Union and Maurice Blackburn release on coronavirus

As the outbreak of COVID-19 – or "coronavirus" – continues to spread through Australia's general population, Union members should be aware of their rights and responsibilities when it comes to taking personal leave, workcover entitlements and accommodating quarantine requirements.

This article explains you and your employer's rights and obligations.

This advice is only general in nature and may vary in specific circumstances. Always consult your union before taking action.

What rights do workers have when quarantined?

If an employee is diagnosed with COVID-19 and is declared unfit to work by a doctor, they must take paid personal leave in accordance with the National Employment Standards in the *Fair Work Act 2009* (Cth) (**FWA**) or their industrial instrument. The employee would likely be required to provide a medical certificate for that period.

Where an employee is not sick, and is ready, willing and able to work, a request by an employer that they not attend work is effectively a direction to stop work. This should be followed by the employee, as such a direction is likely lawful and reasonable.

However, the employee should not be required to take personal leave. The employer should continue to pay the employee at their normal rate of pay while the direction to stop work remains. If an employee obtains a medical certificate clearing them to return to work the employer should allow the employee to return to work. If practicable, the employer may direct the employee to work from home during that period. An employee cannot be directed to take annual leave under the FWA. However they can under a term of an industrial instrument if that term is reasonable.

If an employee is required to look after a dependent who has been quarantined, the employee should use their personal leave as normal. Employees are also entitled to two days' unpaid carers leave, and two days' compassionate leave.

Alternatively, the employee may request to implement a "flexible working arrangement" with their employer. Such a request can only be denied on reasonable business grounds, for example, if it would be impractical or too expensive for the employer to implement.

Can employees be treated differently after a coronavirus diagnosis?

If an employee is diagnosed with coronavirus, they are entitled to take their personal leave just as if it were the common cold or flu. If an employer were to take any "adverse action" against them for exercising such a right – for example, by terminating their employment, or reducing their shifts – they may be in breach of the FWA, as well as State and Federal anti-discrimination legislation.

When the employee has recovered and is declared fit for work, their employer must allow them to return. If the employee's illness has left them with some impairment, the employer cannot discriminate against them on the basis of that impairment, provided they can still meet the inherent requirements of the role.

In the event that an employee is dismissed due to having been diagnosed with coronavirus, or for taking leave to self-quarantine or look after family in quarantine, the dismissal may be unfair under the FWA.

What are the rights of casual workers?

Casual workers are not entitled to paid sick leave. However, they may be entitled to two days unpaid carers leave if they are required to look after an immediate family member who has been quarantined, and two days paid compassionate leave.

If a casual employee is not able to work any of their rostered shifts, they must inform their employer and may be required to provide a medical certificate. Importantly, it is also unlawful for employers to discriminate against casual employees who have been unwell or have had to take time off work to self-quarantine. Employers are not entitled to dismiss those casual employees or to stop giving them shifts on that basis.

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What are the obligations on employers?

Employers must take "reasonable steps" to ensure the health and safety of their employees. This may include directing an employee to obtain a medical certificate declaring them fit to work. If they are not fit for work, the employee must take personal leave. However, if they are ready, willing and able to perform their duties, the employer must allow them to do so. An employer's direction to an employee to take personal leave when they are not sick may be an unlawful and unreasonable direction.

If an employer does not want an employee to attend work, even though they are not unwell, they should be prepared to pay them at their base rate of pay for that period. Alternatively, employers may look to implement flexible work arrangements, such as the direction for employees to work from home on full pay.

Can I make a Workcover claim?

To be able to make a Workcover claim, an employee must be able to demonstrate that work was a reasonable significant factor in catching the disease. Medical evidence would need to be obtained confirming that to be the case. To date general practitioners have been reluctant to confirm that catching a common cold or flu was obtained from work. However if a medical practitioner is prepared to confirm that the likely cause was from work exposure then a claim may be open. Either way please reach out to the union or Maurice Blackburn Lawyers for advice on this issue.

Information correct as at March 2020

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