

ACWA MEMBERS INFORMATION 16 March 2020

CORONAVIRUS – AN UPDATE (1)

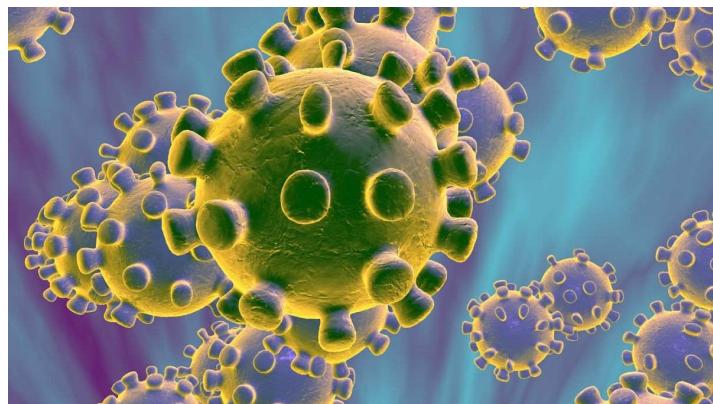
GOVERNMENT ANNOUNCES NEW TRAVEL BANS

Further to our recent advice which will need to be referred to understand your obligations the federal government has announced new travel bans for persons coming to Australia. The new bans came into effect at 2400hrs (AEST) on Sunday 15 March 2020.

The new rules require all persons arriving in Australia, including returning persons or visitors arriving, to self-quarantine for a period of 14 days. This means that employees will not be able to attend the workplace during this period.

In our previous advice we advised that businesses would have to examine the employment arrangements for each employee that had been compelled to self-quarantine because they had returned to Australia from a high risk country. The pool of potential employees that this now affects has significantly increased as a result of the changed conditions in the travel ban.

The information provided in our prior article is reproduced below, subject to minor editing to reflect the travel bans that were in place at the time to writing.



An employee has been directed by the government to self-quarantine for 14 days, but they have not been diagnosed with Coronavirus

This option arises now when an employee returns to Australia from any country.

The best course of action in this situation is to consider the following options.

1. *Can the employee work from home and thus create a business as usual arrangement where there is no significant reduction in productivity and the employee does not lose remuneration?*
2. *Can an agreement be reached whereby the employees take a period of paid annual leave or long service leave if it is available? This may not be ideal in the employee's mind, but in the circumstances, they may agree and if they do then this will mitigate the risk. Except where the employee has excessive annual leave (usually more than 8 weeks), there is no capacity to direct the employee to take annual leave.*

3. Is a combination of the above two options possible? For example, work for 3 days from home and take 2 days annual leave.
4. If an employee does not have enough annual leave, is it possible to allow them to go into deficit annual leave. There is some risk for employers with this, but it is likely that there will be risk in many of the options that present.
5. Employees may be permitted to use personal leave for the period. However, in my view, there is some real risk with this because the employee does not meet the definition of personal ill health or injury and so if they were to challenge this at a later date, they might have to be recredited with the entitlement.
6. Consider using the stand down provisions under the Act. In these instances, the employee does not have an entitlement to pay. However, we recommend that this option is only used as a last resort because there are issues here with the capacity to stand down employees under the Act, given that the Act does not specifically deal with the issue of pandemic, and common law contractual issues because it is not technically the employer that is standing down the employee, it is happening at the direction of the government. The position on this issue may become clearer over time. Based upon the preponderance of published advice on this issue, it would seem that an employee could be stood down without pay if absolutely necessary, and if none of the above options could be agreed, but standing down employees without pay is a drastic move and I would not advise it except in the most desperate circumstances where all other options have been exhausted.

Most business will require specific advice if they wish to implement a number of the above options. Good communication with staff, sound professional advice in relation to options, and ensuring that there is a clear paper trail for any decisions taken will assist in minimizing corporate risk.

For all your queries, and specific advice, please call the ACWA Members HelpLine

Note: you will be asked for the name of your site to verify you are a current financial member

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