

HR in a Crisis What do you do? How do you manage?



This article was originally crafted by Amy Zhang from Inside-HR when we were responding to the Bushfire Crisis, but can also be beneficial in terms of the COVID-19 Crisis.

Here's a few short tips on how HR can quickly impact the well being of staff in a crisis – managing your staff, ensuring your OHS obligations are met and employee safety and well being is first and foremost managed.

With the natural devastation of our bushfires, drought and now rains and the global threat of the coronavirus sweeping Australian shores recently, Employers must be wondering what their rights and obligations are with respect to ensuring the health and wellbeing of their staff, and ensuring the OHS obligations are met.

Given that we do not have a national standard for OHS legislation (unlike employment law where we have an overarching legislative framework), we thought we'd provide you with a quick snapshot to guide you and help you keep employee's well being in mind and get the best outcome for employee and employers:

Employer Duty of Care and WHS obligations

Employers owe their employees a general duty of care. This duty of care includes providing employees with a safe place to work.

Employers also have WHS obligations which require, among other things, providing and maintaining, as far as reasonably practicable, a safe workplace that is free from risks to health and safety; and identifying and assessing hazards and risks to health, and implementing measures to eliminate or alleviate same.

These positive obligations mean that where the workplace is attended by sufficient risk to employee health and safety, employers should consider whether employees can attend the workplace and/or perform their work duties safely and whether there are alternative locations of work available (such as working from home or working from another location run by the employer).

An obvious example of a threat to employee health and safety is a fast-approaching bushfire. However, as the recent issues caused by bushfire smoke (which caused difficulties for those working outdoors, as well as those who commute to work and had respiratory issues) show, there may be latent or less obvious risks to employee health and safety which may mean that the workplace is unsafe.

In the context of a potential health pandemic like the coronavirus, employers should bear in mind that their WHS obligations may extend to measures ranging from mandatory quarantine of employees in the event of travel to infected areas, for example, by requiring them to work from home, to ensuring adequate facilities for washing hands and the availability of face masks. Employers should, however, take care not to fall foul of disability discrimination laws by discriminating against employees on the basis of actual or imputed diseases or infections.

Standing down employees

Under the Fair Work Act 2009, an employer may stand down employees if they cannot be usefully employed because of circumstances for which the employer cannot reasonably be held responsible. If an employee is stood down, they do not need to be paid.

There may be some extra rules and requirements if an award or enterprise agreement applies to your workplace, or where there are additional restrictions in the contract of employment.

Note however that an employee who is authorised to be absent from work (because of pre-approved leave) cannot be stood down.

Directing employees to take annual leave

Rather than standing down employees, you may alternatively direct employees to take accrued annual leave, provided that such a request is reasonable in the circumstances.

If an award or enterprise agreement applies, employers can only do so if the requirement is reasonable and an award or enterprise agreement allows it.

There is, of course, nothing to stop employers and employees from agreeing for the employee to take annual leave, rather than an employer having to issue a direction.

Flexible work arrangements *

If your physical workplace is affected, you may want to consider negotiating flexible work arrangements with your employees. Flexibility in the form of hours, location and pattern of work could mitigate the effects of an emergency or disaster and maintain productivity. Consider in particular whether it is feasible for employees to work from home. This worked particularly well when the GFC arrived in 2008, and the Fair Work Act has provisions and templates to assist you with preparing your business case for flexible working arrangements.

* Inspired People Solutions are in a position to provide you with Templates that will assist you with employees who are working from home. Whether it be setting up checklists, communication templates, Audit forms or new Individual Flexibility Agreements or negotiating job-share or ongoing part-time arrangements, please reach out to us so we can equip you with your requirements. Contact us on 03 9344 1333 or hello@inspiredpeople.com.au

Personal/Carer's leave

Employees affected by a natural disaster, health pandemic or emergency are entitled to take personal/carer's leave. They can take this if they are not fit for work due to a personal illness or injury, or are personally affected by an emergency. It may also be taken to provide support and care to an immediate family member who is ill or injured, or affected by an unexpected emergency.

Such rights may cover circumstances where an employee is quarantined due to suspicion of being infectious, where an employee needs to take time off to care for a family member who has lost their home in the emergency, or where an employee needs to take leave to care for children who may not be able to attend school due to the emergency or disaster.

Compassionate leave

Employees are entitled to take two paid days of compassionate leave where an immediate family member has sustained a life-threatening illness or injury or has passed away.

Community service leave

Employees who engage in voluntary emergency management activities, such as firefighting, SES or other victim assistance initiatives, through a recognised emergency management body may be entitled to unpaid community service leave. Under the Fair Work Act 2009, the amount of leave able to be taken is not specified, but it must be reasonable taking into account the activity, travel time and rest time required.

While there is no obligation to pay employees in such circumstances, you may still wish to do so through discussion with the employee affected.

Defence call-out for reservists

On 4 January 2020, the Governor-General initiated a Defence Call Out under the Defence Act 1903. This places obligations on employers with Reservist employees such as releasing 'called out' employees to undertake defence activities. Reservists have additional workplace protections under the Defence Reserve Service (Protection) Act 2001.

While there is no obligation to pay employees in such circumstances, you may still wish to do so through discussion with the employee affected.

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Amy Zhang from Inside-HR provided the content for this article. <https://www.insidehr.com.au/hr-emergency-essentials/>