



WORKING THROUGH COVID-19

FAQS FOR PRIVATE PRACTICE EMPLOYERS

28 JULY 2020



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HOW TO USE THIS INFORMATION

As the COVID-19 pandemic continues to cause increasing concern across the globe, medical practices are certainly feeling the impact. Private practice employers are having to consider various issues including safety, employer obligations, business continuity and business downturn. Our members have been raising enquiries with us on a range of workplace relations topics and in this guide we have addressed some frequently asked questions.



If you have any questions in relation to this document or the issues raised, please contact our **Workplace Relations team on 02 9439 8822 or email workplace@amansw.com.au**

WORK HEALTH AND SAFETY

1. What work health and safety obligations do I have to my employees?

As an employer and a business, your practice has specific legal obligations under work health and safety law. This includes an obligation to ensure, so far as is reasonably practical, the health and safety of workers while at work. Generally speaking, you must, so far as is reasonably practical:

- provide and maintain a work environment without risks to health and safety;
- provide and maintain safe systems of work;
- provide information and training, instruction or supervision that is necessary to protect all persons from risk to their health and safety;
- ensure that the health of employees and the conditions at the workplace are monitored.

2. What information should I be aware of and provide to my employees?

You should provide relevant information and updates to all employees and contractors about the status of COVID-19 that is consistent with official information. Government and health authorities have been providing the public with important information that is updated regularly based on the latest developments, medical advice and official reports. To ensure the information you provide your employees relating to COVID-19 is current, please see information issued by:

- [Department of Health](#);
- [NSW Health](#);
- [SafeWork Australia](#);
- [SafeWork NSW](#);
- [Fair Work Ombudsman](#);
- [World Health Organisation](#).

This is not an exhaustive list. You may access relevant information from other sources. The situation is developing rapidly and information is changing daily. You should communicate and consult with your employees on an ongoing basis.

3. What practical safety measures can I put in place at my practice?

You should consider the following measures to minimise exposure to risk at your practice:

• **Good hygiene practices.**

You should encourage your employees, patients and visitors to practise good personal hygiene measures by washing their hands regularly, not touching their face, nose, eyes, sneezing into their elbow etc. Information on protecting yourself and others from COVID-19 is available from the [Department of Health](#) and [NSW Health](#). You can also display posters promoting good hygiene practices in your practice. Posters on hand washing and hand sanitising are available from the [Department of Health](#) and [NSW Health](#).

• **Physical distancing.**

You should encourage physical distancing in the workplace. You should direct employees not to shake hands or make physical contact when greeting people in your practice and encourage employees to eat their lunch at their desk or outside rather than in a lunchroom or with colleagues. You should consider increasing the physical space between people at your practice. This may mean wider spaces between seats in your waiting room and more room in between workstations. You may wish to consider opening windows for ventilation where possible. Information on physical distancing is available from the [Department of Health](#) and [NSW Health](#).

• **Providing adequate facilities.**

You should ensure that there are enough supplies of soap, tissues and paper towel at your practice. You should also consider putting hand sanitiser dispensers in prominent areas. Depending on the level of risk at your practice, you may need to consider supplying your employees with personal protective equipment such as face masks, gloves, gowns, masks etc. You may wish to encourage contactless payments at your practice.

WORK HEALTH AND SAFETY

- **Sanitising the workplace.**

You should ensure that your practice, including employee workstations, is clean. It would be sensible to routinely clean frequently touched surfaces in the workplace such as desks, phones, computers, keyboards, mouse, door handles, light switches, toilets, pens etc.

- **Employees not to attend work if they are sick.**

You should direct employees to follow Government advice by staying at home if sick. Information on symptoms, how to seek medical attention and testing is available from the **Department of Health** and a symptom checker has been made available by **Healthdirect**. To make sick leave more accessible to your employees, you may wish to consider temporarily removing any requirement for your employees to provide a medical certificate for absences due to sickness.

- **Avoiding crowds.**

You should follow Government orders regarding organised gatherings. You should consider cancelling non-essential meetings and events and review whether they can be held individually, in smaller groups or remotely, by phone or video link. Information on gatherings is available from the **NSW Government**.

- **Avoid non-essential travel.**

You should follow Government advice regarding travel. Information on travel is available from **Smartertraveller**. You should consider cancelling non-essential travel and review whether the work can be conducted locally or remotely, by phone or video link.

- **Consider flexible working.**

You should consider whether it is possible to balance the delivery of patient care at your practice with the flexibility needed to minimise risks to employee safety. More information on flexible working is set out in **response to 15 below**.

4. How can I assess the risk at my workplace?

Under work health and safety law, employers are required to ensure, so far as is reasonably practicable, the health and safety of their workers and others at the workplace. To provide and maintain a safe working environment, you should have measures in place to minimise and manage the risks arising from COVID-19. To assess the risk in your practice it is important that you keep up to date with current information provided by Governments and health authorities (**see links in response to 2 above**) and implement appropriate measures to manage the risks. Information for employers on managing the risks from COVID-19 is available from **Safe Work Australia** and **SafeWork NSW**.

5. What should I do if my employees are anxious about COVID-19?

It is understandable that your employees may be anxious about COVID-19 and its impact on the workplace and their employment. Providing current and accurate information and consulting with employees regularly is likely to assist in alleviating their concern. Any practical safety measures that you have implemented at your practice (**see response to 3 above**) are likely to help boost confidence and reduce fear. You should maintain open communications with your employees about any concerns they have about the workplace. Information for employers on mental health during COVID-19 is available from **SafeWork Australia** and **SafeWork NSW**. You may wish to direct your employees to information that is available from the **NSW Government, Head to Health**, an Employee Assistance Program (if you have one) or their GP (if appropriate).

LEAVE ENTITLEMENTS

6. What is the entitlement to paid personal (sick)/ carer's leave?

Employees are entitled to personal/carer's leave in accordance with the National Employment Standards (NES) in the Fair Work Act 2009 (Cth). In summary:

- Full time and part time employees are entitled to 10 days of paid personal/carer's leave for each year of service. This entitlement accrues progressively according to the employee's ordinary hours of work and accumulates from year to year;
- Casual employees are not entitled to any paid personal/carer's leave but they do have access to 2 days of unpaid carer's leave for each permissible occasion.

Information on the entitlement to personal/carer's leave is available from the **Fair Work Ombudsman**.

We recommend that you review your full time and part time employee's leave balances in readiness for any requests for paid personal/carer's leave. If you have long-serving employees at your practice, they could have a significant amount of paid personal/carer's leave accrued.

7. When can paid personal (sick)/carer's leave be taken?

A full time or part time employee can take paid personal/carer's leave if they are not fit for work because of a personal illness or injury or if they need to provide care or support to a member of their immediate family or household who requires it because of a personal illness or injury or unexpected emergency.

By way of example, this would extend to circumstances where:

- the employee has symptoms of COVID-19 or is otherwise sick;
- the employee needs to care for a member of their immediate family or household who has symptoms of COVID-19 or is otherwise sick;
- the employee needs to care for their child(ren) due to unexpected school closures.

There are notice and evidence requirements for taking personal/carer's leave. Information on these requirements is available from the **Fair Work Ombudsman**.

However, to make personal leave more accessible to your employees, you may wish to consider temporarily removing any requirement for your employees to provide a medical certificate for absences due to sickness.

8. My employee has returned to Australia from overseas or a locally declared COVID-19 hotspot (e.g. Victoria) and is required to self-isolate in accordance with Government advice. Are they entitled to be paid?

All people should follow Government guidance regarding travel and isolation. Information on travel is available from the **NSW Government**. Information on isolation is available from **NSW Health**.

If your employee is not sick, they are not entitled to any paid personal leave. This includes during a period of self-isolation. Your employee may be entitled to unpaid pandemic leave. Information on unpaid pandemic leave is available from the **Fair Work Ombudsman**.

In most cases, you will not be required to pay your employee during the self-isolation period. You should instead consult with the employee about what other arrangements can be agreed. This may include:

- working from home;
- agreeing that the employee take accrued annual leave or long service leave;
- agreeing that the employee take annual leave in advance in accordance with the applicable modern award;
- agreeing that the employee take unpaid leave; or
- paying the employee for part or all of the self-isolation period at your discretion.

LEAVE ENTITLEMENTS

9. My employee has been in close contact with a confirmed case of COVID-19 and is required to self-isolate in accordance with Government advice. Are they entitled to be paid?

(See response to 8 above).

However, if your employee becomes sick during a period of self-isolation they may be entitled to access paid personal leave (or unpaid personal leave if they have exhausted their entitlement).

Information on quarantine and self-isolation for close contacts is available from the **Department of Health** and the **NSW Government**.

10. My employee is not sick and is not required to self-isolate in accordance with Government advice, but wants to stay at home as a precautionary measure. Are they entitled to be paid?

It is understandable that an employee may wish to stay at home as a precaution if they are a vulnerable worker. Information on vulnerable workers is available from **SafeWork Australia**.

As the employee is not sick, they are not entitled to any paid personal leave. You should consult with the employee about what other arrangements can be agreed **(see response to 8 above)**.

If you can't agree on any other arrangements, the employee's leave would be unauthorised. In other circumstances, you may be able to take disciplinary action against an employee for taking unauthorised leave. However, this is unlikely to be viewed favourably in the current environment and we would not recommend it. Instead we recommend that you continue consulting with the employee with the aim of settling on a mutually agreeable arrangement.

11. My employee says they are not sick and wants to attend work. Can I ask them to take sick leave as a precautionary measure?

If your employee is showing symptoms of COVID-19 or is otherwise sick, they should take personal leave **(see response to 7 above)**.

In the first instance, you should consider whether the employee can work flexibly and from home **(see response to 15 below)**.

If the employee is not able to take personal leave or work from home, but you have a valid reason to consider that your employee is not fit for work and/or poses a risk to the workplace, you may, depending on the circumstances, be able to direct your employee to provide medical clearance before attending work. If you encounter this scenario, we recommend you seek specific advice. In most cases, you will have to pay the employee their ordinary pay while awaiting the medical clearance because, at that point, there is no evidence that the employee is sick. If the employee is certified as fit for work, they will be entitled to attend work. If the employee is certified as not fit for work, they should take personal leave **(see response to 7 above)**.

While you may have the ability to direct an employee to provide medical clearance before attending work, you should consider whether it is necessary or appropriate to require your employee to attend a GP in the current environment. Instead, you may wish to consult with the employee about what other arrangements can be agreed **(see response to 8 above)**.

LEAVE ENTITLEMENTS

12. My employee has been in casual contact with a confirmed case of COVID-19. Can I ask them to stay at home as a precautionary measure?

All people should follow Government guidelines regarding isolation. Information on isolation is available from **NSW Health**. Currently, the Government does not require people to self-isolate if they have been in casual contact with a confirmed case of COVID-19, and therefore your employee is entitled to attend work.

Information on casual contacts of a confirmed case is available from **NSW Health**.

If you have a valid reason to consider that your employee is not fit for work and/or poses a risk to the workplace (**see response to 11 above**).

13. My employee needs to stay at home to care for their child(ren) because the Government has shut down schools. Are they entitled to be paid?

Employees are entitled to personal/carer's leave in accordance with the National Employment Standards (NES) in the Fair Work Act

(see response to 6 above).

An employee can take carer's leave to provide care or support to a member of their immediate family or household who requires it because of a personal illness or injury or unexpected emergency. Depending on the circumstances, closure of schools because of COVID-19 may amount to an "unexpected emergency". In terms of whether the carer's leave should be paid:

- Full time and part time employees are entitled to paid carer's leave (or unpaid carer's leave if they have exhausted their entitlement);
- Casual employees are entitled to 2 days of unpaid carer's leave for each permissible occasion.

Information on the entitlement to personal/carer's leave is available from the **Fair Work Ombudsman**.

If your employee has exhausted their entitlement to paid personal/carer's leave you may wish to consult with them about what other arrangements can be agreed (**see response to 8 above**).

BUSINESS CONTINUITY

14. Can I split rosters to reduce who is in the practice at any one time?

True casual employees have no guarantee or expectation of regular or systematic hours of work and can be rostered to work on an as needed basis. You should consider rostering your casual employees according to your practice needs.

Full time and part time employees have ordinary hours of work that are permanent and have been agreed under their contract of employment. You can't change a term of their contract unilaterally.

In order to split rosters or otherwise change an employee's regular roster or hours of work, you need to consult employees. Modern awards include a provision for consultation about changes to rosters or hours of work and this provision requires you to:

- provide information about the proposed change;
- invite employees to give their views about the impact of the proposed change on them (including any impact on family or caring responsibilities); and
- consider any views given about the impact of the change.

Subject to the employee's agreement, under the applicable modern award it may be possible to change their start and finish times, average their hours over a fortnight or 4-week period or change their roster with 7 days' notice.

Employees are likely to view any measures aimed at reducing risk favourably, but this does not necessarily mean that they will agree to the proposed change. It may depend on whether their family or caring responsibilities allow for a change to their regular roster or hours of work. The provision for consultation about changes to rosters or hours of work is set out in clause 34 of the Health Professionals and Support Services Award 2020 and clause 8A of the Nurses Award 2010.

Information on consultation is available from the [Fair Work Ombudsman](#).

15. I would like to allow my employees to work flexibly and from home. What should I consider?

As the COVID-19 situation develops it is likely that you will need to be more flexible and adaptable than perhaps you normally would be. You should consider the balance between the need to deliver patient care and the need to minimise risks to your employees. You should review your practice policy on flexible working arrangements. Flexible working options at your practice may include:

- working from home;
- flexible start and finish times;
- compressed hours or compressed working week;
- flexible rostering.

Your work health and safety obligations still apply when your employees are working from home. Information on working from home under COVID-19 is available from [SafeWork Australia](#) and [SafeWork NSW](#).

BUSINESS CONTINUITY

16. How do I manage employee performance during the COVID-19 situation? Can I continue to performance manage my employees?

In practice, it will be difficult to continue with a normal performance management process during the COVID-19 outbreak, particularly in a medical practice. This is because the current environment is unprecedented and dealing with COVID-19 in any workplace, but particularly in private practice, is likely to be stressful and challenging for employees.

However, to promote optimal performance during this time, you should:

- communicate and consult with your employees on an ongoing basis;
- set remote working expectations;
- set results based tasks;
- ensure technological needs are met.

17. What happens in the event of a “lock down” extending to medical practices and I am required to close my practice in accordance with Government advice.

In the event of a “lock down” extending to medical practices and you are required to close my practice in accordance with Government advice, the stand down provisions in the Fair Work Act are likely to apply. This is a different scenario to where there has been a downturn in business due to COVID-19, for example because fewer patients are attending your practice. **See section on Business Downturn next.**

The stand down provisions in the Fair Work Act allow employers to “stand down an employee during a period in which the employee cannot be usefully employed”, relevantly because of “a stoppage of work for any cause for which the employer cannot reasonably be held responsible”.

Importantly, you can only stand down an employee under these provisions if the employee cannot be usefully employed. It is therefore critical that you first consider whether the employee can work flexibly before you stand them down.

If you stand down an employee under these provisions, you are not required to pay them for the stand down period (subject to any more generous contractual entitlement). However, employees should also be allowed to take their paid leave entitlements rather than being stood down without pay.

You may be covered by the temporary JobKeeper provisions that have been added to the Fair Work Act. These provisions apply to eligible employers and eligible employees from 9 April 2020 to 28 September 2020.

If you are covered by these provisions, you may be able to stand down your employees under a JobKeeper enabling stand down direction. Information on these provisions is available from the **Fair Work Ombudsman**.

BUSINESS DOWNTURN

You may be covered by the temporary changes to workplace laws that apply during the COVID-19 pandemic, including changes to the Fair Work Act or the applicable modern award. Information on temporary changes to workplace laws is available from the [Fair Work Ombudsman](#). These changes may provide you with the ability to give directions or make agreements with employees to help you manage your business. They may also provide your employees with additional leave options. When reading this section, please also consider whether any temporary changes to workplace laws apply to you.

18. I have to close my practice. Can I direct my employees to take leave?

If you temporarily close your medical practice (also known as a shutdown), you can direct your employees to take paid annual leave during part or all of the shutdown period, if reasonable. If your employees don't have enough accrued annual leave, you can require them to take annual leave in advance, where reasonable.

The provision for annual leave and close down periods is set out in clause 26.5 of the Health Professionals and Support Services Award 2020 and clause 31.9 of the Nurses Award 2010. Information on directing an employee to take annual leave is available from the [Fair Work Ombudsman](#).

Once an employee becomes entitled to long service leave, you can direct them to take long service leave with 1 month's notice (or less than 1 month's notice by agreement).

19. My practice is open, but business has slowed down. Can I direct my employees to take leave?

While your practice remains open, you can only direct employees to take annual leave if they have an excessive leave accrual. The provision for annual leave and excessive leave accruals is set out in clause 26.8 of the [Health Professionals and Support Services Award 2020](#) and clause 31.3 of the [Nurses Award 2010](#). In most cases, the notice requirement of 8 weeks may mean that this is not a feasible option.

Instead, you should consider what other options are available and consult with employees as required by the applicable modern award. This may include:

- agreeing that the employee take accrued annual leave or long service leave;
- agreeing that the employee take annual leave in advance in accordance with the applicable modern award;
- agreeing that the employee take unpaid leave;
- agreeing that the employee work reduced hours, even for a temporary period;
- directing an employee who is entitled to long service leave to take long service leave with 1 month's notice (or less than 1 month's notice by agreement).

20. My practice is open, but business has slowed down. Can I stand my employees down without pay?

No, we do not consider that the stand down provisions apply where there has been a downturn in business due to COVID-19, for example because fewer patients are attending your practice. The stand down provisions are more likely to apply in circumstances where there is a "lock down" that extends to medical practices and you are required to close your practice in accordance with Government advice ([see response to 17 above](#)).

You may be covered by the temporary JobKeeper provisions that have been added to the Fair Work Act. These provisions apply to eligible employers and eligible employees from 9 April 2020 to 28 September 2020. If you are covered by these provisions, you may be able to stand down your employees under a JobKeeper enabling stand down direction during a business downturn. Information on these provisions is available from the [Fair Work Ombudsman](#).

BUSINESS DOWNTURN

21. Can I require my employees to reduce their pay or hours of work?

True casual employees have no guarantee or expectation of regular or systematic hours of work and can be rostered to work on an as needed basis. You should consider rostering your casual employees according to your practice needs.

Full time and part time employees have ordinary hours of work that are permanent and have been agreed under their contract of employment. You can't change a term of their contract unilaterally.

If you are starting to notice fewer patients at your practice and business is slowing down, it would be sensible to start consulting with your employees now about the situation and your changing needs.

Any reduction in an employee's rate of pay or change in an employee's regular roster or hours of work will amount to a variation of their contract and should be agreed between the parties. In proposing such a change you need

Modern awards include a provision for consultation about changes to rosters or hours of work and this provision requires you to:

- provide information about the proposed change;
- invite employees to give their views about the impact of the proposed change on them (including any impact on family or caring responsibilities); and
- consider any views given about the impact of the change.

The provision for consultation about changes to rosters or hours of work is set out in clause 34 of the Health Professionals and Support Services Award 2020 and clause 8A of the Nurses Award 2010.

Information on consultation is available from the **Fair Work Ombudsman**.

However, if you are covered by the temporary JobKeeper provisions that have been added to the Fair Work Act, you may have the ability to reduce your employees' hours or days of work. Information on these provisions is available from the **Fair Work Ombudsman**.

22. What options do I have to control staffing costs?

The economic impact of COVID-19 is having and will have a negative impact on many businesses, but it is hitting small businesses particularly hard. You may need to consider what options are available to you to ensure the viability of your practice during these difficult times. This may include:

- agreeing on a reduced rate of pay, even for a temporary period;
- agreeing to reduced hours of work, even for a temporary period;
- agreeing that the employee take accrued annual leave or long service leave;
- agreeing that the employee take unpaid leave.

You need to consult with your employees about any proposed changes. As above, if you are starting to notice fewer patients at your practice and business is slowing down, it would be sensible to start consulting with your employees now about the situation and your changing needs. During consultation you may need to explain to your employees that the above measures are options that are likely to reduce the need to implement more drastic measures such as redundancies.

In relation to changes to rosters or hours of work, **see response to 21** above. In relation to other proposed changes such as redundancies, **see response to 23 below**. The provision for consultation about major workplace change is set out in clause 33 of the Health Professionals and Support Services Award 2020 and clause 8 of the Nurses Award 2010. Information on consultation is available from the **Fair Work Ombudsman**.

BUSINESS DOWNTURN

23. I have made the difficult decision to make my employee redundant. What do I need to consider?

If you have decided to make a position at your practice redundant, you will need to be satisfied that:

- the person's job is no longer required to be performed by anyone;
- you have consulted with affected employees in accordance with the applicable modern award;
- it must not have been reasonable in all the circumstances for the person to be redeployed within the business or an associated entity.

Modern awards include a provision for consultation about major workplace change and this provision requires you to:

- give notice of the changes to all affected employees and their representatives (if any);
- discuss the changes with affected employees and their representatives (if any) and provide them with all relevant information in writing about the introduction of the changes, the likely effect on employees and measures to avoid or reduce adverse effects on employees;
- commence discussions as soon as practicable after a definite decision has been made;
- promptly consider any matters raised by the employees and their representatives in relation to the changes.

Information on consultation is available from the **Fair Work Ombudsman**.

In practice, this may mean the following steps:

- holding a meeting with your employee(s) to notify them of your proposed decision to make a position redundant;
- inviting your employee(s) to a further meeting to discuss the proposed redundancy, the impact it will have on their employment, whether there are any redeployment opportunities;
- confirming the matters discussed with the employee(s) in writing;
- considering any matters raised by the employee(s), including any alternatives to redundancy;
- communicating your decision to your employee(s).

When terminating an employee because of redundancy, in addition to your consultation obligations, you will also need to consider your obligations to provide:

- notice of termination in writing (or payment in lieu);
- redundancy pay (if applicable) (**see response to 24 below**);
- payment of any annual leave and annual leave loading (if applicable);
- payment of long service leave (if applicable).

Information on final pay is available from the **Fair Work Ombudsman**.

BUSINESS DOWNTURN

24. I am terminating my employee because of redundancy. Do I have to pay them redundancy pay?

If you are a small business (that is, you have fewer than 15 employees) and you terminate an employee who is covered by the **Health Professionals and Support Services Award 2020** or the **Nurses Award 2010** because of redundancy, you are not required to pay any redundancy pay.

If you are not a small business (that is, you have 15 or more employees) and you terminate an employee because of redundancy, you are required to pay redundancy pay under the National Employment Standards.

Information on redundancy is available from the **Fair Work Ombudsman**.

All employers, whether small business employers or not, are required to consult with employees under an applicable modern award and pay employees their final pay (**see response to 23 above**).

25. I have met my legal obligations when terminating my employee, but I wish I could do more. What else can I consider?

We appreciate the strain that the COVID-19 outbreak has on small business and individual circumstances, and every situation is different. If you have met your legal obligations but wish you could do more, you could consider:

- paying redundancy pay over and above your legal obligations;
- making a discretionary ex gratia termination payment over and above your legal obligations;
- providing a statement of service;
- agreeing to be a referee for any future employment opportunities;
- directing your employee to Centrelink for information and support.

If you have any questions or would like specific advice, please contact our Workplace Relations Team by emailing workplace@amansw.com.au.

The information in this document is of a general nature only and does not constitute legal advice. The application and impact of laws can vary widely based on the specific facts involved. Given the changing nature of the situation, laws, rules and regulations, and the inherent hazards of electronic communication, there may be delays, omissions or inaccuracies with the information in this document.

We have made every attempt to ensure that the information and links contained in this document are accurate as at the date of drafting. The examples given are illustrative and not exhaustive. The links provided connect to third party websites over which AMA (NSW) has no control.

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