



COVID-19: Implications for employers in PNG

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COVID-19: Implications for employers

Since the declaration of a Public Health Emergency of International Concern on 30 January 2020 by the Director-General of the World Health Organisation (WHO), we have watched with increasing concern the spread of the coronavirus COVID-19 across the globe¹. Now the National Government has activated its emergency response plans to contain the health and economic impact of the spread of COVID-19, employers are strongly encouraged to plan and get ready to respond to the outbreak.

This publication addresses a number of the employment, safety and labour issues that will help frame and inform decision-making for both private and public sector employers in this challenging environment. In setting out the various issues that employers must navigate, we acknowledge that containing the epidemic and protecting people is the priority.

1 On 30 January 2020, at the second meeting of the Emergency Committee (EC) convened by the WHO Director-General under the International Health Regulations (IHR), the Director-General on behalf of the EC declared that the spread of the coronavirus COVID-19 satisfied the criteria to determine a Public Health Emergency of International Concern. The IHR is a legally binding international instrument on disease prevention, surveillance, control and response adopted by 196 countries. The purpose and scope of the IHR is to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.



What we know

The emerging consensus is that in addition to the terrible human cost of this virus, there will be a significant impact on the global economy.

The impact on employers is readily understood when noting the WHO advice that all countries should be prepared for containment, including active surveillance, early detection, isolation and case management, contact tracing and prevention of onward spread of the infection. Isolation is one of the key response tools of government to contain the spread of COVID-19. Whilst some people will recover easily others may get very sick very quickly and inevitably, if there is community transmission and the infection becomes widely spread it will dramatically affect businesses.

If COVID-19 is not contained, it is likely that the response measure of isolating affected persons and persons exposed to affected persons will become widespread. In Papua New Guinea, Prime Minister James Marape has announced a state of emergency. This came into effect on 24 March 2020 and will last for a period of at least 14 days to allow the government to impose control measures to tackle the virus and its spread. These measures include a ban on international and domestic flights, non-essential inter-provincial travel and temporary closure of schools. If there is widespread community transmission, there is a high risk that in addition to school closures, offices, mine sites and plants will be required to close.

What should employers be doing to manage throughout the COVID-19 pandemic?

The focus of this publication is on managing and protecting your employees. There is a good chance that your policies on leave and flexible work practices, including working from home, will be tested and may not be adequate as drafted. Indeed, the Prime Minister has already indicated that employers should consider suspending non-essential services and allowing employees to remain at home². Organisations are therefore encouraged to assess their capacity to manage and respond to the challenges the COVID-19 virus will present to their staff and operations.

Your considered response will be required in conjunction with the myriad of business continuity issues that will also demand attention such as interruption of supply chains, disclosure requirements, liquidity and a significant lessening of demand for services, commodities and products.

To assist your thinking and planning we have set out a guide to the likely safety, employment and labour issues, outlining the base position and then questions that you are likely to confront. Employers should, however, at all times be conscious of the particular 'rules' applying to that workplace sourced from contracts, policies and enterprise agreements or awards (rare) and the *Employment Act* and the *Employment of Non-citizens Act*.



² Official Statement from the Office of the Prime Minister dated 22 March 2020; Declaration of a state of emergency by the Head of State in National Gazette G185 dated 23 March 2020.

1 Safety

This is likely to be the issue that presents the greatest challenge to many employers. Remembering first principles will help your deliberations and decision making. Where a risk to health is identified at a workplace, employers must, so far as is reasonably practicable, eliminate the risks, or otherwise minimise the risks. The type of controls required to address the risk of COVID-19 will depend on the level of risk as well as the availability and suitability of controls for each workplace.

Health authorities are reminding all employers of basic hygiene advice, which means making available adequate facilities or products (such as hand sanitiser) to allow employees and other persons to maintain good hygiene practices.

But for many employers the challenges are far greater. Some industries will have specific risks that are elevated because of the nature of their work. For example, health care, airline and other travel, waste management and those involving laboratory, border, customs and quarantine work.

Employers in high risk industries will need to assess the provision and use of appropriate personal protective equipment, such as gloves, gowns, masks, eye protection and respirators, and immediately review their infectious disease protocols and ensure they are up to date and disseminated to all workers

1.1 Responsibilities at the workplace

In general terms, employers must, so far as is reasonably practicable:

- provide and maintain a working environment that is safe and without risks to the health of employees and other persons;
- provide information, instruction, training or supervision as is necessary to protect all persons from risks to their health. Any information, instruction and training needs to be provided in a way that is readily understandable, so any language barriers (both local and foreign) will need to be considered;
- monitor the health of employees and other persons at all workplaces;
- monitor conditions at all workplaces; and
- ensure that persons other than employees are not exposed to risks to their health or safety arising from the operations of the employer.

Employees and other persons at the workplace also have responsibilities. These responsibilities are useful when reminding people why they may be required to provide certain information or be absent from the workplace. In general terms, employees and other persons must:

- take reasonable care for their own health and safety;
- take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons; and
- co-operate, so far as reasonably able, with any reasonable instructions given by the employer so the employer can comply with its responsibilities.

1.2 The importance of assessing risk

Employers need to identify whether there is a risk to the health of employees and other persons from exposure to COVID-19 at their workplace. Identifying the level of risk can include:

- monitoring expert advice as the COVID-19 situation develops;
- reviewing the implementation of infection control policies, procedures and practices to ensure they are effective and are being followed;
- educating and keeping persons at the workplace up to date on new information;
- consulting with others with whom the employer works, particularly contractors and labour hire providers to ensure they are also being active, to the extent necessary, in managing the risk;
- monitoring the latest travel advice; and
- considering whether work activities put other people at risk.

1.3 What controls are available to you?

Where a risk to health is identified at a workplace, employers need to select controls to manage exposure to that risk. The type of controls required will depend on the level of risk as well as the availability and suitability of controls for each workplace, and may include:

- providing adequate facilities or products (such as hand sanitiser) to allow employees and other persons to maintain good hygiene practices;
- advising employees and other persons to self-isolate at home for 14 days if they feel unwell, particularly if they are presenting cold or flu-like symptoms; or
- advising employees to refrain from domestic or international travel in line with restrictions imposed by the National government.

In developing an infection control policy, employers need to know how they will manage

2 Leave entitlements

2.1 How do the usual personal leave entitlements apply to COVID-19?

With widespread isolation measures being implemented it will become common to respond to the situation where an employee or their family member is ill with the COVID-19 virus. The basic annual and sick leave entitlements are set out in the Employment Act. In Papua New Guinea, employees, other than those engaged on a casual basis, are entitled to 14 days' paid annual leave and 6 days' paid sick leave for each year of service³. In addition, many employers offer compassionate/carer's leave which an employee is entitled to take to look after a family member who is sick.

In the context of COVID-19, sick leave will apply if a full or part-time employee is not fit for work because they have contracted the virus. Compassionate/carer's leave (if any) will apply if an employee needs to look after a family member or member of the employee's household who is sick with the virus; or, if an employee needs to look after a family member or member of the employee's household because of an unexpected emergency, such as a shutdown of school facilities which requires the employee to mind a healthy child (noting that the need must be 'unexpected', as in with little or no warning, to trigger the leave entitlement, so forewarned or ongoing closures may not be covered).

Annual and sick leave may be accrued by agreement between the employer and employee up to certain statutory limits: a maximum 56 days of annual leave over a four year period of continuous service and up to 18 days sick leave in any year.

In certain urban areas, common rules established under the Industrial Relations Act provide slightly higher personal leave entitlements. For example, under the Port Moresby Common Rule, employees are entitled to three weeks paid annual leave, nine days paid sick leave and 14 days unpaid compassionate leave per annum.

In an increasingly competitive labour market, it is not uncommon for employers to offer terms and conditions of employment that exceed the above minimum statutory requirements. We would recommend that your human resource division confirm employees' contractual entitlements as a preliminary step to implementing a COVID-19 strategy.

2.2 What information are you entitled to from an employee?

Employees typically have to give notice to get paid for sick/compassionate leave. Essentially this requires an employee to inform their employer as soon as practicable and to advise of the period or expected period of leave.

An employee must also give their employer evidence of the illness or unexpected emergency if their employer asks for it. Medical certificates is a typically accepted form of evidence. While there are no strict rules on what type of evidence needs to be given, the evidence needs to satisfy a reasonable person that the employee was genuinely entitled to the personal/compassionate leave.

It will be worth considering that attending a medical clinic may not be possible if there is a significant COVID-19 outbreak, as people are likely to be directed to stay at home in many instances and not attend a hospital or medical clinic to avoid exposing others.



³ Employment Act, sections 61 and 65.

2.3 What happens if an employee is required to be isolated and confined to their home or they are quarantined – are they entitled to sick leave?

The Employment Act does not have specific requirements addressing this circumstance. Some employers may wish to develop policies to address this situation. An employer should consider its response to this scenario. It may include options such as:

- making arrangements for remote working (where feasible/practicable);
- if remote working is not practicable, then the response may be to suggest an employee take:
 - annual leave;
 - any other leave available to an employee (such as long service leave or any other leave available under an award, enterprise agreement or contract of employment); or
 - any other paid or unpaid leave by agreement between the employee and the employer, including compassionate leave.

2.4 Are employees required to tell employers they have been directed to isolate?

First, in our view it is reasonable to expect employees to contact their employer as soon as practicable if they are unable to attend work because they are required to be isolated at home or to enter quarantine because of exposure to COVID-19. In the circumstances of an outbreak such as this we think it is a reasonable direction to require an employee to inform you if they have been instructed to isolate or are in the category of persons within the scope of any government travel advisory.

It is also not unreasonable, and would be an appropriate safety control, to require such an employee to stay at home and not permit them to attend at the workplace.

Employers are encouraged to consider how they intend to manage these situations. It may be that it is possible to require persons who are in isolation or otherwise not able to attend work to work remotely if practicable. The situation may be more complicated in the event an employee has been working abroad or travelling for work commitments and has got stuck through no fault of their own. Employers may counter that it would be reasonable to continue to pay their salary as normal until they return (or could reasonably do so).

2.5 What if an employee wants to stay home or refuses to attend work?

You may also be asked whether an employee can stay at home in circumstances where there is no travel restriction and it is otherwise safe to attend work. The usual situation is that in this instance an employee would need to make a request to work from home (if possible) or to take some form of paid or unpaid leave, such as annual leave or long service leave. An employee is not otherwise entitled to be paid if they refuse a reasonable direction to attend work as directed.

It is prudent for employers to exercise some caution with these arrangements. In this dynamic environment you may accommodate some flexibility in managing your staffing needs, particularly if other employees become ill or have caring responsibilities. Arrangements may need to be made subject to the resourcing needs at the workplace so they can be altered at short notice. This means being upfront about how an employee's responsibilities, for example child care (including in the event of school closures), are to be managed.

If the individual refusing to come into work is pregnant or otherwise at high risk, you should tread carefully and may have to be more flexible. If someone has genuine fears about attending work, the stress of being required to do so or alternatively face disciplinary action may itself adversely affect their health.

Effectively managing these arrangements requires employers to be on top of the latest health information being provided by the office of the Prime Minister and the health department. Events are unfolding quickly and your intelligence needs to be updated to reflect the available public health advice.

2.6 Can an employer require employees to take annual or long service leave?

The Employment Act does not provide any guidance as to whether an employer can require an employee to take paid annual leave. Absent any contractual right that allows this, we think requiring employees to use accrued leave entitlements will require cooperation or express consent. We don't think it would be unreasonable to request an employee to take leave taking into account relevant considerations such as the needs of both the employee and employer's business and alternative more drastic measures e.g. stand down without pay or (ultimately) termination of the employment contract.

This is not a simple issue to manage in the context of the uncertainty regarding the extent to which the COVID-19 virus will impact employers.

One first step would be to start communication with employees, and where required, their representatives, about this option.

3 How do we manage business continuity?

3.1 Flexibility and working from home

Employers should be across their policies concerning working flexibly or consider preparing new policies as part of their COVID-19 preparedness strategy. Many organisations are testing their capability to continue operations with the majority, or even all, of their employees working remotely. To understand how this would be implemented at your organisation you should:

- Review existing working flexibly policies – does your policy set out what is required of employees working from home? You should be looking now at how you will ensure the health and safety of people working remotely and updating your policies if necessary.
- Communicate flexible working policies and expectations around working remotely – are employees aware of various on-going obligations around confidentiality and safe work practices when working at home? In particular, it will be important to remind employees of the current processes and requirements for working safely.
- Review and test your support mechanisms for employees working remotely over extended periods.

The possibility that large numbers of employees will be required or permitted to work remotely will challenge the systems of many employers.

For many in Papua New Guinea, it may be a new way of working and effective execution extends beyond your communications (not everyone will have a home or mobile phone) and IT capabilities, which are of course critical.

3.2 Supporting well-being

Employers need to consider how they can continue to manage performance whilst supporting the well-being of their employees in what threatens to be a highly anxious environment for many. An important element will be having updated information that appropriately frames your perspective on the impact of the outbreak on your people and business.

3.3 Managing hours of work

Another consideration will be managing overtime. Compliance obligations remain important in a crisis. There will undoubtedly be occasions when requesting employees to work additional hours is necessary and reasonable.

Reiterating your approach to overtime as part of your preparations should be considered.

4 Travel

4.1 Can an employer give directions about an employee's non-work related travel?

In normal circumstances an employer has little influence or control over the travel plans of employees outside of work. It is in our view different in responding responsibly to the threats posed by the COVID-19 outbreak. It is likely to be reasonable to expect employees to abide by the travel advisories of the National government (as updated from time to time).

Employers may also choose to inform employees that when making travel plans they should understand the risks they are taking by reference to the government's current travel advisories/restrictions.

It is also prudent for employers to remind employees who are returning from travel and feel unwell that before returning to the workplace they should a clinic/hospital and seek medical advice. This can be framed as an expectation.

4.2 Work-related travel

The position is of course different for work-related travel. You should make sure that travel policies clearly address where employees can travel to, the reasons for travel and permission required. Employers need to be assessing the risk of requiring employees to travel (particularly overseas), even for critical meetings.

In this environment, informing employees that travel policies will be under regular review also can help communications and lessen anxiety. You should also carefully check the insurance cover now afforded for work-related travel.



5 Labour

The course of the COVID-19 outbreak is very uncertain. However, as various reports from government, central banks and the OECD suggest, there are likely to be negative effects that will test the resilience of businesses. It would be prudent for companies to take a fresh look at worst-case scenarios and develop contingency strategies against each.

5.1 Managing operating costs

Planning is difficult as the events unfold because the extent and duration of the impacts are not yet known. In this environment having staged responses is likely to be more attractive than the alternatives. The priorities will be the welfare of your people, the need to retain talent and of course the need to protect the business in the long term.

The most difficult decision for some businesses will be whether or not to implement wholesale lay off of employees. There are a number of alternatives and supplementary steps you can consider first, including:

- Hiring – you may choose now to freeze new hires; you may also consider whether it is open to you to withdraw or amend offers of employment to candidates;
- Reducing supplementary labour – arrangements can be implemented to reduce contractors, labour hire and casual employment;
- Costs – is it possible to amend or defer salary increases, bonus, share plans?
- Rostering – can changes be made to rosters, hours of work, shift patterns, overtime arrangements?

5.2 Consultation requirements around change

The notion of ‘consulting’ about workplace change, though not a statutory requirement, is considered best practice. Employers should carefully consider whether any of the above initiatives require consultation with employees and/or their representatives prior to implementation of new or changed workplace practice and procedures.

5.3 Stand downs

Employers do not have a statutory right to suspend performance of the obligations in the employment contract in the absence of an express right to do so conferred by the contract, (incorporated into contracts by reference), enterprise agreements or awards (the latter are rare).

Employers have no general / common law right to stand down or send home employees for whom they cannot find work, whether because of a turndown in business or because of factors outside the employer’s control such as the outbreak of COVID-19. The power to stand down is derived from contract, policies, enterprise agreements or awards.

Stand downs will be closely scrutinised and likely to be challenged if not implemented strictly in accordance with the applicable legal obligations. It should not be assumed that a lawful stand down is triggered in all circumstances where employees cannot be usefully employed.

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