

COVID 19 – Guide (July 8, 2020)

Stage 3 Restrictions Reimposed on Metropolitan Melbourne and Mitchell Shire.

Victorian Premier Daniel Andrews has announced that Stage 3 restrictions will be reimposed in Metropolitan Melbourne from 11:59pm July 8, 2020. These restrictions will also apply to the Mitchell Shire. At the time of announcement, the restrictions are expected to last for 6 weeks.

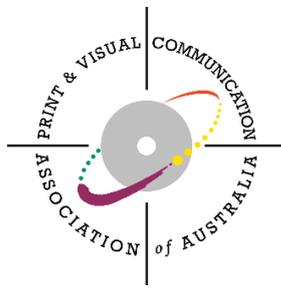
For members affected by this decision, please see the following COVID-19 guide covering some of the key workplace relations issues.

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Managing Obligations to Employees during the COVID-19 Pandemic

COVID-19 and Employee Entitlements

What happens if my employee is required to self-isolate (including after returning from overseas)?

If an employee is required to self-isolate (including after returning from overseas), they should contact their employer immediately to discuss their circumstances. They may elect to take annual leave during this period should they wish to do so. Alternatively, if they are unwell or caring for an immediate family member or a member of their household who is unwell during this period, they may take personal/carer's leave.

Requests to take annual leave and personal/carer's leave will be subject to normal policies and procedures for the taking of leave.

What if an employee chooses to self-isolate but has not been directed to do so?

If an employee wants to self-isolate – but has not been directed to do so (e.g. have not arrived from overseas), they may request to work from home (if feasible), otherwise they will need to apply for annual leave or leave without pay. If the employee is unwell or is caring for someone who is unwell, they may take personal/carer's leave.

What happens if the employer directs the employee not to attend the workplace (but they were not directed to self-isolate by an authority)?

If you direct an employee not to attend the workplace to fulfill your WHS requirements (i.e. they have not been directed to self-isolate by a government authority and have not chosen to self-isolate themselves), they will be entitled to normal pay until they receive evidence from a medical practitioner or other relevant authority that they are either fit for work (and therefore return to the workplace), or not fit for work (they then go on personal/carer's leave).

What happens if an employee wants to cancel a leave request as they can no longer go on holidays (for example due to the restrictions on interstate and international travel)?

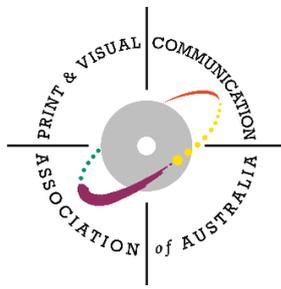
Employers are encouraged to do everything reasonable to allow an employee to cancel their leave request in this sort of circumstance. Both parties should work together to reach an amicable agreement – e.g. employee only takes a portion of the leave etc.

Can my employees take personal/carer's leave if affected by school closures?

If a school closure results in your employee being forced to stay home to care for their child/children, they will likely be entitled to personal/carers leave for the brief period following the school informing them that children must stay home (if they are a permanent employee).

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Changes to Rosters/Hours of Work

Can I make changes to my employees' regular rosters/hours of work? How would I do so in a compliant manner?

Making changes to an employee's roster/hours of work is a viable option for you to consider to manage the impacts of COVID-19 on your business. In order to do so in a compliant manner, you must follow the consultation provisions of the award that applies to your employees. Practically, this will involve arranging a meeting/s with employee/s who will be affected to explain the changes you intend to introduce, when you would like these changes to come into effect (e.g. from the following pay period) and to allow the employee and their representatives (if any) the chance to respond and provide any input they may have in relation to the changes. Once you have reached an agreement with your employees, all relevant details should be confirmed with the employee in writing (including an expected duration for the changes made – if they are temporary in nature).

Please note that if you are considering making changes to your employees' rosters/hours of work, we would recommend you contact us to receive advice in relation to your individual circumstances.

If we make changes to an employee's roster, meaning they no longer have ordinary hours on a day on which a public holiday falls, do we still need to pay them?

As per the National Employment Standards (NES), employees who would normally work on the day on which a public holiday falls are entitled to be paid at their base rate for the ordinary hours they would have worked if they had not been away because of the public holiday. If an employee's new roster means that they wouldn't have been working if the day were not a public holiday, you are not required to pay them as they didn't have any ordinary hours on that day. If you would like to pay your employees based on their previous roster, it is at your discretion to do so.

Please note that awards can contain additional terms that may affect your obligations to employees on public holidays. We would recommend you contact us to confirm whether any additional terms apply to your employees.

Ending Employment

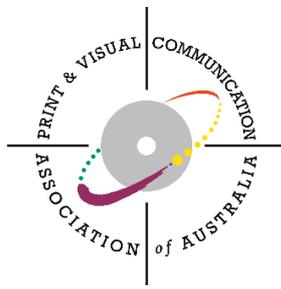
What if I need to consider redundancy due to a downturn in business related to COVID 19?

The normal redundancy provisions apply. This includes consulting with employees covered by a modern award, providing the appropriate notice period and paying the appropriate entitlements (including redundancy pay if your business has 15 or more employees).

A comprehensive redundancy guide is available online at www.pvca.org.au. If you are considering redundancies, please contact the service directly via phone or email.

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Standing Employees Down

Due to current economic circumstances related to the COVID 19 pandemic, many businesses are looking at whether they can stand down staff.

Many business owners view standing down staff as the most effective means of ensuring their business remains viable. Standing down employees is largely covered by Section 524 of the Fair Work Act 2009. As per these provisions, for a staff member to be legally stood down, it needs to be demonstrable that:

1. they are unable to be usefully employed;
2. due to a stoppage of work ...
3. for reasons which the employer cannot reasonably be held responsible.

Under the current COVID-19 circumstances, the most likely scenarios that would satisfy this criteria is:

- A. if the member's business is either ordered to cease operating by the government or
- B. can no longer operate/trade *for any other reason* for which the employer cannot reasonably be held responsible.

If the member believes their situation reflects the above - then standing down staff can be considered.

Caution: Given the relatively tight definition and historically limited application of the stand down provisions, please be advised that a decision to stand down staff does carry some risk. i.e. that the Fair Work Commission may, at some later stage, deem the stand down invalid. However, we live in very unique times and under the current circumstances, this may well be a commercial risk worth bearing for the survival of the member's business.

Other options

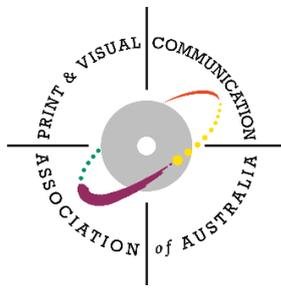
Please consider the following four staffing options *before* considering standing down staff:

- a. Agreeing with employees to take their annual leave and/or long service leave
- b. Asking employees if they would be willing to agree to a reduction in ordinary hours – possibly for a temporary period
- c. Asking employees if they would be willing to take a period of unpaid leave by agreement
- d. Deciding to make staff redundant

These options arguably carry less risk than standing down staff, particularly if your circumstances mean a stand down may not be entirely permissible.

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JobKeeper and Amendments to the Fair Work Act

The JobKeeper Scheme

On the 30th March 2020, the Federal Government announced the JobKeeper scheme, which allows businesses significantly impacted by the coronavirus outbreak to access a subsidy to continue employing and paying their staff. The scheme will ensure eligible employees can keep their job and earn an income – even if their hours have been cut as a result of the COVID-19 pandemic.

The JobKeeper Scheme was approved and legislated on the 8th of April 2020. It will provide \$1,500 per fortnight for eligible employers to pass onto their eligible employees. The scheme will also be available to independent contractors and self-employed individuals who satisfy the necessary criteria.

The payments will be available from the fortnight beginning the 30th of March 2020 and continue until the fortnight ending the 27th of September 2020.

The Australian Taxation Office (ATO) is the government body responsible for administering and managing the scheme. Comprehensive information relating to the scheme, including eligibility requirements and the steps employers need to follow to access payments are available at: <https://www.ato.gov.au/General/JobKeeper-Payment/>.

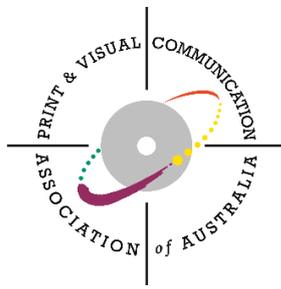
From a workplace (industrial) relations perspective, employers who believe they will be eligible for the scheme and intend to participate should take the following steps:

- Visit the ATO website to enrol for the JobKeeper payment* (<https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Enrol-for-the-JobKeeper-payment/>)
- Notify eligible employees that they intend to claim the JobKeeper payment on their behalf
- Request eligible employees complete and return the *JobKeeper employee nomination notice*
- Begin paying eligible employees the full \$1500 (before tax) per fortnight
 - Please note: In order to be eligible for the scheme, an employer must pay all eligible employees the full \$1500 (before tax) per fortnight even if they would ordinarily earn less than this amount. An employer cannot pay their employees less than \$1500 per fortnight and keep the difference.

*The ATO website provides information about the appropriate step by step enrolment processes for businesses to follow depending on their individual circumstances. The appropriate processes for a business to follow depend primarily on tax/accounting regulations and obligations. As such, for comprehensive advice, we recommend employers contact their bookkeeper, accountant or the ATO directly.

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If an employer intends to participate in the JobKeeper scheme, they must nominate all eligible employees.** They cannot choose to nominate only some employees. However, individual eligible employees can choose not to participate.

If employees have multiple employers, they will usually be allowed to select the employer from whom they would like to receive JobKeeper, the exception being where an employee is employed with one employer on a casual basis and has permanent employment elsewhere. In this scenario, the employee **must** choose their permanent employer.

This requirement is to acknowledge the fact that in the majority of cases, a permanent employer will be an individual's 'primary' employer. Consequently, this will prevent an individual from nominating a secondary, casual job if their primary employment has not been affected.

Finally, it is important to clarify that employees are not receiving JobKeeper from another employer as they cannot be nominated for the scheme by more than one employer.

**The only exception to this rule relates to employees whose employment had already been terminated prior to the announcement of the JobKeeper scheme. While employers can choose to re-engage these employees and nominate them for JobKeeper, they are not under any obligation to do so.

The Government provides further information on the JobKeeper scheme at the following addresses:

- Treasury: <https://treasury.gov.au/coronavirus/jobkeeper>
- Business Australia: <https://www.business.gov.au/risk-management/emergency-management/coronavirus-information-and-support-for-business/jobkeeper-payment>

To support the introduction and operation of the JobKeeper scheme, amendments to the Fair Work Act were implemented on the 9th of April 2020. At this time, the Fair Work Ombudsman have advised that the amendments to the Act will operate until the 28th of September 2020.

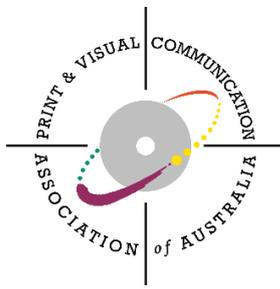
Please note: The amendments to the Act only apply to eligible employers who have qualified for the JobKeeper scheme and the workplace arrangements they make with their eligible employees from the 9th of April onwards.

The amendments allow employers who have qualified for the JobKeeper scheme to:

- Temporarily stand down (or partially stand down) employees in certain circumstances
- Alter employees' usual duties and locations of work in certain circumstances
- Agree with employees to make changes to days and/or hours of work in certain circumstances
- Agree with employees to take a period of annual leave subject to specific criteria

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Direction to reduce hours or days of work (temporary and partial stand downs)

These provisions, known as 'JobKeeper enabling stand down directions', allow eligible employers to direct eligible employees that their hours are being reduced (including to 0 hours).

In order to enact these provisions in a legally compliant manner, employers must be able to show that their employee/s cannot be usefully employed for their normal days or hours because of changes to business occurring as a result of:

- The COVID-19 pandemic
 - A Government initiative introduced to slow the transmission of COVID-19
- OR**

Employers also need to:

- Make sure the direction is reasonable, taking into account employees' personal circumstances e.g. family or caring responsibilities
 - Notify employees and their representatives (if any) at least 3 days before issuing the direction (unless the employee agrees to a shorter period of notice)
 - Keep a written record of the consultation
 - Confirm the JobKeeper enabling stand down direction in writing
- AND**

Changes to duties/locations of work

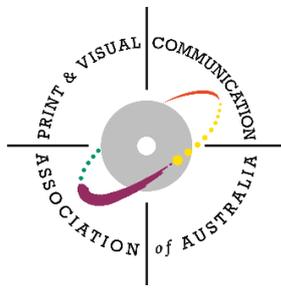
These provisions, known as 'JobKeeper enabling directions', allow an eligible employer to direct their employee to change their responsibilities/duties and their place of work (including to work from home or at another location).

In order to enact these provisions in a legally compliant manner, employers need to:

- Make sure the direction is reasonable, taking into account employees' personal circumstances e.g. family or caring responsibilities
 - Ensure the employee has the necessary skills, competencies, licenses and/or qualifications to perform the new duties
 - Ensure the new duties and location are safe (including with regard to the spread of COVID-19)
 - Ensure the location is suitable for the employee's duties
 - Ensure the employee is not required to travel an unreasonable distance
 - Ensure the duties and location are reasonably within the scope of the employer's operations
 - Notify employees and their representatives (if any) at least 3 days before issuing the direction (unless the employee agrees to a shorter period of notice)
 - Keep a written record of the consultation
 - Confirm the direction in writing
- AND**

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Agreement to make changes to days/hours of work

These provisions allow an eligible employer to make an agreement with an eligible employee to work on different days or times than usual.

In order to enact these provisions in a legally compliant manner, employers need to:

- Ensure the performance of work on different days or at different times is safe and within the scope of business operations
- Ensure the employee's usual work hours aren't reduced (this would require employers to issue a JobKeeper enabling stand down direction)
- Record any agreement made in writing

Please note: An employee must genuinely consider a request of this nature and cannot unreasonably refuse such a request.

Agreement to take annual leave

These provisions allow an eligible employer to request an eligible employee take a period of paid annual leave provided that:

- The agreement will not result in the employee having less than 2 weeks remaining in their annual leave balance (after the period of leave has occurred)

Employees who make an agreement to take annual leave still accrue their usual leave entitlements during the period of leave. Service is considered continuous for the purposes of redundancy pay and pay in lieu of notice (i.e. it is considered as time worked).

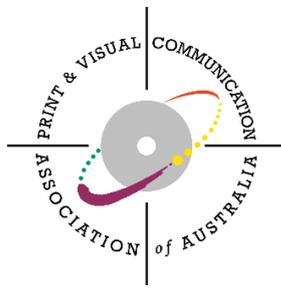
Please note: An employee must genuinely consider a request of this nature and cannot unreasonably refuse such a request.

As is always the case, any agreement to take annual leave must be recorded in writing.

Prior to enacting any JobKeeper enabling directions, we would strongly recommend you contact us for advice in relation to your individual circumstances.

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JobKeeper FAQ

If one of my employees usually earns more than \$1500 (before tax) per fortnight, can I just pay them \$1500 (before tax) per fortnight?

If an employer has issued a JobKeeper enabling stand down direction to reduce an employee's hours to zero, the employer need only pass on the \$1500 (before tax) for the fortnight. Under **no circumstances** can an employee receive less than this amount.

If an employer has issued a JobKeeper enabling stand down direction to partially reduce an employee's hours, the amount an employer must pay will vary depending on their situation. If:

- The reduced hours would result in the employee earning \$1500 or less (before tax) per fortnight, the employer must pay the employee \$1500 per fortnight.
- The reduced hours would result in the employee receiving more than \$1500 (before tax) per fortnight, the employer must pay the difference between the JobKeeper payment and the employee's ordinary wage/salary.

Essentially, an employee must receive either the minimum payment under the JobKeeper scheme or their ordinary wage/salary according to the hours they are working (which includes periods of paid leave) – whichever is greater.

If one of my employees would ordinarily earn less than \$1500 (before tax) per fortnight, can I request they work additional hours?

An employer can request that an employee receiving the JobKeeper payment work additional hours (in excess of their ordinary hours). However, it is important to note that the usual requirements in the Fair Work Act and the relevant award/agreement apply.

The key is that any additional hours are reasonable – as an employee is entitled to refuse a request to work additional hours if they are unreasonable. If the only reason an employer is requesting an employee work extra hours is to 'earn' the \$1500 (before tax) payment, it is unlikely this request will be considered reasonable.

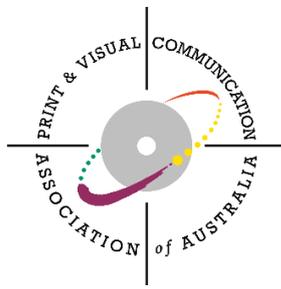
In this scenario, it would also be important for employers to consider additional obligations that may arise from the award/agreement that applies to the employee e.g. overtime and penalty rates.

If I had agreed with my employees to make changes to their terms of employment (e.g. to reduce hours, take paid leave etc.) before the introduction of the JobKeeper scheme, do the JobKeeper enabling directions supersede these agreements?

Any arrangements made between an employer and employee prior to the introduction of JobKeeper scheme will continue to operate subject to the terms of the agreement made. Please note that for any such agreement to be considered permissible, an employer needs to have satisfied the necessary provisions of the award/agreement that applies to the workplace and their employees.

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Do employees continue to accrue leave while subject to a JobKeeper enabling stand down direction?

Yes. Where an employee is subject to a JobKeeper enabling stand down direction, all entitlements will continue to accrue as though the direction hadn't been given.

If my employees are on annual leave, sick leave or long service leave, can I use JobKeeper to help pay them?

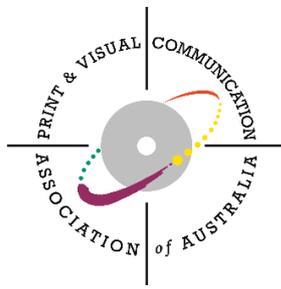
Yes, the JobKeeper payment can be used to pay an employee who is accessing their leave entitlements. If an employee's ordinary wage/salary during a period of leave is more than \$1500 (before tax) per fortnight, the employer must make up the difference between the JobKeeper payment and this amount.

When do JobKeeper enabling directions cease to operate?

A qualifying employer may give an eligible employee a JobKeeper enabling direction from the 9th of April 2020 (when the amendments to the Fair Work Act were passed into law) until the 28th of September (when the legislative provisions will be repealed).

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Managing Work (Occupational) Health and Safety during the COVID-19 Pandemic

Duty to Provide a Safe Workplace

As per Work Health and Safety legislation in normal circumstances, there is an obligation for businesses to do everything reasonably practicable to ensure the health and safety of anyone who enters the workplace (which includes workers, volunteers, customers etc.). This includes limiting the spread of illness (including COVID-19) wherever reasonably possible.

Preventative measures to limit the spread of the virus include:

- Implementing good hygiene practices
- Providing Personal Protective Equipment (PPE) as appropriate
- Ensuring the workplace is cleaned thoroughly and regularly
- Implementing physical (social) distancing measures
- Encouraging employees to monitor their own health and stay home if they are unwell (providing access to personal/carer's leave as per workplace policies and procedures)
- Providing regular information, training and instruction on protocols to ensure workers understand the measures being taken to minimise the spread of the virus

Implementing Good Hygiene Practices

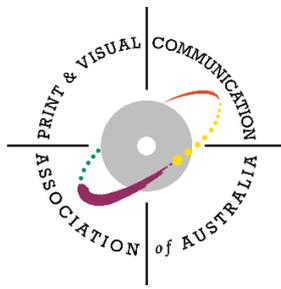
Available evidence indicates that COVID-19 spreads through droplets in the air when an infected person coughs or sneezes. Medical experts have also advised that the COVID-19 can survive on surfaces or objects, meaning an individual may be at risk of catching the virus if they touch a surface or object that has been infected then touch their mouth, nose or eyes.

In order to mitigate this risk, employers should develop policies requiring anyone in the workplace to:

- Wash their hands often with soap and water for at least 20 seconds
 - Before and after eating
 - After using the toilet
 - When touching any potentially contaminated surfaces
- AND**
- Use an alcohol-based hand sanitiser where it is not possible (or practicable) to wash their hands with soap and water
 - Cough or sneeze into their elbow or use a tissue
 - Dispose of used tissues in a closed bin immediately after use
 - Clean and disinfect shared equipment as soon as practicable after use (including communal computers/phones, reception desks, waiting areas etc.)*
 - Display posters that demonstrate how to correctly wash and dry hands and use hand sanitisers (e.g. these posters from the World Health Organisation on [washing hands](#) and [using hand sanitisers](#))

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**Comprehensive information on cleaning and disinfecting surfaces in a variety of circumstances is available from Safe Work Australia [here](#).*

Mandating Physical Distancing Procedures

Physical distancing, commonly referred to as social distancing, is an important measure that has been introduced to curb the spread of the coronavirus. The Department of Health currently requires everyone (excluding family members or members of one's household) to maintain a 1.5m distance from one another. Furthermore, the Department has advised that there should be 4 square metres of space allotted per person where practicable.

Practical steps to implement physical distancing measures may include (but are not limited to):

- Moving equipment/furniture to increase distancing between workers
- Creating floor markings/signage to identify 1.5m distancing requirements
- Reviewing common tasks to identify activities that may need to be modified to adhere to physical distancing requirements
- Deferring large staff meetings where possible (e.g. consider conducting staff meetings using video-conferencing technology where possible, holding staff meetings in smaller groups where it is necessary that meetings are face-to-face)
- Limiting individuals' access to the workplace where non-essential (e.g. contactless deliveries, requiring contractors/visitors to wash their hands upon entry to the premises, using electronic paperwork or photographs of goods in an appropriate location where possible to confirm deliveries have taken place)

**Comprehensive Information on physical (social) distancing is available from the Department of Health [here](#).*

Monitoring Health

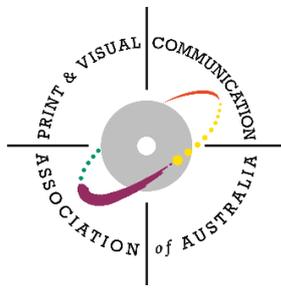
If an employee is experiencing symptoms that suggest they are unfit for work such as fever, cough, runny nose or shortness of breath OR if they have come in close contact with anyone with these symptoms, they should not attend the workplace until these symptoms have subsided. It may also be appropriate to require them to obtain medical clearance from a doctor before returning to work.

Employers may be considering additional steps to monitor the health of their employees including conducting temperature checks to identify whether their employees are suffering from a high temperature (which has been reported as one of the common symptoms of COVID-19).

While this may be considered reasonable in certain environments (e.g. where workers live together in FIFO accommodation), it will usually not be considered reasonable for employers to unilaterally require their employees to undergo temperature checks as it will not help to tell them whether an individual has COVID-19. Additionally, an individual may be asymptomatic

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and/or be on medication that reduces their temperature. Finally, a person who records a high temperature may have this symptom for a reason unrelated to COVID-19.

Working from home

The Federal Government has updated their advice to indicate that if working from home arrangements are working well for employees and their employers, they should continue at this point in time. If an arrangement has been made to allow an employee or employees to work from home due to the COVID 19 outbreak, all parties must consider their WHS obligations. The PVCA HR Service has working from home resources, including a Working from Home WHS Risk Analysis and Working from Home Agreement template available online at www.pvca.org.au.

Mental Health and COVID-19

One of the key considerations for employers and workers during the COVID-19 pandemic is the impact of the outbreak on our mental health and wellbeing. Understandably, the primary focus has been on the steps that can be taken to maintain our physical wellbeing and minimise the spread of the coronavirus. However, work (occupational) health and safety obligations apply to psychological as well as physical health meaning it's equally important to consider what steps can be taken to promote and preserve mental wellbeing.

According to SafeWork Australia, the primary WHS hazards workers may experience as a result of the pandemic include:

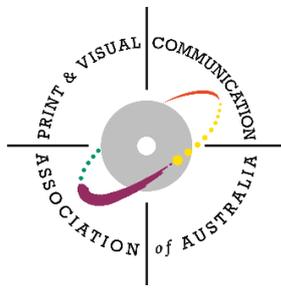
- Exposure to client violence or aggression
- Isolated work – for example if a drastic portion of the workforce is separated to adhere to social distancing measures or is forced to self-isolate
- Poor change management – for example if businesses are (understandably) restructuring to address the impacts of COVID-19 but are not providing adequate information or support to workers

So, what can you do to promote healthy habits during the pandemic?

- Ensure open channels of communication – although face-to-face meetings should be discontinued wherever possible, offer regular opportunities to connect on COVID or non-COVID related issues (perhaps using digital communication platforms)
- Emphasise the importance of maintaining a daily routine – following a regular sleeping pattern, having a balanced diet, subscribing to online health and wellbeing programs
- Encourage staff to reimagine ways to engage with their usual hobbies to help maintain a sense of normalcy e.g. connecting with friends and family online, accessing music and the arts online, signing up to online classes
- Provide access to up-to-date, qualified and trustworthy information on an ongoing basis (from reputable news outlets, the [Department of Health](#) and your relevant state/territory authorities, [Safe Work Australia](#), [Head to Health](#) etc.)

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- Provide access to the host of resources available exclusively to members 24 hours a day, 7 days a week in the wellbeing section of the PVCA HR portal
- Alert workers to available assistance services e.g. Lifeline, 1800RESPECT, BeyondBlue

Additional Considerations

In determining appropriate measures intended to fulfil obligations under work health and safety legislation, employers should remember the following key points:

- Engage in consultation with workers to identify potential hazards/risks and establish appropriate protocols to follow – remember that your workers are one of your best sources of information and their participation will ensure greater buy-in to any policies and procedures you decide to introduce
- Formalise the agreed-upon measures with written policies and ensure there is clear communication (by multiple channels) of the established protocols to all workers
- Keep up to date with the official information released by government sources (e.g. the [Fair Work Ombudsman](#), [Safe Work Australia](#), [Department of Health](#), state/territory health authority etc.)
- Ensure workers are given ongoing access to information released by government sources
- Provide workers with access to support services to address queries or concerns, including employee assistance programs

Finally, and importantly, you may wonder what you should do if someone in your workplace contracts COVID-19 or has been in close contact with a confirmed case of COVID-19. This [infographic](#) from Safe Work Australia provides step-by-step guidance on actions employer should take if they find themselves in this type of situation.

For more information on WHS and workplace relations considerations during this time, contact the PVCA HR Service on 1800 835 167 or email hrhotline@pvca.org.au.

For more health information on the coronavirus, call the Public Health Information Line on 1800 004 599 or the Coronavirus Hotline on 1800 020 080.

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