

Managing an Influenza Pandemic

Information for NSW employers and employees



The World Health Organisation has reported that the world is moving closer to an influenza pandemic, and recommends all countries prepare. A pandemic will directly affect many people's health and well-being, and potentially will impact on workplaces.

There may be increased disruption to the supply of goods and services, absenteeism, illness and the need to care for sick family members.

The NSW Government encourages employers and employees to take a cooperative approach to managing their responsibilities in a fair and equitable manner. It is in everyone's interests for businesses to continue to trade and survive a pandemic whilst allowing people to manage their important and legitimate personal, family and community responsibilities.

The NSW Government is working in cooperation with other Australian governments, the community and businesses to manage the impact of a pandemic across the State.

In NSW, the Office of Industrial Relations (OIR) provides a range of services to help employers and employees understand their rights and obligations under NSW employment laws.

A pandemic will challenge the ability of employers and employees to deal with a range of unprecedented difficulties. Employers should seek to develop a Business Contingency Plan (BCP) to address potential implications should a pandemic occur. For assistance on how to develop a BCP, refer to the resources at the end of this fact sheet.

Existing industrial relations and occupational health and safety frameworks form the basis for pandemic planning in the workplace.

NSW awards and enterprise agreements apply to unincorporated employers in the state jurisdiction. For further information about whether you are covered by state or federal industrial relations laws contact the NSW Office of Industrial Relations.

Health and safety

Employers have a legal obligation to provide and maintain a safe workplace and must take steps to eliminate or control the risks associated with a pandemic. Employers must involve staff in identifying any risks of potential infection. Discuss together how to deal with these risks. Be prepared to consider alternative work practices, and look at other ways of running the business.

For information on how to minimise the spread of infection, refer to the *NSW Workplace Guide to Managing Influenza Pandemic* or contact NSW Health.

Employers can expect staff to continue to attend work where adequate measures to alleviate the risk of infection have been taken and where employees are able to attend.

In certain circumstances governments may implement social distancing or quarantine measures.

Flexible working arrangements

There are a number of options available to employers and employees including working from home, part-time work, flexible hours, job sharing and using leave entitlements. The use of flexible work practices will vary as business needs change, but employers and employees should explore flexible working arrangements on a temporary basis in preparing for a possible pandemic.

Working from home is one option, as certain workplace roles can still be performed from home. Consider whether this is a viable option for the business. Working from home can be used if employees are unable to





get to work due to the pandemic. For more information on health and safety and workers compensation issues when working from home, refer to the *Working from Home Guide* or contact WorkCover.

Part-time work may also be an option. Employees may have increased caring responsibilities and therefore may need to spend more time at home. Check the relevant award or agreement to see if there are any restrictions on employees working part-time.

Look at varying working hours and utilising practices such as flexible hours to limit the number of people at work at the one time. Advise employees what the core business hours are and that they may work their normal day within this time-span, ensuring the business needs are met.

When negotiating flexible hours arrangements, it is important to meet the minimum hours requirements in the relevant award.

Job-sharing may be a suitable option as employees may need to work fewer hours to balance their caring responsibilities. Employees share the available work and remain engaged as permanent employees paid on a proportional basis (depending on hours worked). Check the relevant award to ensure there are no restrictions on job-sharing arrangements.

Sick leave

Sick leave provisions are contained within NSW awards and enterprise agreements.

Refer to the relevant award or agreement to determine the terms of an employee's paid entitlement. If an employee obtains a medical certificate and is unable to work, they will be able to access paid sick leave.

If an employee doesn't have the sufficient sick leave balance, the leave would be either unpaid or an agreement would need to be reached with the employer to access other forms of leave.

Personal/Carers leave

Most NSW awards or enterprise agreements contain provisions relating to personal/carers leave. This type of leave allows an employee to use their sick leave for the purpose of caring for a family member or a member of their household who is sick or requiring care due to an unexpected emergency.

An employer can require an employee to establish that the family or household member needs care, by way of a medical certificate or statutory declaration.

Personal/carers leave provisions allow employees to use other forms of leave, should they have no sick leave available. This may include taking accrued annual leave in single day absences, time off in lieu of overtime, working make-up time, taking accrued rostered days off or in the case of casual employees, unpaid leave.

Other forms of leave

Utilise leave entitlements where applicable. Ask employees to use annual leave, long service leave or any time off in lieu that they may have available.

Employees may be able to access their accrued annual and long service leave, with the employer's agreement, should an employee be unable to attend work. An employer may direct an employee to take their accrued annual or long service leave with one (1) months notice or with a lesser period of notice with the employee's agreement. An employee may also take leave before it becomes due, with the employer's agreement.

An employee may also seek to take unpaid leave with the consent of the employer.

Employer duty of care

An employer has a duty of care to provide a safe and healthy workplace for employees. If the employer has medical certification that an employee is sick, they may direct that employee to go home, in which case sick leave may be paid to the employee if available or another form of leave, as discussed above.

If the employer directs an employee to go home without medical certification, the employer may be obliged to pay that employee ordinary wages without deducting time from their sick leave.

Stand down

In some cases NSW awards or enterprise agreements may contain stand down provisions whereby employees may be stood down without pay. This generally applies where there is a cessation of work for a reason which is outside the control of the employer. If the influenza pandemic affected the employer's capacity to operate or provide work for employees, the employer may have the option of invoking a stand down provision.

An employer may also make an application to the Industrial Relations Commission of New South Wales under section 126 of the *Industrial Relations Act 1996*, to stand down employees if there is no useful work because of any act or omission for which the employer is not responsible.

Should an award not contain stand down provisions and an order is not sought from the Commission, an employee may be entitled to payment from the employer of ordinary wages for the period during which the employee is directed to stay away from work.

Ending employment

In the event that work is unavailable, an employer may end the employment of the employee(s). Appropriate notice would be required to be given based on the relevant award or agreement.

On termination of employment, all outstanding wages and entitlements would be paid out in full to the employee(s).

If an employee believes their employment was terminated unfairly, they may consider lodging an unfair dismissal application with the NSW Industrial Relations Commission. For further information please contact NSW Office of Industrial Relations.

It may be unlawful to terminate an employee who takes time off work because of illness or to meet caring responsibilities.

Redundancy

Employers may be required to pay redundancy to employees in the event their role is no longer available or the business closes. Awards and enterprise agreements set out terms for redundancy payments which generally only apply to permanent employees who have been employed continuously for more than twelve (12) months in workplaces with more than 15 employees. For further information please check the relevant award or agreement or contact the NSW Office of Industrial Relations.

Payment of outstanding monies

If an employer fails to make payment of outstanding monies from a period of employment, in the first instance contact the employer to resolve the under-payment.

If you are unable to resolve the dispute, please contact the NSW Office of Industrial Relations.

Resources

More information on how to manage the employment implications of a pandemic is contained in the [NSW Workplace Guide to Managing Influenza Pandemic](#)

Office of Industrial Relations

For assistance on NSW employment laws and awards contact OIR on 131 628

WorkCover

For assistance on workplace health and safety contact WorkCover on 13 10 50 www.workcover.nsw.gov.au

[Working from home guide to OHS, rehabilitation and workers compensation requirements](#)

NSW Health

For information on risk control measures contact NSW Health on 02 9031 9000. www.health.nsw.gov.au

State plans

[The NSW Human Influenza Pandemic Plan](#)

[The New South Wales Health Management Plan for Pandemic Influenza](#)

National plans

National Action Plan for Human Influenza Pandemic

Australian Health Management Plan for Pandemic Influenza:

Pandemic Planning in the Workplace

Federal workplace related information

For information for employees and employers on federal employment laws contact the Fair Work Infoline on 13 13 94. www.fairwork.gov.au

NSW Legislation

The following legislation covers NSW employment laws:

- *Industrial Relations Act 1996*
- *Industrial Relations (Child Employment Act) 2006*
- *Annual Holidays Act 1944*
- *Long Service Leave Act 1955*
- *Occupational Health and Safety Act 2000*

