The impact of COVID-19 on employers' WHS obligations

AON

The model Work Health and Safety laws

Under the model Work Health and Safety ("WHS") laws, employers have a duty of care for the health and safety of their workers and others at the workplace. This includes:

- providing and maintaining a work environment that is without risk to health and safety; and
- providing adequate facilities for workers in carrying out their work.

To meet their duty of care, employers must identify risks at the workplace, and where possible eliminate, control, or minimise those risks.

When looking to eliminate or mitigate a risk, employers should consider what measures can be undertaken, whether those control measures are 'reasonably practicable', and whether it is reasonable to implement those measures.

To determine whether a measure is 'reasonably practicable', employers must consider the:

- likelihood of the risk occurring;
- degree of harm that might result; and
- availability and suitability of a control measure.

What controls should employers put in place to manage the risk of exposure to COVID-19?

The latest physical distancing measures can be found on the Australian Government Department of Health website. As a result of these measures, a number of restrictions are now in place on the range of venues and activities that businesses may operate.

For those businesses that are still able to trade, employers must still implement appropriate controls to manage the risk of exposure to COVID-19.

Measures that employers can undertake to manage risk will depend on the nature of the workplace and of the work that is being undertaken. Nonetheless, there are three key things employers can do to manage the risk of infection:

- maintain good hygiene and cleanliness of the workplace;
- implement physical distancing – keep everyone at the workplace physically apart, and
- use protective personal equipment (PPE) appropriately.

The above list is not exhaustive, and there are certainly other controls that can minimise the risk of infection, such as delaying non-essential tasks. There is no one-size-fits-all approach.

The important thing is that employers:

- actively consider the context of their business. That is, the workplace, the work carried out there, the workers, and others who come into the workplace, and
- take reasonable steps to eliminate or minimise the risk of people at your workplace contracting COVID-19.

How does physical distancing apply at the workplace?

To slow the spread of the virus, all employers must implement appropriate physical distancing in accordance with state and territory laws, as far as is reasonably practicable.

Physical distancing means that individuals at the workplace maintain the required distance apart - currently, a minimum of 1.5 metres.

Some workplaces may not allow individuals to stay the required distance apart. Where this is the case, businesses should think about implementing other precautionary measures to help minimise the transmission of the virus. For example:

- rideshare businesses could require that passengers sit in the rear seat of a vehicle;
- implementation of contactless deliveries (deliveries left outside the home without requirement for a signature), and
- implementation of contactless payment options (no cash).

Businesses should limit access to the workplace by people who do not need to be there. This includes children and workers' other relatives. For further information on physical distancing see the Australian Government Department of Health.

What are the WHS requirements when there are alternative work arrangements, such as working from home?

In Australia, the model WHS laws still apply if workers are required to work somewhere other than their usual workplace, for example, from home.

What an employer can do to minimise risks at a worker's home will be different to what they can do at the usual workplace. However, if possible, an employer should:

- provide guidance to its workers about what constitutes a safe home office environment, including what a good work station set-up looks like and how to keep physically active;
- require workers to familiarise themselves and comply with good ergonomic practices, for example by referring to a self-assessment checklist;
- maintain daily communication with workers;
- provide continued access to an employee assistance program, and
- appoint a contact person in the business that workers can talk to about any concerns.

What are the WHS risks of working from home?

Working from home may change, increase, or create new work health or safety risks. To understand these risks, an employer must consult with its workers.

Possible new risks created by a workforce that is deployed to work from home include:

- physical risks from poor work environment, such as poor workstation set-up, inadequate heating, cooling, lighting, electrical safety, home hygiene or home renovations; and
- psychosocial risks such as isolation, high or low job demands, reduced social support from managers and colleagues, fatigue, online harassment, and family and domestic violence.

Employers are still required to do what they reasonably can to manage the risks to a worker who works from home

How do WHS duties apply to risks to psychological health?

The duty of employers under the model WHS laws apply to psychological health, too. This is a stressful time for all Australians, and employers must do what they can to reduce the psychological risks to workers and others at the workplace.

What steps can employers take to minimise workplace stress?

Employers can take the following steps to eliminate or minimise workplace stress:

- be well informed with information from official sources, regularly communicate with workers, and share relevant information as it comes to hand;
- consult workers about any risks to their psychological health and how these can be managed;
- provide workers with a point of contact to discuss their concerns and to find workplace information in a central place;
- inform workers about their entitlements if they become unfit for work or have caring responsibilities;
- proactively support workers who are identified as being potentially more at risk of workplace psychological injury (e.g. frontline workers or those working from home); and
- refer workers to appropriate channels to support workplace mental health and wellbeing, such as employee assistance programs.

More information about work-related psychological health and safety and how an employer can meet its duties can be found in the Safe Work Australia Guide: Work-related psychological health and safety: A systematic approach to meeting your duties.

Visit the following sites for information on caring for mental health:

- Beyond Blue – Looking after your mental health during the coronavirus outbreak
- Australian Psychological Society – Tips for coping with coronavirus anxiety
- Headspace – How to cope with stress related to coronavirus (COVID-19)

How can Aon help you?

Our national WHS team can assist employers with a range of services including:

- WHS strategies associated with COVID-19 Risk Management;
- Working from home strategies, policies and procedures;
- Ergonomics and home office/desk set-up advice;
- Mental health advice associated with working from home;
- Mental health training and education – virtual delivery options available; and
- Advice to support Directors & Officers in exercising due diligence.

Contact us

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WHS and workers' compensation resources

WHS regulators

WHS regulators are responsible for enforcing and regulating WHS laws.

Comcare

- Comcare - for Australian Government employees and for employees of organisations which self-insure under the scheme
- Comcare - Coronavirus

New South Wales

- Safework NSW
- SafeWork NSW – Coronavirus: Advice for NSW workplaces

Victoria

- WorkSafe Victoria
- WorkSafe Victoria - Preparing for pandemics
- WorkSafe Victoria - Exposure to coronavirus in workplaces

Queensland

- Workplace Health and Safety Queensland

Northern Territory

- NT WorkSafe
- NT WorkSafe - Getting your workplace ready for COVID-19 (Coronavirus)

Tasmania

- WorkSafe Tasmania

South Australia

- SafeWork SA
- SafeWork SA - Coronavirus (COVID-19) workplace information

Western Australia

- WorkSafe WA
- WorkSafe WA - Coronavirus - What can be done to prepare for the possibility of a viral outbreak in the workplace