



RETURNING TO THE PHYSICAL WORKSPACE



HOW TO DEAL WITH EMPLOYEES REFUSING TO RETURN TO THE PHYSICAL WORKPLACE

Not every employee is going to be excited about the prospect of returning to the physical workplace. For some, the idea may be terrifying, be it due to the increased risks of exposure to COVID-19 or a reluctance to go through yet another change. For others, they are enjoying a new found flexibility in working from home and there is a strong reluctance to let it go.

There is no gentle way to put this, this topic is going to cause employers pain. It's highly sensitive and emotive and there is no simple response on how to counter it. There are however a number of consideration points, these are outlined below.

HAVE YOU GOT A COVIDSAFE PLAN?

The first thing employers need to be doing before they direct employees back to work is to develop a 'COVIDSafe plan'. This is absolutely essential and is covered in a lot more detail in our article 'Developing a COVIDSafe Plan'. Essentially this is a robust risk assessment plan that takes into consideration legal requirements (such as public health orders, health directions, etc.) and information from government, industry and employee associations and ensures Workplace Health and Safety requirements are adhered too.

ARE THERE ANY SPECIAL CONSIDERATIONS?



Next, special considerations need to be made for disabled employees, 'vulnerable' employees and employees with carers responsibilities who are going to have great difficulty returning to work due to an issue associated with COVID-19. Ensure that if you have vulnerable employees you follow the special provisions (as stated by Australian Health Protection Principal Committee) for vulnerable people in the workplace. Tread very carefully in this area and get advice as necessary. This is a risk area for what are called 'general protections' claims, when employees argue you treated them in an unfair way because of their particular circumstances - e.g. a disability, family responsibilities, union membership or a complaint they made against you.



Finally be reasonable and consider the reason and timing for returning to the physical workplace. Examine issues of productivity (home vs workplace) and the reasons why an employee needs to be physically present in the workplace.

CONSULTATION

The most important thing throughout this process is to **consult and communicate with your employees**. You have a **duty of care** to protect the health and well being of your employees. You need to reassure your employees that you are taking the transition back to the workplace very seriously and you need to be frequently communicating and reassuring your employees. Start talking to your employees early about your plans to transition to the physical workplace, listen to them and then together try to find a workable solution for both parties. This does not mean you have to accept a refusal to return by an employee, but more to encourage open communication and cooperation.



At the end of the day, if you are doing all the right things like following the law (and all relevant advice and guidance from industry bodies) and you are confident you have all the appropriate Workplace Health and Safety measures in place, the decision on whether an employee returns to the physical workplace or not is entirely up to you.

If you direct your employees to return to the physical workplace and they refuse to follow a reasonable direction this may lead to disciplinary action being taken against the employee. However, like much of what we have experienced with COVID-19, this situation is complicated and it's really important that you seek advice if you are getting push back or refusal from your employees about their return.

In the next article, we provide some recommendations on the policies you should assess updating or implementing in the COVID19 and post COVID 19 world.

If you are facing any of the issues described above, contact us now for a [complimentary Discovery Session](#) with one of our Employee Experts.

