SAFETY IN THE WORKPLACE

Safety in the Workplace – WHS Quarterly

Our Autumn 2020 edition includes:

- The transition to returning to work and important considerations;
- Updating your policies and procedures; and
- A reminder that you may need to consult.

On Friday 8 May 2020, the Australian Government released a three-phase plan to reopen locked down businesses in a "Covid-safe environment". The NSW Government subsequently announced a NSW-specific Stage 1 to be implemented from Friday 15 May 2020, which includes the re-opening of some pubs, cafes and restaurants and advice for other businesses to continue "working from home, if it works for you and your employer".*

For businesses continuing to work from home, employee mental health should remain at the forefront of employer concerns over the coming months.

For businesses who have stood employees down and/or have been unable to work from home, and are now allowed to re-open, the return to work will require adjustments and precautions to be implemented at the workplace to ensure the safety of employees and customers.

The easing of restrictions may be the catalyst for some businesses to direct employees currently working from home to return to the office. This approach will need to be managed carefully.

The Transition to Returning to Work

The Federal and NSW Government announcements mean that employers who have directed employees to work from home or be stood down may now wish to direct their employers to return to work. Of course, while there is a lot to look forward to as we work towards a return to normality, it will be highly important to manage this process effectively, responsibly and supportively, and to consider any Work Health and Safety obligations and risks.

Ease the Transition… Be Flexible!

Health experts have described the implications of the COVID-19 pandemic as causing immense global

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anxiety. Keeping this mind, alongside the challenging experiences your employees may have had in being stood down or adjusting to working from home, it is important to remember that your employees may also experience anxiety about returning to work.

After a few months of working remotely or not working at all, employees may have fallen into a different routine. Having to now commute on public transport, change their sleep patterns and, for those returning from working from home, forego their flexible work hours might feel uncomfortable or demotivating. More significantly, employees may experience legitimate concern and anxiety around their physical safety – both commuting and in the office – in light of the threat of and continuing (albeit slowing) spread of Covid-19.

For this reason, it will be important to manage the employees' return to work carefully to ensure their mental and physical health and safety is not compromised and to keep in mind that the transition will be different for each employee.

For employees who have been stood down, the prospect of earning money again may be sufficient incentive for them to return to work. For those employees working from home, a direction to return to the office may be met with resistance. That said, the Government's current message is to stay working from home, if it works for you and your employer, and in NSW all school children will be returning to school on Monday, 25 May 2020. Given this development, an employer is able to insist an employee return to work if it doesn't work for them and provided appropriate WHS steps are taken.

If directing employees to return to work, employers can rely on the clause in their employment contract specifying the location of their workplace. However, this direction must be "lawful and reasonable". Ask yourself:

1. Is it reasonable to ask workers to return to the office?
2. How necessary is it that the job is done from the office?
3. Does it work for the employer?

These questions are particularly important in circumstances where employees may share a household with (or care for) immuno-compromised or elderly people. These employees may be less likely to comply with a return to work direction and, by the same token, it may be less reasonable to expect that they do.

In such circumstances, any refusal not to comply with a return to work direction should be carefully considered to avoid indirectly discriminating against such employees and establishing the basis for a General Protections claim.

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You should consider whether reasonable adjustments can be made including allowing the employee to continue working from home or gradually returning to the office. Any requests for reasonable adjustments or flexible working arrangements will be significantly more difficult for an employer to refuse given the employee may be able to rely on 8 weeks of working from home.

Dealing with reluctance to return to work may be one of the biggest challenges for employers. To ease the transition we suggest:

- Allowing employees to return to the office on a staggered basis (particularly where hot-desking occurs) to be reviewed periodically;

- If it is viable and it works for the employer, allow employees to continue to work remotely;

- Consider offering to add a few remote workdays each week to an employee's contract;

- Allow for employees to temporarily change their working hours to avoid commuting on public transport during peak periods;

- Consider reimbursement for alternative transport arrangements such as travel by private vehicle;

- Allow employees to take any accrued but untaken annual or long service leave; and/or

- Of course, implement Covid safe measures in the workplace – physical distancing, availability of sanitiser, periodic deep clean (canvassed in more detail below).

Make Sure the Workplace is Safe

You should review the 10 guidelines endorsed by Safe Work Australia to keep employees safe and ensure that your office is prepared for a return to work. We touch on the more pertinent of these below.

1. **Cleaning**

Make sure your workplace is regularly cleaned and disinfected.

You should already have in place regular and scheduled cleaning of your workplace. Ensure any areas frequented by workers or others (e.g. visitors to your premises) are cleaned frequently. This includes eftpos equipment, elevator buttons, handrails, tables, counter tops, doorknobs, sinks and keyboards.

Depending on the nature of risk in your workplace, you could arrange for a thorough clean with detergent or disinfectant to occur each evening to ready the business for the following day.

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Workers should also be encouraged to clean personal property that comes to work, such as, sunglasses, mobile phones and iPads with disinfectant, such as disinfectant wipes.

2. Physical Distancing

Currently, this means keeping a distance of at least 1.5 metres between people. The virus is unlikely to be spread if face- to- face interactions are limited to less than 15 minutes and interactions involving close proximity are limited to 2 hours.

Some examples of encouraging physical distancing, where there are size problems given the employer's office premises, include:

- Limit the number of employees, customers or clients in the workplace at the one time;

- Implement rotating shift arrangements so less employees are in the workplace at once;

- Implement queuing strategies – for example, marking out spacing on the floor with tape;

- Implement contactless deliveries;

- Delegate an employee on the work floor to ensure individuals are keeping the required distance from each other; and

- Move workstations, desks and tables further apart .

3. Hygiene

The World Health Organisation advises that hand washing should take 20-30 seconds. Encourage workers to be thorough with such hygiene maintenance to help stop the spread of COVID-19.

Make it easy for employees to follow good hygiene practices by making available plenty of supplies including hand sanitisers.

4. Signage and Posters

Signage and posters are an excellent way for employers to remind employees of the risks posed by COVID-19 and measures to stop the spread.

Employers should display such posters in relevant areas. Some examples of good posters are:

- How to hand wash poster
- How to hand rub poster
- Australian Government Department of Health Simple steps to help stop the spread poster
- Australian Government Department of Health keeping your distance poster
- Keeping mentally healthy

If you have any questions on how to implement any of the above strategies, please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.

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*NB: Each state & territory is approaching the easing of restrictions and the return to work process slightly differently.

POLICIES & PROCEDURES

Update your Policies and Procedures

It may be timely to update your current policies and procedures to incorporate best practice during this time. For example, your working from home, flexible working arrangements and workplace health and safety policies are unlikely to reflect current times.

Notably, you may consider it helpful to update your policies on taking personal leave to incorporate and clarify the options in circumstances where the employee (or a family member or member of their household) contracts coronavirus and/or is required to self-isolate.

A Reminder – you may need to consult

Importantly, you may have statutory obligations to consult on health and safety matters, including in relation to any changes you put in place.

If you require assistance in directing employees return to work, ensuring employees' health and safety or preparing workplace policies, please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.