introduction

---

**Page 4** Health and safety

---

**Page 8** Returning from stand down

---

**Page 11** Absence in the workplace

---

**Page 14** Working from home

---

**Page 16** Face to face interactions

*The information provided below is based on the information available to Employsure as at 29 March 2021.*

# Introduction

**As a result of COVID-19, you may have fully or partially shut down your business operations and/or changed the way your business operates in some way. In most cases, this will have significantly affected how your employees have been engaged. Your employees may be currently stood down, or working from home or a different location, at reduced hours and/or performing different duties.**

As restrictions are lifted, you will be faced with many decisions around assessing your business operations, bringing employees back to work and ensuring the workplace is safe.

The below information is designed to assist you in understanding your workplace relations and work health and safety obligations so that you can move your business forward in the COVID-19 pandemic.



*The information provided below is based on the information available to EmploySure as at 29 March 2021.*

# Health and safety

## I am reopening my workplace. What do I have to do to ensure it is safe?

Prior to reopening your workplace, as an employer you need to ensure that the working environment is safe for your employees and anyone else who may be in the workplace (for example, contractors, customers etc).

This should be done by completing a risk assessment on the risks that COVID-19 present in your workplace. Primarily, this will focus on the risk of COVID-19 being transmitted in your workplace, and how these risks can be effectively managed.

The risk assessment process involves:

- ***Identifying any risk factors in the workplace***

First, consider the risks posed by people in the workplace (eg whether there are any employees returning from overseas, confirmed hotspots or in contact with a suspected or confirmed case, whether there are customers or others who come into the workplace who could potentially transmit the infection to employees and others).

Then, consider the work environment and activities (eg how closely employees are required to work, how closely employees need to interact with customers, whether any physical contact is required between employees and/or others).

- ***Determine the likelihood that COVID-19 could be transmitted in the workplace, and the seriousness of consequences if it is transmitted***

Rate the likelihood of COVID-19 transmission in the workplace as either Rare, Unlikely, Possible, Likely or Almost Certain, taking into account the risk factors identified above. For example, a workplace whereby no physical contact is required, and employees can maintain social distancing will have a lower risk of transmission than a workplace where frequent close human to human contact is required.

Then, rate the seriousness of COVID-19 transmission in the workplace as either Marginal, Minor, Moderate, Major or Severe, taking into account who is at risk of being infected by COVID-19. For example, the seriousness of consequences will be much higher if there are vulnerable people in the workplace who are more susceptible to being infected by COVID-19 or suffering more severe consequences if infected (such as the elderly or those with pre-existing chronic medical conditions).

In combination, the likelihood and consequences should be used to determine whether there is a High, Medium or Low risk of COVID-19 transmission in the workplace.



# Health and safety

- *Implement control measures to eliminate, or minimise, the risks of COVID-19 being transmitted in the workplace.*

Wherever possible, the aim should be to eliminate the risk of transmission. For example, this might be achieved by eliminating face to face meetings or changing these to be conducted via video/phone conferencing. Where it is not possible to completely eliminate the risk of transmission, measures should be implemented to minimise the risk of transmission. For example, this might be achieved through social distancing, hygiene and cleaning measures. The higher the risk of transmission, the higher the obligation on the employer to effectively control the risk. Vaccinations and an immunisation program should be addressed in the business' detailed Infection Control policy.

Another effective control measure is strongly encouraging employees to get vaccinated against COVID-19 prior to, or on return to the workplace.

Employsure clients with BrightHR can use the VaccTrak feature to record which employees have been vaccinated to assist in managing a safe return to the workplace.

The above steps should be taken in consultation with employees and other workers in the workplace, especially when creating or updating your COVID Safety Plan. In some areas, you must have a COVID Safety Plan in place to operate, or use an industry-specific COVID Safety Plan template. If you are not required to use an industry-specific template, you can use our COVID Safety Plan template and resources [here](#).

## **Do I have an obligation to provide hand sanitiser, masks and other PPE to my employees?**

As part of a risk assessment, you should be identifying any specific controls that are required in your workplace to eliminate or reduce the risks posed by COVID-19. The controls you require will depend on the risks within your workplace and are therefore specific to each business.

However, in practice, all workplaces will need to provide antibacterial hand wash and/or hand sanitiser, in conjunction with guidance on proper handwashing techniques, to help promote good hand hygiene and reduce the risks of COVID-19 being transmitted in the workplace.

The requirement to provide personal protective equipment (PPE) such as masks, gloves, eye shields and gowns, will come down to the specific nature of the workplace. Health authorities recommend the use of such PPE in health care settings when treating patients with suspected or confirmed cases. The use of masks is also recommended for individuals who have a suspected or confirmed case, or who need to leave their home while self-isolating. In these settings, as an employer, this PPE should be provided.

Masks can also be used as an extra precaution alongside the usual control measures including those relating to hygiene and physical distancing.

# Health and safety

In some areas, the wearing of face coverings has been mandated for employees in the workplace and/or is recommended in circumstances where physical distancing is difficult or impossible. PPE will also need to be provided to employees in these cases.

## **I cannot afford to spend money on modifying my workplace. What options do I have?**

Under health and safety legislation, your obligation is to take reasonable steps to manage risks within your workplace as far as reasonably practicable. The higher the risk that is posed, the greater the obligation on you to take steps to effectively manage the risk.

If you have a very low risk of transmission in the workplace, or the consequences of transmission are minor, then a high monetary spend may not be considered reasonable. However, if you have a very high risk of transmission or the consequences of transmission may be fatal, then a high monetary spend is more likely to be considered reasonable.

Ultimately, you should follow the risk assessment process outlined above. If this identifies that controls are required that are not practical for you to implement, such as modifying the workplace, consider what other controls can be put in place. If you can identify other controls which reduce the risk of transmission to an acceptable level, you may not need to modify the workplace to manage the risk. However, if there is still an unacceptable risk of transmission even after other controls have been implemented, then you either need to eliminate the risk (for example, by not performing that work until the risk of transmission lowers) or otherwise come up with a strategy to pay for the modifications to the workplace.

## **My employees spend most of their time on site at client premises. What obligations do I have in relation to ensuring health and safety at the client sites?**

Your health and safety obligations apply, regardless of whether work is performed on your site or a third party site. As such, a risk assessment should be completed, in consultation with your employees and others at any third party sites, following the approach outlined above.

If this risk assessment shows that appropriate controls can be put in place to make it safe for your employees, then you should implement these controls and proceed to work at the client premises as usual. If the risk assessment shows that appropriate controls cannot be put in place to make it safe for your employees, then you should provide other work to your employees that does not involve that place of work.

## **My employee is refusing to return to work. What do I do?**

These are uncertain times, and it is understandable that some employees may be particularly

# Health and safety

concerned about the impact a return to work may have on their personal wellbeing or that of loved ones.

If facing any objections such as this, talk with the employee to try to identify the root cause of the concern. Do they have vulnerable people in their home that they are worried about passing COVID-19 on to? Do they have concerns that the safety measures put in place are not adequate?

Once you understand the root cause, you can then try to address it. Perhaps the employee can work from home in the short term, or you can run them through your risk management processes to give them confidence. Perhaps you can agree to the employee taking accrued leave until they feel more comfortable. It will be best for your ongoing relationship with the employee if you can come to a mutual agreement about their return to work.

In the event the employee refuses to come to work without reasonable excuse, and you require them to return to work, you may be able to commence a disciplinary procedure on the basis of unauthorised absence. Contact our Advice Team on 1300 651 415 for further advice on this option.

## **Do I need to actively monitor employee health in the workplace?**

Your obligation is to eliminate or minimise the risk of COVID-19 transmission as far as reasonably possible. One way to do this is by asking your employees to remain away from the workplace if they are unwell or exhibiting any symptoms associated with COVID-19. However, the risk of transmission can be further reduced by remaining aware of the general wellbeing of your employees and acting quickly if you notice they are displaying any symptoms that may be associated with COVID-19.

An employee who is unwell with COVID-19 symptoms should be encouraged to take personal leave (which may be paid or unpaid, depending on the employee's employment status and leave accruals), and to report to a COVID-19 clinic for testing.

If the employee refuses to take personal leave, contact our Advice Team on 1300 651 415 for further advice.

## **What if an employee, or another person in the workplace, is diagnosed with COVID-19?**

In the event someone in the workplace is diagnosed with COVID-19, we recommend you follow the guidance of Safe Work Australia in handling this. You can find this guidance [here](#). You can also contact our Advice Team on 1300 651 415 for further guidance.

In some areas, an incidence of COVID-19 exposure in the workplace is a notifiable incident to your state or territory health and safety regulator. Refer to your relevant state or territory health and safety regulator website for further details on your obligations or contact the Advice Team on 1300 651 415 for further guidance.



# Back to work navigator tool

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# Returning from stand down

## I have an employee on stand down. How do I bring them back to work?

If there is no longer a stoppage of work and the employee can usefully be employed in your business, a stand down is no longer permitted under the normal stand down provisions in the Fair Work Act and therefore the employee must return to work.

To bring the employee back to work, you should notify them that the stand down period has ended and they are required to return to work. We recommend you confirm this in writing, by using the letter [here](#). Please note that before the employee returns to the workplace, you must ensure that it is safe for them to do so. See the Health and Safety section above for more information.

Despite the stoppage of work ending, you may be in a position where you do not have enough work for your employee due to the impact of COVID-19 (for example, you have a significant downturn in customer volumes).

Your options could include:

- Requesting your employee to take annual leave or long service leave. Check your applicable award as it may have a provision to force an employee to take annual leave, and/or provisions allowing you to shut down your business (or part of your business) subject to certain requirements being met. In addition, you may be able to require the employee to take long service leave in accordance with the applicable legislation
- Requesting your employee to take unpaid leave
- Requesting your employee to reduce their hours, either temporarily or permanently
- Requesting your employee to do a combination of the above. For example, agree with the employee that they reduce their hours from 5 days a week to 3 days a week, with the remaining 2 days taken as annual leave or long service leave

The above options require the employee's agreement, unless the applicable award or enterprise agreement states otherwise. If you come to an agreement with your employee to do one or more of the above, you should document this in writing. Please contact the Advice Team on 1300 651 415 for specific advice and documentation.

If none of the above options are viable or the employee does not agree to any of your proposals, you may be in the unfortunate position where redundancies need to be considered. If this is the case, please contact our Advice Team on 1300 651 415 to ensure you understand your obligations and follow the correct process.

# Returning from stand down

## **I have a full-time employee on stand down. They are refusing to return to work. What can I do?**

The first step is to ensure you understand why the employee is refusing to come to work (eg it may be due to carer's responsibilities). If the employee is simply refusing to work for no good reason, this becomes a disciplinary issue for failing to follow a lawful and reasonable instruction and/or unauthorised absence. Please call our Advice Team on 1300 651 415 for specific advice.

## **I had to stand down a number of employees and want to stagger their return as I cannot afford to have them all come back at once. Can I select certain employees to come back from stand down before others? How do I select who returns first?**

If there is no longer a stoppage of work and the employee can usefully be employed in your business, a stand down is no longer permitted under the normal stand down provisions in the Fair Work Act. In this instance, the employee's stand down period would cease and they would need to be provided work to perform.

In order to stagger their return, your options are dependent on coming to a mutual agreement with the employee. Your options could include:

- Requesting your employee to take annual leave or long service leave. Check your applicable award as it may have a provision to force an employee to take annual leave, and/or provisions allowing you to shut down your business (or part of your business) subject to certain requirements being met. In addition, you may be able to require the employee to take long service leave in accordance with the applicable legislation
- Requesting your employee to take unpaid leave
- Requesting your employee to reduce their hours, either temporarily or permanently

# Returning from stand down

- Requesting your employee to do a combination of the above. For example, agree with the employee that they reduce their hours from 5 days a week to 3 days a week, with the remaining 2 days taken as annual leave or long service leave

The above options require the employee's agreement, unless the applicable award or enterprise agreement says otherwise. If you come to an agreement with your employee to do one or more of the above, you should document this in writing. Please contact the Advice Team on 1300 651 415 for specific advice and documentation.

If none of the above options are viable or the employee does not agree to any of your proposals, you may be in the unfortunate position where redundancies need to be considered. If this is the case, please contact our Advice Team on 1300 651 415 to ensure you understand your obligations and follow the correct process and also whether redundancy is feasible for your business.

**While my employee was on stand down, they got another job. I want them to return to work with me now. Can I force them to stop working for the other employer?**

This will depend on the contractual arrangement you have in place with the particular employee. For example, if the employee is a permanent employee, you can direct them to return to work. On the other hand, if the employee is casual, they are not obliged to accept shifts. Please call our Advice Team on 1300 651 415 for specific advice.

# Absence in the workplace

## **Can I direct an employee to go home if I think they are unwell?**

The best approach is to have a discussion with your employee to express your concern that they are unwell, and ask them to seek medical advice to confirm whether they may have contracted COVID-19. Explain that this is a necessary step to protect others in the workplace from potentially being exposed to COVID-19. If they agree to do so, this could be taken as personal/carer's leave.

In some areas, there may be strict public health guidelines or directions requiring you to have a policy of directing employees who are unwell to stay at home and take a COVID-19 test.

If the employee refuses to do so, consider whether the employee can work from home until they are symptom free.

If they continue to refuse, you should direct them to obtain a medical clearance confirming they are fit for work. In these circumstances, you would need to pay for the medical assessment, and continue to pay the employee for their ordinary hours as if they were working. Taking this approach will help to protect the health and safety of others in your workplace. Please call our Advice Team on 1300 651 415 for specific advice.

## **My employee has provided me with a medical certificate saying they cannot work. Can I direct them to attend work? They don't have any accrued sick leave.**

If an employee has provided you with a medical certificate confirming they are unfit for work, you cannot direct them to attend work for the period they are certified as unfit.

If you have evidence that they are not in fact sick (eg Facebook photos of them socialising with friends), you may be able to commence a disciplinary process. Alternatively, if the employee's absence continues for three months or for a combined three months in the past twelve months, you may be able to commence a dismissal process. In each of these scenarios, you must take extreme caution to avoid any discriminatory claims. Please contact our Advice Team on 1300 651 415 for specific advice.

## **My employee has told me they cannot come back to work because they have no childcare. What can I do?**

If you need the employee to return to work, you should hold a conversation with the employee to fully understand the situation and come to a mutual agreement as to how they could continue to work. For example, it could be possible for the employee to work from home, or work different hours based on the specific circumstances. If a mutual agreement cannot be reached, the employee (depending on their employment status and the specific circumstances) could be entitled to

# Absence in the workplace

personal/carer's leave. However, this would only be the case for as long as the situation to care for their children is classed as an "emergency". Otherwise, the employee would need to access other forms of leave, such as annual leave or long service leave or take unpaid leave until their situation changes and they can return to work.

You should review any public health directions restricting or regulating access to childcare and discuss options with your employee.

If you don't need the employee to return to work, you could agree with the employee to work from home (if practical), the employee could be on personal/carer's leave if they are entitled to it, or you could come to a mutual agreement for them to take another form of leave (eg annual leave, long service leave or unpaid leave) until their situation changes.

It is important to note that if your business requirements change and you need to take steps which will affect the employee's role (eg you need to make the employee's role redundant), it would be particularly important to follow a proper process to avoid any discrimination claims. Please contact the Advice Team on 1300 651 415 for specific advice.

## What questions can I ask employees to determine if they are sick?

You can ask the employee questions to help prevent the spread of COVID-19, such as:

- Are you experiencing cold or flu like symptoms?
- Have you had a temperature?
- Have you been in contact with anyone that is confirmed to have COVID-19?
- Have you returned from overseas, interstate or any locations/hotspots with confirmed COVID-19 cases in the past 14 days?

## My employee has requested they work different hours as they want to minimise the amount of contact they have with other employees as they are anxious about contracting COVID-19. What do I do?

This will depend on the specific circumstances. If the employee is a vulnerable person (for example, 70 years of age or older, or has a chronic health condition that increases their risk), it will be necessary to conduct a risk assessment to ensure you are meeting your health and safety obligations, which may involve the employee working from home or working a different pattern of hours to minimise their contact with other employees/people in your workplace. See the Health and Safety section above.

If the employee is not a vulnerable person, the situation will depend on whether the employee is eligible to make a request for a flexible working arrangement.



# Absence in the workplace

A permanent employee with at least 12 months of continuous service, or a regular and systematic casual with at least 12 months service who has a reasonable expectation of continuing employment on a regular and systematic basis, may make a request to change their hours of work if they meet the below criteria:

- are the parent, or have responsibility for the care, of a child who is of school age or younger
- are a carer (within the meaning of the Carer Recognition Act 2010)
- have a disability
- are 55 or older
- are experiencing violence from a member of their family, or
- provide care or support to a member of their immediate family or household, who requires care or support because they are experiencing violence from their family.

The request can only be refused on reasonable business grounds, for example, it would be too costly, or it would result in a significant loss of efficiency or productivity.

If the employee is not eligible to make a flexible work request, you do not have to agree to the employee's request to change their hours. If you do agree to changing their hours, you should document this in writing and ensure that the agreement has a specific end date, and/or have the ability to be reviewed on a regular basis (eg fortnightly/monthly) if you do not wish for the change to be permanent.



# Working from home

## **Can I direct my employees to continue working from home, even though we are allowed to have them back in the workplace?**

You can change the employee's location of work by mutual agreement. We recommend that any agreement is in writing. If the employee does not agree, you cannot force them to work from home, unless there is a health and safety reason for not being able to be in the workplace.

## **My employee has requested to work from home permanently. I want them to be in the office. What can I do?**

This will depend on whether the employee is eligible to make a request for a flexible working arrangement as well as any continuing public health directions mandating that employees continue to work from home even when restrictions on workplaces are lifted.

A permanent employee with at least 12 months of continuous service, or a regular and systematic casual with at least 12 months service who has a reasonable expectation of continuing employment on a regular and systematic basis, may make a request to work from home if they meet the below criteria:

- are the parent, or have responsibility for the care, of a child who is of school age or younger
- are a carer (within the meaning of the Carer Recognition Act 2010)
- have a disability
- are 55 or older
- are experiencing violence from a member of their family, or
- provide care or support to a member of their immediate family or household, who requires care or support because they are experiencing violence from their family.

The request can only be refused on reasonable business grounds, for example, it would be too costly, or it would result in a significant loss of efficiency or productivity. If the employee has already been working from home, proceed with caution as you will need to establish why working from home is no longer reasonable.

## **My employee is asking for equipment to be provided as we have asked them to work from home permanently. Do I need to provide them with this?**

When an employee works from home, you have the same obligations to them as if they were working from their usual place of work such as the office, warehouse or yard.

# Working from home

You must identify and manage risks by conducting a risk assessment to determine what is reasonably required to keep the employee safe at work. If the employee is asking for the equipment because their workstation is unsafe, it will be important for you to do an assessment before taking any further steps. You may determine that it is best for the employee to borrow equipment from you or reimburse reasonable costs. You are under no obligation to provide an employee with equipment that they do not need to safely perform their role.



# Face to face interactions

## **I need to hire new staff. Can I hold interviews in person? What are my obligations to the interviewee? What questions can I ask them about their health and contact with COVID-19?**

Provided there are no public health directions to the contrary, you can hold interviews in person, as long as you maintain social distancing (eg keeping a 1.5m distance and not shaking hands). It would also be prudent to ask the interviewee prior to them attending the interview whether they are experiencing cold or flu like symptoms or have a temperature, or have been in contact with someone with a confirmed case of COVID-19 or travelled overseas, interstate or in a location/hotspot with confirmed COVID-19 cases in the last 14 days. You have a duty to provide a safe environment to not only employees, but anyone who enters your premises.

Taking the above into account, you may determine that it is better to hold interviews through video conferencing to limit physical contact. In the interview, we recommend explaining to the interviewee that you are taking the COVID-19 situation very seriously and have health and safety policies in place.

## **Can I hold face to face meetings? Can I direct my employees to have face to face meetings with clients?**

This will be subject to the outcome of the risk assessment you have conducted for your business and any continuing public health directions. If meetings do take place, these should be done so subject to maintaining social distancing and in accordance with any control measures put in place as a result of the risk assessment (eg limit to the number of people in the meeting, open air if possible, hand sanitiser available on entry and exit).

## **We want to hold an office event to celebrate being back in the office. Is this allowed?**

This will depend on the restrictions currently in your state or territory. However, if any gathering is permitted, the usual social distancing measures should be followed to minimise the risk of infection.

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