

# Emergency HR Response – Information for Public Sector Employers



**Victorian  
Public Sector  
Commission**

---

This resource has been produced to provide Victorian public sector employers with information about their HR response to emergencies, such as natural disasters, outbreaks of infectious disease or other unforeseen incidents.

In July 2009, the [Public Administration Act 2004](#) ('the Act') was amended to include emergency provisions that empower the Premier to **declare an emergency** (Part 7A) for the purposes of mobilising the public sector workforce.

This information sheet contains:

- guidance for public sector employers to assist them to respond to all types of emergencies (whether an emergency is declared under the Act or not)
- information about changes to the Act regarding employer powers in **declared emergency** situations.

This resource should be read in conjunction with relevant employment agreements and awards.

## 1. Responding to Emergencies

During an emergency, public sector employees may become incapacitated or they may need to stay at home to care for family members. In the event of reduced public transport services, many employees who are reliant on public transport may have difficulty getting to work, further increasing absenteeism.

Increased employee absenteeism may compromise the ability of the public sector bodies to meet service delivery requirements. Government and boards will have expectations about service delivery standards, priority setting and risk mitigation and all public sector bodies need to plan to deal with the potential human resources implications of an emergency in respect of continuity of service and staff management.

Many public sector employees and their supervisors will have questions about:

- employer and employee rights and responsibilities
- employee entitlements
- alternative work arrangements
- benefits
- leave and pay flexibilities
- occupational health and safety requirements.

## 1.1 Providing a Safe Work Environment

At all times, employers must be aware of their OH&S obligations and as far as is practicable, must provide a safe and healthy workplace for employees. WorkSafe (Victoria's occupational health and safety body) publishes guides to assist employers such as *Emergency management – Developing a plan for a small organisation* and *OHS preparedness for an influenza pandemic: A guide for employers*.

## 1.2 Planning for Flexibility

Employers and employees will need to be flexible in order to minimise the disruption to work and home life that an emergency may cause. In addition to possible personal sickness, many employees may have a greater need to care for dependents during an emergency and planning for flexibility can provide for this eventuality.

Options for flexible and home-based working arrangements are already available to many public sector employees. Expanding the availability of these options during an emergency is one means by which public sector employers might reduce absenteeism. Employees are required to seek their employer's approval prior to commencing a flexible and home-based arrangement.

## 1.3 Leave Entitlements

Many employees will require leave during an emergency for a variety of reasons. Employers should establish local procedures for recording and approving applications. In the event of an emergency, employees may find that access to medical practitioners is limited. Employers may wish to accept statutory declarations where there are existing requirements for the provision of a medical certificate.

It is important that processes are established to protect vulnerable employees and employers need to consider how best to manage employees once they have exhausted their personal/carers leave entitlements.

## 1.4 Sending Sick Employees Home

In the event of an infectious disease emergency, such as pandemic influenza, employers may need to send sick employees home. Where an employer forms a 'reasonable belief' within the meaning of the [Disability Discrimination Act 1992](#) and the [Equal Opportunity Act 2010](#) that an employee poses a risk to the health of others in the workplace, an employer can and should direct that employee to not report for work until fit for duty.

## 1.5 Employee Attendance

Providing the workplace is safe, fit employees are expected to report for work as usual during an emergency. Employers should ensure that employees are aware that they will be expected to report for work unless they are on approved leave. Employers must also encourage employees to discuss any OH&S concerns with their employer.

Some employees may feel anxious about coming to work during an emergency. Encouraging their participation in planning processes and providing clear and regular communication is crucial to alleviating employee concerns and minimising unnecessary absenteeism.

## 1.6 Collecting Personal Information

An employer's ability to collect personal information about their employees is strictly regulated by both the [Health Records Act 2001](#) and the [Privacy and Data Protection Act 2014](#).

During an emergency, unless directed to, employers should consider carefully whether there is an additional requirement for collecting any further health or personal information concerning their employees.



## 1.7 Payment of Salaries and Other Entitlements

In order to ensure that employees are not disadvantaged during an emergency and to assist in maintaining morale, it is essential that payroll functions are not disrupted. Employers may wish to consider training additional employees in the payroll functions of their workplace.

Payroll functions should be regarded as absolutely critical and employers who outsource their payroll functions to external agencies should ensure those agencies have comprehensive continuity plans in place.

## 1.8 Employee Assistance Programs

As part of an employer's duty of care for the occupational health and safety of employees, Employee Assistance Programs (EAPs) are a valuable resource. Many workplaces have EAPs, and services provided to employees through EAPs include external confidential counselling on personal or work related issues.

In the event of an emergency, employees may seek assistance from EAPs. Employers should ensure that their employees are aware of any EAPs available to them and those who outsource their programs should ensure their suppliers have comprehensive continuity plans in place.

## 1.9 Minimising Unlawful Discrimination

Employers have a responsibility to ensure that employees are not unlawfully discriminated against, knowingly or unknowingly, by their managers, their colleagues and the organisation.

For example, in the event of an infectious disease emergency such as pandemic influenza, treating all employees as potentially infectious will both reduce the spread of the infection and minimise any unlawful discrimination of employees suspected of being infectious. Employers can follow relevant WorkSafe social distancing guidelines to minimise exposure to the virus in the workplace. The guidelines are contained in the WorkSafe publication *OHS Preparedness for an influenza pandemic: A guide for employers*.

Employers should also be aware that if an infectious disease originates from a particular geographical region, employees from that region (or perceived to be from



that region) may be at an increased risk of experiencing unlawful discrimination from others. Employers should remain aware of the potential for heightened unlawful discrimination in the workplace during an infectious disease emergency.

## 1.10 Volunteering

Volunteers make an extraordinary contribution to Australian society and Victorians have a proud history of volunteering in times of emergency. Volunteers will form a valuable resource during the response to and recovery from an emergency.

Some employees will be registered members of local emergency services organisations and volunteering in their local communities must be supported as per the National Employment Standards of the [Fair Work Act 2009](#) and relevant employment agreements and awards.

In addition to volunteering, public sector agencies may request assistance from across the public sector. Employers should promptly respond to such requests where they are able to do so. Where requests for assistance involve the mobilisation of employees, employers should:

- ensure their employees are willing to volunteer and their skills meet the needs of the requesting agency
- note that both the originating employer and receiving employer share the duty to ensure, as far as practicable, the health and safety of the employee.

## 2. Declared Emergency Situations

In July 2009, the [Public Administration Act 2004](#) ("the Act") was amended to include emergency provisions that empower the Premier to declare an emergency (Part 7A) for the purposes of mobilising the public sector workforce.

Upon the declaration of an emergency by the Premier, section 105E of the Act delegates public sector body Heads the following 'emergency powers' to assist managing their workforce and responding to the emergency:

- assign any duties to employees
- require employees to perform duties within another public sector body or at a place other than their usual place of work



- direct employees to not report for duty.

Although Victoria has referred most of its industrial relations laws to the Commonwealth, in the event that an emergency is declared by the Premier, public sector employers will be empowered to direct or assign duties as outlined above. For the period of the declared emergency, these 'emergency powers' apply even where provisions in employment awards or agreements relating to employee duties may be inconsistent.

## **2.1 Assigning Duties to Employees**

In the event that an emergency situation is declared under the Act and that a safe workplace can be provided, all fit employees are expected to report for work as usual (unless they are on approved leave).

An employee must comply with directions given by an employer to perform duties that may differ from that employee's original employment, but remain within the employee's skill-set and on terms and conditions that are no less favourable.

## **2.2 Directing Employees to Perform Duties at a Place Other than Their Usual Workplace**

During an emergency, demand for some services and administrative duties will decrease while others will increase. As a result, once the Premier has declared an emergency under the Act, public sector employers may direct employees to perform duties at alternative critical work areas for the duration of the emergency on terms and conditions that are no less favourable.

## **2.3 Directing Employees to Not Report for Work**

Public sector body Heads will have the power to direct employees to not report for work once the Premier has declared an emergency under the Act. Public sector employers must continue to pay any employees directed by the employer not to report for work under these arrangements and continuity of service will be maintained.



## 2.4 Leave Provision for Employees

In an emergency, employees will require leave for a variety of reasons. All usual leave allowances and eligibility policies apply and as per usual leave policies detailed records need to be kept.

## 2.5 Emergency Declaration

Should an emergency be declared under the Act, the Victorian Secretaries Board will brief Victorian Public Service departments who in turn will communicate the declaration to their portfolio public sector agencies.

Note – prior to the Premier declaring an emergency under the Act, usual emergency management and business continuity policies apply.

## 3 Additional Information

There are many good quality resources available on the Internet that can assist with planning your HR response to an emergency. These include:

[Department of Human Services \(Victoria\) Emergency Management](#) – with links to information about preparing for emergencies such as bushfires, floods and influenza pandemics.

[Emergency Management Victoria](#) – with a link to the Emergency Management Manual Victoria

[WorkSafe Victoria](#) – with links to emergency management and pandemic planning guides

[Australian Government's Emergency Management in Australia](#) – with links to emergency management and business continuity resources