



WORKING THROUGH COVID-19

WORK HEALTH AND SAFETY (WHS)

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HOW TO USE THIS INFORMATION

The COVID-19 pandemic has created an unprecedented situation for employers and employees. It is understandable that businesses may have concerns about how to meet their WHS duties at this time. We have prepared this guide to help you think about the practical steps you can take to minimise the risk of exposure to COVID-19 at your practice and meet your WHS obligations.



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**

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WHS DUTIES

What WHS obligations do I have to my employees?

As an employer and a business, your practice has specific legal obligations under WHS laws. 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.

How do I minimise the risk of exposure to COVID-19 for my employees?

If you are not able to eliminate the risk of exposure to COVID-19, you have to take steps to minimise that risk so far as is reasonably practicable. Ways of minimising the risk for your employees could include:

- implementing flexible working arrangements, including working from home;
- requiring employees to practice physical distancing;
- requiring employees to practice good hygiene;
- directing employees to stay home when sick;
- cleaning the workplace regularly and thoroughly.

CONSULTATION

Do I have to consult with my employees?

Yes. Under WHS laws, you have a duty to consult with your employees about WHS matters, so far as is reasonably practicable. When consulting with your employees, you should:

- allow them to express their views and to raise any issues that may arise directly or indirectly because of COVID-19;
- let them contribute to the decision-making process;
- take their views into account;
- advise them of the outcome of the consultation.

Consultation does not require consensus or agreement, but you should allow your employees to be part of the decision making process.

What do I have to consult about?

Under WHS laws, you are required to consult with your employees:

- when assessing risks to health and safety presented by COVID-19;
- when making decisions about ways to minimise the risk of exposure to COVID-19;
- when making decisions about the adequacy of facilities for employee welfare;
- when proposing changes that may affect employee health and safety.

For example, you should consult about various practical considerations including employee preferences, working from home, returning to work, travel to work, family/carer's responsibilities, physical distancing, lifts, office layout, hygiene, cleaning and measures to minimise exposure to COVID-19.

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Does consultation have to be in person?

No. It may not be possible for you to consult with your employees in person. For example, because some or all of your employees are off work or working from home. You should find other ways of consulting with your employees, such as via email, phone or video link.

RISK MANAGEMENT

How do I manage risks in the workplace?

You should conduct a risk assessment to proactively manage the risk of exposure to COVID-19 at your practice. An effective risk assessment should:

- identify which employees are at risk of exposure to COVID-19;
- determine what sources and processes are causing the risk;
- identify if and what kind of measures should be implemented to minimise risks so far as is reasonably practicable;
- check the effectiveness of existing measures.

Information on risk management is available from [Safe Work Australia](#).

How do I do a risk assessment?

There is no form that a risk assessment must take. It can hold a simple discussion or complete more detailed tools and techniques. Information on risk assessments is available from [Safe Work Australia](#). This includes [key considerations](#) and an example [risk register](#) for businesses.

Should I keep records?

Yes. You should document the consultation and risk management processes by keeping records of any emails and letters and making file notes of any phone calls and video links with your employees. These records should act as proof that you have complied with your WHS duties and obligations.

VULNERABLE PEOPLE

One of my employees is a vulnerable person. What should I consider?

You should follow Government guidelines regarding vulnerable people. Information on vulnerable people is available from the [NSW Government](#) and the [Department of Health](#). Information on vulnerable workers is available from [Safe Work Australia](#).

When conducting a risk assessment for a vulnerable person, you should consider factors including the employee's characteristics, the features of your workplace and the nature of the work. If a vulnerable person is exposed to COVID-19 at your practice it may result in serious illness or death. You should consider all available measures to limit exposure to vulnerable people even if the likelihood of them contracting COVID-19 may be low. This may include considering flexible working arrangements such as working from home.

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Can I require an employee who is a vulnerable person to take leave?

No. You should consider all available measures to limit the risk of exposure to COVID-19 for vulnerable people. This may include considering flexible working arrangements such as working from home. If it is not reasonably practicable for the employee to work from home, you should consider other measures to minimise the risk of exposure to COVID-19, such as physical distancing and PPE. If appropriate measures have been implemented, the employee may be able to return to work. If appropriate measures cannot be implemented and there is a risk to the employee's health and safety, you should consult with the employee about what other arrangements can be agreed. This may include agreeing that the employee take paid or unpaid leave.

Can I temperature check my employees?

There are no guidelines or rules that require employees to have their temperature checked at the workplace. If you would like to temperature check your employees as a measure to minimise the risk of exposure to COVID-19, you should seek to obtain their agreement. If they do not agree, you may be able to issue them with a lawful and reasonable direction to have their temperature checked. Whether the direction is lawful and reasonable will depend on the circumstances, including the features of your workplace, the nature of the work and whether there are any vulnerable people present. While temperature checks may be useful as an added precaution, they are not always an accurate way of knowing whether someone has COVID-19. Information on temperature checks is available from the [Department of Health](#) and [Safe Work Australia](#).

OTHER MEASURES

Can I direct my employees to download or use the COVIDSafe app?

No. You cannot direct your employees (or any person) to download or use the COVIDSafe app, but you may encourage your employees to download or use the COVIDSafe app. This applies whether on the employee's personal mobile device or a work mobile device provided by you. Further, you cannot treat a person adversely because they have not downloaded or are not using the COVIDSafe app.

These restrictions are contained in a Biosecurity Determination made by the Minister for Health under the Biosecurity Act 2015 (Cth). It is an offence to contravene a requirement in the Biosecurity Determination. The maximum penalty is five years' imprisonment or \$63,000, or both.


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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