

COVID-19 Guidance Note on Employment-Related Matters

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1. Introduction

This Guidance Note provides specific advice to Victorian public health services, Ambulance Victoria and Forensicare (referred to throughout as '**Employer**'). For the avoidance of doubt, this guidance applies to all public sector residential aged care services (PSRACS).

Nothing in this Guidance Note will, nor is intended to, limit or diminish an employee's right, benefit or entitlement under an enterprise agreement, award, or the *Fair Work Act 2009* (Cth). Nor does it limit or absolve an employer's legal or statutory obligations.

1.1 Related guidance material and other documents

- Guidance material regarding mandatory vaccination requirements for healthcare workers
- Department of Health guidance regarding the use of PPE, as amended or replaced from time to time

2. Absence due to COVID-19

2.1 Current public health recommendations

Current public health advice for the general population recommends:

- Anyone with symptoms including runny nose, sore throat, cough, fever or chills should isolate and get a test for COVID-19.
- A person with COVID-19 should isolate for at least 5 days and until symptoms resolve.
- A person with COVID-19 should not leave isolation if experiencing the common symptoms of COVID-19: runny nose, sore throat, cough, shortness of breath, fever, chills or sweats.
- Anyone who has COVID-19 or symptoms of COVID-19 should avoid visiting or working in sensitive settings for at least 7 days.
- Workers who are a close contact should be asymptomatic and follow testing recommendations (see section 3 below) if they are required to work in sensitive settings during their 7 day close contact period.
- Close contacts who are not workers in sensitive settings should not attend any sensitive setting during their 7 day close contact period.

For the purpose of this guidance note, sensitive setting includes residential care facilities (including aged care and other services), other care facilities, and healthcare premises (including when health care services are provided in people's homes).

2.2 Leave and payment for absence – ongoing (full-time and part-time) employees

(a) Positive case

Where an employee returns a positive COVID-19 test (either by PCR or RAT), for 7 days from the day the positive test is returned:

1. They should be supported to work from home wherever possible and they are well enough to do so.
2. If the nature of their work means they cannot perform their normal duties from home, managers should identify alternative duties the employee can perform from home.
3. If they are unwell and/or the nature of their work means there are no alternative duties that can be performed from home, the employee is entitled to special leave.

Where an employer imposes an isolation period in excess of 7 days, special leave should be granted for the additional days unless there are extenuating circumstances to disallow.

If an employee is still unwell after the 7-day isolation period, and the employer has not imposed a longer isolation period, personal leave can be accessed. Where the employee has exhausted their personal leave and other paid leave entitlements, access to paid special leave may be considered on a case-by case basis.

An employee's right to make a WorkCover claim is not prejudiced by the employee seeking, or being paid, special leave.

(b) Close contacts in limited circumstances

Employers can presume healthcare workers who are close contacts are ready, willing and available to attend work, provided that they feel well, are symptom-free, and return negative rapid antigen tests prior to their shift.

There may be two situations where this is not the case. Firstly, an employee who is symptomatic despite returning a negative rapid antigen test. In this case, employees should be encouraged to have a PCR test. Second, an employer may determine based on an assessment of risk that the nature of the healthcare worker's workplace means it is not appropriate for a close contact to return to work during the 7-day self-isolation period. In either of these two situations:

1. the employer and employee may consider 'working from home' arrangements for some or all of the -isolation period where practical and appropriate.
2. where it is agreed that working from home is not reasonable, practical or appropriate, staff can access special leave for the 7-day self-quarantine period.

Where an employer imposes a quarantine period in excess of 7 days, special leave should be granted for the additional days unless there are extenuating circumstances to disallow.

An employee who is unwell following the 7-day period but does not have COVID-19 should access available personal leave. Where the employee has exhausted their personal leave and other paid leave entitlements, access to paid special leave may be considered on a case by case basis.

The standards that apply to an employee who is a close contact are set by the employer and employee.

2.3 Leave and payment for absence – casual employees and independent contractors (fee-for-service)

Casual employees and independent contractors engaged directly by Victorian public health sector entities may also be affected by public health recommendations to be absent from work due to COVID-19.

Typically, casual employees and independent contractors do not have paid personal (sick) leave or annual leave entitlements to draw upon. Nonetheless, casual employees and independent contractors provide a valuable resource to public health services and PSRACs.

Employers are encouraged to consider the financial impact on casual employees and independent contractors and explore options that avoid or minimise the impact of being required to be absent from the workplace.

Where a casual employee or independent contractor is required to be absent from work, the employer may make arrangements with that person to work from home for some or all of the relevant period where reasonable and practical.

Where working from home is not practical, Employers should assess whether to provide casual employees with paid Special Leave or other financial assistance on a case-by-case basis, taking into account:

- whether the casual has been employed and working for the health service on a regular and systematic basis for at least three (3) months, and is anticipated to continue to be employed on a regular and systematic basis; and
- the likely work pattern for the employee concerned had there not been public health advice recommending they be absent.

For casual employees who have been employed and working for less than three months, or who have not been working for the health service on a regular and systematic basis, employers should use their discretion in assessing appropriately whether or not to provide paid Special Leave or other financial assistance on a case-by-case basis.

2.4 How payments should be calculated

Where an employee is absent from work because they have or have had a non-COVID-19 related illness, it is expected that the employee will use their personal leave in the first instance.

Payment for any period of paid personal (sick) leave under the relevant enterprise agreement must be calculated in accordance with the provisions of that enterprise agreement.

Paid Special Leave should be calculated by reference to the rate of pay and allowances the employee would have earned had the employee worked their shift, including shift penalties but excluding overtime, stand by, travel allowance, incidental expenses or any other payment of a temporary character.

2.5 Notice and evidence requirements

Evidence requirements for any period of paid personal (sick) leave are set out in the relevant enterprise agreement.

An Employer may require reasonable evidence to substantiate the requirement to self-isolate. If the employee is not returning to work due to being symptomatic but has not tested positive to COVID, they may be required to provide evidence consistent with the requirements described for Personal (Sick) Leave in the enterprise agreement covering the employee

Where evidence is required, an employee must provide it to be eligible for the paid Special Leave.

3. Close contacts

If an employee shares a house or has had close contact with someone who gets COVID-19, they will be at risk of developing COVID-19 in the days that follow the last close contact with that person.

Employees who are close contacts of a positive case should:

- wear a mask when leaving home (and should be an N95/P2 respirator when attending the workplace during the close contact period (7 days from close contact));
- notify their Employer that they are a close contact if attending the premises during the close contact period (7 days from close contact);
- test regularly in the period following their last contact with the person who has COVID-19. This includes rapid antigen tests undertaken 24 hours apart for 5 days out of 7 days after being identified as a close contact; and
- if they develop any symptoms, stay home and take a test.

If they test positive for COVID-19, the above guidance regarding positive cases will apply.

4. Vaccination

This section applies to full time and part-time employees, and long-term casuals (i.e. those who have been working with their public sector employer on a regular and systematic basis, and who are anticipated to continue to be employed on a regular and systematic basis).

4.1 Time off to attend a vaccination appointment

Public health services are expected to support employees to meet vaccination requirements

relevant to healthcare and aged care workers. This includes COVID-19 vaccinations.

The following applies to any vaccination mandated or recommended by the department:

- Time off without loss of pay to travel to and from a location where they receive a vaccination.
- Employees who access up to four hours of paid time off should return to work as soon as possible after receiving their vaccination unless they suffer an adverse reaction (see below).
- If it is not practical or possible to receive the vaccination in paid time, employers should use their discretion to support the employee to receive the vaccination outside of their ordinary working hours by providing up to four hours' pay on a case-by-case basis.
- Requests for paid time off must be approved in advance.
- Where onsite vaccinations are, or have been, provided by the Employer, time release will only be provided to attend that onsite service and the paid time off for up to four hours (or equivalent payment) referred to above does not apply.

4.2 Where an employee experiences an adverse event after receiving a COVID-19 vaccine

Employees may experience adverse events after receiving the COVID-19 vaccination. These can be mild, common or expected. Further information on adverse events following immunisation (AEFI) can be found on the SAFEVAC website.¹

Paid Special Leave should be made available to an employee who suffers an AEFI. To access paid Special Leave in this circumstance, the employee is required to provide evidence in accordance with the requirements described for Personal (Sick) Leave in the enterprise agreement covering the employee confirming that the reason for not attending work is due to an AEFI. In this instance, paid Special Leave will be capped at a maximum of two days per COVID-19 vaccination received, including where a 'booster' shot is received by the employee.

5. Safe working practices

Employers and employees have mutual obligations to ensure the workplace is safe and without risks to the health of employees and others.

Employers must – as far as is reasonably possible – eliminate, or otherwise minimise risks. Victorian public health sector entities are – or operate in – a high-risk environment in terms of infection risk and this level of risk must be appropriately addressed. They are also environments where vulnerable people seek care and attention.

Employers should communicate and work with their employees to identify risks in the workplace. This includes understanding which of their employees may themselves be

¹ <https://www.safevac.org.au/Home/Info/VIC>

vulnerable to infection and adverse consequences from COVID-19.

Where an employee has a legitimate concern for their own health and safety – for example, where an employee feels they are a greater risk if they were to contract COVID-19 due to a relevant pre-existing illness or pregnancy – employers are, as always, expected to ensure a safe working environment for all employees (ongoing and casual). Where appropriate, employers should consider what if any reasonable adjustments are available, including working from home arrangements where practical, temporary transfer to other duties, or other flexible arrangements. In some cases, employers and employees may reach agreement on the taking of paid leave to mitigate the risks.

Employers should also be aware of the [Aboriginal Cultural Safety Framework](#) and ensure that cultural safety is included in their decision making.

Employers who run Employee Assistance Programs or similar should ensure that employees who have concerns about their wellbeing are aware of these programs and are able to access them.

Similarly, employees working in these environments must take appropriate precautions by following policies and procedures aimed at reducing risk and by informing their employer of risks in and to the workplace, including where their own personal circumstances may contribute to those risks. Employees must comply as far as is reasonably possible with lawful and reasonable instructions given to them by their employer so that the employer can comply with its responsibilities.

The *Occupational Health and Safety Act 2004* (OHS Act) requires employees to take reasonable care for their own health and safety and the health and safety of others who may be affected by their acts or omissions at the workplace. Employees must also co-operate with their employer with respect to any action taken by the employer to comply with the OHS Act.

Workers should be reminded to always practice good hygiene and other measures to protect themselves and others against infection.

6. Personal protective equipment

Public health advice continues to be that masks should be worn by staff and visitors to sensitive settings, including healthcare settings.

Part of the employers' responsibilities in minimising risk is providing appropriate personal protective equipment (PPE) for their setting such as gloves, gowns, masks, eye protection and respirators.

As at the date of this guidance note, guidance on the use of PPE is contained in the 'COVID-19 - A guide to the conventional use of personal protective equipment (PPE)'. Information on the use of PPE can be found on the Department of Health's [website](#).