

Workplace Relations Update, November 2022

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Post-pandemic employment considerations

Changes have recently been made to Pandemic Orders across various jurisdictions regarding:

- workers' COVID-19 vaccination
- quarantine and isolation requirements

The rules for health care workers differ from state to state. OTA members should review the specific vaccination and isolation rules that apply in their jurisdiction, which can be accessed via the [Fair Work Ombudsman's website](#), or the health department's website of each state or territory.

It is important to note that occupational therapy services can take place in a variety of workplace settings. For example, occupational therapists might work in corporate, educational, or residential care settings. There may also be different vaccination or isolation requirements that apply between public or private healthcare settings. All occupational therapists must take into consideration the pandemic orders that apply to their specific workplace setting.

With vaccination and isolation mandates being lifted across a range of industries in most states and territories, the onus is on the respective workplaces to manage their infection control policies and meet their Work, Health & Safety (WHS) obligations.

Maintaining a COVIDSafe workplace

Even when public health orders ease, it is important for private practice owners to remember that under WHS laws, they still have a duty to protect their staff from harm and maintain a COVIDSafe workplace. The same applies to sole traders, who have a responsibility to ensure their work practices do not cause harm or effect the health and safety of any contractors they engage, their clients or anyone else.

Practice owner/sole trader WHS responsibilities include:

- Having a COVIDSafe plan in place that is regularly updated.
- Implementing infection control measures - COVID-19 vaccination is one the control measures currently available.
- Providing clear direction, guidance, reassurance and support to employees and other key stakeholders.
- Ensuring that workers and other key stakeholders are in good health and do not attend the workplace if they are unwell.
- Notify your health and safety representatives (HSRs) and your workforce of any positive cases of COVID-19 and follow the record keeping, reporting and contact tracing requirements in to your jurisdiction.

All states & territories require workplaces to have some form of a COVID-safe plan. Workplaces should regularly conduct a risk assessment and implement control measures to address any risks. For example, make sure your policies, procedures and systems address the following concerns:

- Who's in charge of preventing, responding to and reporting a COVID-19 outbreak in my practice?
- Do I have a good emergency plan in place?
- What infection control measures will I implement?
- What does social distancing mean in my practice?
- What forms of contact tracing am I implementing in my practice?
- What is my stance and approach on monitoring COVID-19 vaccination of my staff?
- What privacy, record keeping, and anti-discrimination measures will I implement?
- Am I providing sufficient accessible infection control communications and training to your staff?
- Am I providing sufficient leave entitlements and workplace adjustments to my staff?
- Am I providing sufficient accessible mental health support to my staff e.g., an employee assistance program?

Infection control training

The Victorian Department of Health has launched a free, online infection prevention and control (IPC) eLearning package covering key concepts such as the chain of infection, how to perform correct hand hygiene, PPE, cleaning, waste disposal, and working in an outbreak. The content is general in nature but is especially designed for everyone that works in sensitive settings, and participants receive a certificate of completion.

Anyone can access the interactive package on-demand, from any device. The content is designed to be easy to understand and is delivered in bite-sized chunks. [Click here to access modules >](#)

Are workers testing positive for COVID-19 still required to isolate?

Current advice from the Australian Government Department of Health and Aged Care states that “workers providing close personal care in high-risk environments such as residential aged and disability care facilities and hospitals must not attend work for 7 days after testing positive for COVID-19 and while symptoms persist.”

It is important for practice owners to have clear policies and processes in place to manage staff who are unwell. This may include:

- WHS
- infection control
- personal leave
- return to work plan
- communications regarding welfare and wellbeing, support resources, required notice periods and required evidence

Pandemic Leave & High-Risk Settings Pandemic Payment

Unpaid pandemic leave is available until 31 December 2022 in the following awards:

- Health Professionals & Support Services Award
- Social, Community, HomeCare & Disability Services Award
- Aged Care Award
- Aboriginal & Torres Strait Islander Health Services Award
- Supported Employment Services Award
- Ambulance and Patient Transport Award

Eligible employees can access up to 2 weeks’ unpaid pandemic leave (or more by agreement with their employer) if they can’t work due to:

- A requirement to self-isolate by government or medical authorities, or via medical advice, or
- Measures taken by government or medical authorities in response to the pandemic.

The leave is available in full immediately to full-time, part-time and casual employees. Employees don’t have to accrue the leave or use all their paid leave before accessing unpaid pandemic leave.

Workers who are concerned about the financial impact of isolating due to COVID-19 should check their eligibility for the new [High-Risk Settings Pandemic Payment](#).

Can I still require my staff to be vaccinated?

Where a public health order does not apply, private practice owners need to consider a range of factors, such as their WHS obligations and their workplace environments, to assess whether it is reasonable to continue to require their employees and contractors to receive COVID-19 vaccinations. Meeting WHS obligations and reducing the risk of potential litigation from either employees or others (e.g. clients, visitors) will be one of the key justifications for practice owners continuing to mandate the COVID-19 vaccine in their workplace, regardless of public health orders.

An increasing number of Australian workplaces across a range of sectors have chosen to implement and maintain mandatory COVID-19 vaccination as a condition of employment (and/or on-site attendance). The Fair Work Ombudsman advises that this is likely to be considered reasonable in healthcare settings because employees are required to have close contact with people who are particularly vulnerable to the health impacts of COVID-19. It is also worth noting that on 31 March 2022, the Australian Health Protection Principal Committee (AHPPC) recommended maximising COVID-19 and influenza vaccination uptake and coverage as an important step in providing protection against both severe illness and infection.

Occupational therapists who are employees must comply with any lawful and reasonable directions by their employer. If private practice owners have lawfully mandated COVID-19 vaccination in their workplace, then employees must comply. Ensuring that a vaccination mandate is lawful may include seeking professional advice and ensuring terms relating to COVID-19 vaccinations are included in employment contracts or agreements.

Reviewing your policies, processes and agreements regarding worker vaccination

A tailored vaccination policy is the appropriate way for private practice owners to establish their approach to COVID-19 vaccination and provide clear guidance to their staff on mitigating the risks of infectious diseases such as influenza and COVID-19. Your workplace vaccination policy will usually be a component of your existing infection control policy. It should include:

- Information about your organisation's vaccination program and implementation plan
- How you will manage communications, record-keeping and privacy
- Your processes for managing scenarios whereby an employee chooses not to be vaccinated
- Employer and employee rights and responsibilities

Practice owners intending to make COVID-19 vaccination a condition of employment in their practice should also review their recruitment and onboarding processes, their privacy policy, and all employment agreements. When reviewing your workplace protocols, make sure you keep in mind student placements, contractors, agency staff, and anyone who attends the workplace.

Communication and mental health support

Any time that private practice owners update their policies, employment agreements, or WHS protocols, they should consult with their team and provide ample opportunity for their staff to discuss any concerns. It is best practice for private practice owners to take a compassionate approach to resolving any employee concerns. Always listen carefully and talk things through.

In some instances, you may need to offer extra support services such as an Employee Assistance Program (EAP). Mental health issues in the workplace are becoming increasingly complex, with occupational therapists and practice owners continuing to face post-covid change and uncertainty. It's important to have access to a range of support resources. Confidential EAP counselling allows practice owners and occupational therapists to proactively address their mental stress before it escalates.

Workers' compensation

Under the disease provisions of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (SRC Act) a worker can put in a workers compensation claim if their employment contributed to a significant degree to them becoming sick, injured or diseased. For example, this could include causing or exacerbating a mental health illness or contracting a disease such as COVID-19.

Worker compensation schemes differ from state to state, so OTA members should refer to the safety authority in their jurisdiction. Practice owners can mitigate workers' compensation claims by taking proactive measures to maintain a COVIDSafe and mentally healthy workplace.

It is always important for occupational therapists and practice owners to understand their workplace rights and obligations. If you have any questions or require more detailed or tailored information, it is advisable to seek professional advice, whether this be through the WHS authority in your jurisdiction, the Fair Work Ombudsman or an HR consultancy that works closely with the allied health sector such as WorkPlacePLUS.

Hybrid working arrangements

Over the past few years, many people's work arrangements changed because of the impacts of the pandemic. These changes include more people working from home as well as changes to rosters, hours of work or duties.

Nowadays, many people continue to seek flexibility in their working arrangements, to help them reduce commute time, manage health risks and meet family or other commitments. The Fair Work Ombudsman advises that it is best practice for employers to give their employees flexibility where possible to help them balance their work and personal lives.

The hybrid working arrangements model means an employee works partially from home or another location and partially from the practice.

Practice owners should consider hybrid working arrangements on an individual basis as a one size fits all approach will not be effective. Trial periods are recommended, and the arrangements need to be carefully considered, documented and monitored. Ultimately, employees must still meet the inherent requirements of their roles.

It is advisable for your practice to have a flexible work policy and/or working from home policy.

Key considerations and challenges regarding hybrid working arrangement include:

- Formalised arrangements & regular reviews
- Working hours, availability & contactability
- Meeting the business requirements
- Maintaining work culture, engagement and productivity
- Managing performance and disciplinary issues
- Work, health and safety (WHS)
- Legalities

Flood support

WorkPlacePLUS is offering free HR advice to flood-affected employers.

It is common for people experiencing a crisis such as a natural disaster to experience distress, overwhelm, brain-fog etc which makes decision-making difficult, so it is important to provide them with easy, simple access to support and information.

Please note the types of issues WorkPlacePLUS can assist with talking through during a crisis:

- immediate crisis management for their organisation and their staff
- their business continuity plan
- staff leave entitlements
- accessing relief from local and national agencies
- accessing mental health support

The following information is copied from [our blog](#):

"WorkPlacePLUS is available to talk things through and offer practical support with immediate HR issues such as employer obligations during an emergency, staff leave entitlements, rostering and payroll, business operations, accessing flood relief and recovery and coordinating emergency approval applications for residential aged care."

To access this offer, members can call WorkPlacePLUS on (03) 9492 0958.

Mentally healthy workplaces

Factors at work that can harm mental health are known as psychosocial hazards. Under model WHS laws, practice owners have a duty to protect their workers from psychological harm. In July 2022, Safe Work Australia published an updated guide on for employers called *Model Code of Practice: Managing psychosocial hazards*. [Access the guide >](#)

There are a number of proactive tools and strategies practice owners can use to foster a mentally healthy workplace. For example:

- Developing and implementing a workplace mental health strategy and policy
- Providing manager and supervisor training
- Checking in regularly with staff
- Promptly addressing issues, red flags, complaints or concerns
- Running facilitated group discussions
- Conducting cultural reviews and staff wellbeing surveys
- Offering flexible working arrangements, workplace adjustments and health leave
- Providing routine health checks and access to mindfulness classes
- Providing a reward and recognition program
- Providing an Employee Assistance Program (EAP)

During the challenges of the pandemic, floods and beyond, we've seen a surge in claims of work-related stress. In times of change, uncertainty, stress, or crisis, it is extremely important to ensure your staff have access to a range of reliable mental health support resources.

An EAP is an employer-funded support service delivered by an independent provider, which allows your staff to access confidential support for issues that may be affecting their mental health and impacting their attitude, performance or wellbeing at work.

EAPs delivered by [WorkPlacePLUS](#) provide confidential, short-term, solutions-focused support to employees experiencing work or personal issues. For example:

- Natural disasters / disease / trauma
- Workplace conflict / critical work incidents
- Managing difficult behaviours (work or home)
- Organisational change / redundancy
- Relationship / LGBTQIA+ / family issues
- Addictions (drug, alcohol, gambling)
- Grief / loss / bereavement
- + more

Christmas closure / Managing annual leave

Employer obligations over Christmas/New Year's shut down period

Will your practice be closed over the festive season? It's important to provide staff with a minimum of one month's notice of your shut down period, including any requirements for staff to take annual leave. More information on managing employee annual leave balances over the Christmas/New Year's shut down period is provided below.

Practice owners are required to pay permanent employees their usual wages during Christmas/New Year's shutdown period unless their award or agreement says otherwise. Check your award or enterprise agreement regarding what employees should be paid when working on a public holiday.

The down time after Christmas is a great opportunity to review your workplace practices. This is important to ensure that you are meeting your employment obligations, preventing risks and operating smoothly into the new year.

Skeleton Staffing

Some workplaces require continuous staffing over the Christmas Holidays, such as medical and aged care facilities. Employers and managers should prepare by:

- Finalising staff rosters including any extra arrangements needed for contract workers.
- Clarifying accountabilities including who will have building access.
- Providing updated emergency contact information.
- Planning ahead for any financial transactions or admin procedures that may be needed during the shutdown period.

Managing employee annual leave balances

It is important for practice owners to be familiar with the rules around annual leave entitlements and, ideally, be able to come to an agreement with employees around managing leave balances.

Annual leave is an entitlement for employees which is to be taken regularly to ensure that they have appropriate down time and can relax. Not taking accrued annual leave can be hazardous to the health and safety of employees.

Excessive accrued annual leave balances can represent a significant financial liability for practice owners. Here are some general options for managing employees with excessive annual leave balances:

- **Shutdown** - Depending on business requirements, practice owners may shut down during quiet periods, for example over Christmas/New Years, and require their staff to take annual leave during this time.

The Fair Work Act says that if a requirement is “reasonable” you can insist employees who are not covered by an award or agreement take a period of annual leave. Enforcing staff to take leave over a shutdown period is even given as an example of a “reasonable” condition. But if your employees are covered by an award or an agreement, you will need to check the relevant provisions.

- **Direction to take leave** - If an employee has accrued an excessive amount of leave, it is considered “reasonable” to direct them to take annual leave. While the Fair Work Act doesn’t define how much leave is “excessive”, greater than four weeks can be used as a general guide (this is used in many agreements and policies).

If your employees are covered by an award or an agreement, you will have to check those specific provisions. Most modern awards now provide for employers to direct employees with excessive leave balances to take paid annual leave. In certain circumstances, such employees can also give their employer a written notice requiring paid annual leave to be granted.

- **Cashing out of leave** - Employers can cash out some of an employee’s leave balance, but only if the worker agrees to it. The agreement has to be in writing and the employee can’t be left with a leave balance of less than four weeks. Staff employed under a registered award or agreement can only cash out a maximum two weeks’ leave every 12 months.
- **Requiring employees to use leave within a certain period** - Some employers ask their staff to use their leave in the same year they accrue it, by stating in their policy that if an employee builds up a certain amount of leave, they must talk with their manager about a mutually convenient time to take it. Such policies may “encourage” staff to take leave, but these can’t be legally enforced unless the requirement is deemed “reasonable”.

Accrued leave can’t be lost just because an employee hasn’t used it within the stipulated time. An employee who doesn’t comply with the policy is still entitled to accrue leave and have it paid out on termination.

Paid family and domestic violence leave

On 27 October 2022, The Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 passed both houses in parliament. This updates the National Employment Standards (NES).

Effective 1 February 2023, employees affected by family and domestic violence will be entitled to 10 days of paid Family and Domestic Violence (FDV) Leave per year, up from the current 5 days of unpaid leave per year. Small businesses will have until 1 August 2023 for the changes to take effect.

FDV Leave is available to employees who have experienced violent, threatening, controlling, or abusive behaviour by a close relative, a member of an employee's household, or a current or former intimate partner of an employee. The entitlement allows the affected employee to take time off from work to do things necessary to alleviate their situation, such as seeking support, finding safe accommodation, or attending court hearings, without putting their employment at risk.

The new entitlement will apply to all employees, including casual employees and employees under enterprise agreements which already have paid FDV Leave entitlements. Employees will have access to paid FDV Leave from the day they commence employment, and the entitlement will refresh every year.

Practice owners should update their leave policies and monitoring systems to reflect the new changes.

SCHADS support

The Social, Community, HomeCare and Disability Services (SCHADS) Award is one of Australia's most complex modern awards to decipher and implement correctly. But it is important to ensure that you are paying staff at least the minimum entitlements and mitigating the risk of a breach under the SCHADS Award. If you make a mistake, you will be liable for back pay and a potential penalty.

Changes to the SCHADS Award came into effect on 1 July 2022. The transitional period, granted by Fair Work to allow employers to negotiate and implement the changes, ended on 1 October 2022.

To support you with interpreting and applying the SCHADS Award correctly, WorkPlacePLUS has developed a special SCHADS Consultation Offer which includes a copy of our comprehensive SCHADS Analysis Guide. [Learn more >](#)

HR/IR member support

All OTA members receive special member benefits through WorkPlacePLUS for support with HR and IR issues. For more information, contact Anna on (03) 9492 0958 or visit WorkPlacePLUS.com.au.

Post-pandemic employment considerations

Checklist for occupational therapists who are employees or independent contractors

- Review the specific vaccination and isolation rules that apply in your jurisdiction and your specific workplace settings.
- Review your Work, Health & Safety (WHS) obligations.
- Review and comply with your employer's policies and processes regarding:
 - WHS
 - Infection control
 - Mental health / workplace wellbeing
 - Privacy & confidentiality
 - Personal Leave
 - Returning to Work
 - Workers' compensation
- Review and comply with your employer's COVIDSafe plan including infection control protocols.
- Speak with your employer about any questions or concerns you may have.
- Seek reliable, fact-based information and resources e.g.:
 - Employee Assistance Program
 - High-Risk Settings Pandemic Payment
 - Australian Government of Health and Aged Care
 - Fair Work Ombudsman
 - Safe Work Australia

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Post-pandemic employment considerations

Checklist for practice owners including sole traders

- Review the specific vaccination and isolation rules that apply in your jurisdiction and your specific workplace settings.
- Review your Work, Health & Safety (WHS) obligations.
- Review and/or update the following policies and processes in your practice:
 - WHS
 - Infection control
 - Mental health / workplace wellbeing
 - Privacy & confidentiality
 - Personal Leave
 - Returning to Work
 - Workers' compensation
 - Communications regarding welfare and wellbeing, support resources, required notice periods and required evidence
- Review and/or update the COVIDSafe plan in your practice including infection control, record keeping, and reporting protocols.
- Provide clear verbal and written communication, consultation and updates to employees and other key stakeholders regarding any changes you are making in the workplace to improve WHS.
- Provide clear direction, guidance, reassurance and support to employees and other key stakeholders, including reliable, fact-based information and resources e.g.:
 - Employee Assistance Program
 - High-Risk Settings Pandemic Payment
 - Australian Government of Health and Aged Care
 - Fair Work Ombudsman
 - Safe Work Australia
- Seek professional advice, whether this be through the WHS authority in your jurisdiction, the Fair Work Ombudsman or an HR consultancy that works closely with the allied health sector such as WorkPlacePLUS.

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