

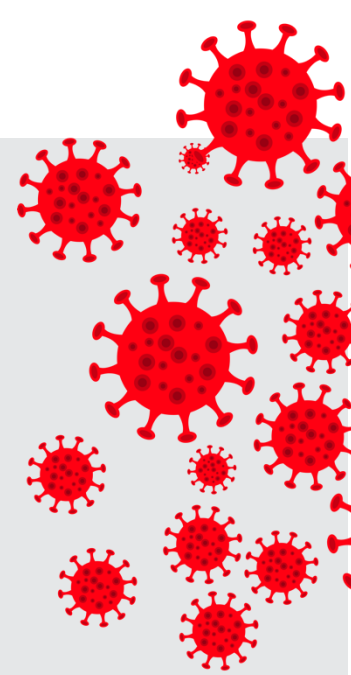
Notification of positive COVID-19 cases - New requirements for Victoria

SUMMARY

New Regulations have been made in Victoria which require employers to notify WorkSafe immediately if they become aware that an employee or contractor has tested positive for COVID-19 and has been in the workplace within the infectious period.

This obligation will apply even if the infection occurred outside the workplace.

The Regulations will be in place for 12 months.



INCIDENT NOTIFICATION REQUIREMENTS

Victoria

New requirement to notify WorkSafe of a confirmed COVID-19 case

The [Occupational Health and Safety \(COVID-19 Incident Notification\) Regulations](#) were made on 28 July 2020, effective immediately. They will be revoked after 12 months.

Regulation (4) prescribes that a confirmed COVID-19 diagnosis is notifiable to WorkSafe under Part 5 of the OHS Act, when:

- (a) *when an employer becomes aware that –*
 - (i) *an employee; or*
 - (ii) *an independent contractor engaged by an employer or an employee of the independent contractor –*

has received a confirmed COVID-19 diagnosis and has attend the workplace within the infection period; or

- (b) *when a self-employed person has received a confirmed COVID-19 diagnosis and has attended the workplace within the infectious period.*

Regulation (3) defines the **infectious period** as: *the date, being 14 days prior to the onset of symptoms consistent with COVID-19 or a confirmed COVID-19 diagnosis (whichever comes first), until the date on which the person receives a clearance from isolation from the Department of Health and Human Services (DHHS).*

It is important to recognise that this Regulation is not limited to situations where the infection occurred due to an exposure in the workplace. It applies more broadly to situations where an employee or contractor has been in the workplace during the infectious period.

Victorian obligations associated with notifying of a confirmed COVID-19 case

Once you become aware that an employee or contractor has a confirmed case you must identify if they have been in the workplace during the infectious period. If they have, you must notify WorkSafe Victoria immediately by calling 13 23 60. At the same time, you need to ensure actions are being taken to close areas where they spent significant time (to meet the obligations to preserve the incident site) and initiate actions to meet DHHS requirements in relation to close contacts and cleaning.

Part 5 of the [Occupational Health and Safety \(OHS\) Act 2004](#) establishes the following obligations on employers in relation to Incident Notification:

Section 38:

Employer must notify WorkSafe immediately after becoming aware that an incident has occurred at a workplace under the management and control of the employer or self-employed person (by calling 13 23 60); and provide a written record to WorkSafe within 48 hours.

Section 39:

An employer or self-employed person must ensure that the site is not disturbed, until an inspector arrives or otherwise directs that the site can be disturbed. However, the site may be disturbed for the purpose of: protecting the health and safety of a person; or aiding an injured person involved in an incident; or taking essential action to make the site safe or to prevent further occurrence of an incident.

On page 7 of the WorkSafe [Guide to Incident Notification](#) the site is defined as *the area at the workplace where the incident occurred*. It does not mean the whole workplace. In the context of COVID-19 we would expect this means any area that the employee or contractor worked or spent significant amounts of time.

On the [WorkSafe landing page](#) for this topic it is stated that once a notification is received, WorkSafe will *“then advise if an inspector will make a site visit and whether the incident scene can be disturbed before the inspector's attendance”*.

Practical impact for employers

The following information incorporates both the WorkSafe requirements for notification and the DHHS requirements in relation to close contacts and cleaning that need to be undertaken if you receive advice from an employee or contractor that they have a positive COVID-19 diagnosis.

To meet WorkSafe notification requirements:

- Identify whether the employee or contractor was in the workplace within the infectious period.
- If they have been in the workplace in the infectious period notify WorkSafe Victoria immediately by calling 13 23 60 and advise of any action taken to date.
- Identify where they worked or spent significant periods of time and close these areas off to preserve the incident site.
- Follow WorkSafe Victoria instructions.

To meet DHHS requirements:

- Notify others in the workplace that had close contact with the employee or contractor. The [DHHS website](#) includes a link to a Close Contact Fact Sheet which currently defines close contact as “*having face-to-face contact for more than 15 minutes or sharing a closed space for more than two hours with a confirmed case of coronavirus (COVID-19) while they were infectious*”. Close contacts are required to quarantine and should seeking testing and advice from DHHS.
- Contact DHHS for advice on further actions including cleaning requirements. Some information is available [here](#). To assist DHHS with contact tracing and notification, offer to provide them with details of close contacts within the workplace that have been identified to date.

The DHHS COVID-19 hotline is **1800 675 398**.

Ai Group’s view

Ai Group supports the key objective outlined in the Regulation that is about “*improving the information available to the Authority [WorkSafe Victoria] to reduce the risks to health and safety in the workplace arising from COVID-19*”.

Victoria is facing an unprecedented public health issue that is finding its way into our workplaces. It is a risk that most employers have not previously needed to address. We are encouraging WorkSafe to provide further assistance to employers in order to safeguard their employees against the spread of COVID-19 in workplaces and the community.

However, we are concerned that the COVID-19 reporting requirements have been attached to this section of the Act and have expressed these views to the CEO of WorkSafe.

The regular Incident Notification provisions of the OHS Act relate to fatalities, serious injuries and dangerous occurrences in the workplace that may require investigation by WorkSafe to identify control measures and determine whether prosecution activity is appropriate.

For this reason, they attract severe maximum penalties which are not appropriate to the circumstance of the COVID-19 notification requirements which incorporate circumstances where the virus was contracted outside the workplace.

We are having ongoing discussions with WorkSafe to monitor how the notification processes are assisting employers to respond to positive COVID-19 cases in the workplace.

The Regulations are now in place and employers must comply with the notification and site preservation requirements. We encourage employers to also utilise the contact with WorkSafe to seek support and guidance to assist them to take the next steps required once a COVID-19 case is reported to the workplace.

We look forward to receiving feedback from WorkSafe about the contribution this Regulation makes to slowing the spread.

Please provide Ai Group with feedback on your experiences

Ai Group is keen to get hear from members about the support and assistance provided by WorkSafe if there is a requirement to notify of a positive COVID-19 case.

This will enable us to have input into enhancements to the system and its ability to support employers through the process of responding to COVID-19 in the workplace.

Provide your feedback to [Tracey Browne](#).

Other jurisdictions

Most other jurisdictions require that an employer notify the WHS/OSH Regulator if a person has contracted COVID-19 due to their work.

A summary of requirements in other jurisdictions can be found on the [Safe Work Australia](#) website. At the time of publication of this Advice, the Safe Work Australia information had not been updated to match the obligations under the new Victorian Regulations.

DO YOU REQUIRE FURTHER ASSISTANCE?

Ai Group has set up a special [section on our website](#) to provide access to Ai Group advice and assistance relating to the COVID-19 pandemic.

For further information or assistance, please contact Ai Group's Workplace Advice Line on 1300 55 66 77 or access Ai Group's or access the [Health and Safety Resource Centre](#).

For information about our safety and workers' compensation consulting and training services, contact:

Consulting Services

[Trinette Jaeschke](#)

0400 282 477

Training Services

[David Tiller](#)

0499 195 307



Tracey Browne

Manager – National Safety & Workers' Compensation Policy and Membership Services

FURTHER INFORMATION

For further information or assistance, please contact the Ai Group Workplace Advice Line on 1300 55 66 77.