

# Frequently asked questions



## Occupational Health and Safety (COVID-19 Incident Notification) Regulations

---

### Table of contents

<b>Occupational Health and Safety (COVID-19 Incident Notification) Regulations .....</b>	<b>1</b>
What has changed?.....	2
When do the changes commence?.....	2
Are the changes temporary? .....	2
When do I need to notify WorkSafe?.....	2
How do I notify WorkSafe? .....	3
How do I know whether I need to report?.....	3
What happens if I don't comply? .....	3
Do I have a duty to preserve the incident site? .....	3
Who is an 'employer'? .....	4
Who is a 'self-employed' person? .....	4
What does a 'confirmed coronavirus (COVID-19) diagnosis' mean?.....	4
What does 'infectious period' mean? .....	4
What is a positive result of a diagnostic procedure? .....	4
What happens if I didn't know a staff member tested positive for COVID-19? .....	5
What happens when you are 'cleared' from isolation?.....	5
Where can I find out more about this change?.....	5

## What has changed?

- From 28 July 2020, employers and self-employed persons must notify WorkSafe immediately after becoming aware that an employee has received a **confirmed and a probable** coronavirus (COVID-19) diagnosis. For the purposes of the OHS COVID-19 Regulations, a positive result includes both a confirmed case and a probable case of COVID-19.
- Failure to report an incident to WorkSafe is an offence and may result in prosecution.
- Until now, employers were not required to notify WorkSafe of an infectious disease in the workplace, unless immediate inpatient treatment is required or the disease is the cause (or suspected cause) of a death.
- In this state of emergency and pandemic situation, timely notification of potential workplace transmission of COVID-19 is critical for efficient and effective management of related health and safety risks, and the prompt investigation of potential breaches of employer duties.
- The Occupational Health and Safety COVID-19 Incident Notification Regulations 2020 (OHS COVID-19 Regulations) are made under Part 5 the *Occupational Health and Safety Act 2004* (OHS Act) and will assist WorkSafe to reduce the risks to health and safety in the workplace arising from COVID-19.

## When do the changes commence?

- The OHS COVID-19 Regulations commenced on **Tuesday 28 July 2020**.

## Are the changes temporary?

- The OHS COVID-19 Regulations are temporary in nature and will expire 12 months after their commencement.
- WorkSafe will review the OHS COVID-19 Regulations during the 12-month period of operation.

## When do I need to notify WorkSafe?

- Employers and self-employed persons, with management or control of a workplace must notify WorkSafe immediately after becoming aware:
  - that an **employee or independent contractor engaged by the employer, and any employees of the independent contractor**, has received a confirmed diagnosis of COVID-19, and has attended the workplace within the infectious period (being 14 days prior to receiving the confirmed diagnosis of COVID-19 and until clearance from isolation has been received); or
  - a **self-employed person** has received a confirmed diagnosis of COVID-19 and has attended the workplace within the infectious period (being 14 days prior to receiving the confirmed diagnosis of COVID-19 and until clearance from isolation has been received).
- An employer will be considered to be 'aware' of the incident, when they have been notified of the positive diagnosis by either the employee, independent contractor, employee of the independent contractor, or by the Department of Health and Human Services (DHHS).
- Notification is **not required when a person's workplace is their home, and that person has not attended any other workplace over which their employer has management or control of, within the relevant infection period** (being 14 days prior to receiving the confirmed diagnosis of COVID-19 and until clearance from isolation has been received).

## How do I notify WorkSafe?

- A COVID-19 notifiable incident in the workplace requires immediate notification to WorkSafe on **13 23 60**.
- WorkSafe will lodge details of the incident and email you a link to an online incident notification form.
- Written notification is then required within 48 hours on the approved form.
- Once you have completed and submitted the online incident notification form, you will receive a confirmation email with a copy of your records.
- You can also download an incident notification form here (remember, employers must also call 13 23 60): <https://www.worksafe.vic.gov.au/resources/incident-notification-form>.
- If you are unsure about your obligations, please contact WorkSafe on **13 23 60**.

## How do I know whether I need to report?

- You must report any incident outlined in the OHS COVID-19 Regulations.
- A 'workplace' means a place, whether or not in a building or structure, where employees or self-employed persons work.
- Therefore, if you are working it is considered to be a workplace however if you are unsure please contact WorkSafe on **13 23 60**.

## What happens if I don't comply?

- Failure to comply with the incident notification requirements in the OHS Act can lead to fines (for each offence) of up to:
  - \$39,652.80 for individuals\*; or
  - \$198,264.00 for companies\*.

\*Subject to variation depending on the value of a penalty unit.

## Do I have a duty to preserve the incident site?

- Under the OHS Act, there is a requirement to preserve the site of a notifiable incident; however, you are not required to do so if there is a need to:
  - protect the health and safety of a person
  - aid an injured person involved in the incident or;
  - take essential action to make the site safe or to prevent further occurrence of an incident.
- If a person with a confirmed diagnosis of coronavirus (COVID-19) has attended the workplace during the infectious period, it is essential that the site is cleaned and disinfected, in order to prevent further transmission of the virus.
- Therefore, the requirement to preserve the incident site does not apply after a confirmed diagnosis of coronavirus (COVID-19).

- Employers should follow any advice or direction provided by DHHS when a confirmed case of coronavirus (COVID-19) has been identified.
- The DHHS has more information on what to expect if a case of COVID-19 is confirmed at your workplace here: <https://www.dhhs.vic.gov.au/preventing-infection-workplace-covid-19#what-to-expect-if-a-case-of-coronavirus-covid-19-is-confirmed-at-your-workplace>.
- Information about cleaning and disinfecting businesses and construction sites here: <https://www.dhhs.vic.gov.au/preventing-infection-workplace-covid-19#cleaning-and-disinfecting-for-business-and-constructions-sites>

### **Who is an ‘employer’?**

- An ‘employer’ is defined in the OHS Act as a person who employs one or more other persons under contracts of employment or contracts of training.
- This definition covers an individual, a company, body corporate, partnership, unincorporated association, franchising operation or not-for-profit organisation, in the private or public sector who has one or more employees.

### **Who is a ‘self-employed’ person?**

- A self-employed person is defined in the OHS Act as a person, other than an employer, who works for gain or reward otherwise than under a contract of employment or training.
- The employer or self-employed person, who has management or control of a workplace where a notifiable incident has occurred, is under a legal duty to notify WorkSafe of that incident.
- This legal duty to notify does not apply to a manager or supervisor or any other staff member of the employer. Whilst a manager, supervisor or other staff member may be delegated the task of reporting an incident, the ultimate legal responsibility rests with the employer.

### **What does a ‘confirmed coronavirus (COVID-19) diagnosis’ mean?**

- A person has undergone a diagnostic procedure and has received positive result for coronavirus (COVID-19), also known as ‘novel coronavirus 2019’.
- See the Department of Health and Human Services (DHHS) for the case definition of a confirmed case of coronavirus (COVID-19) here: <https://www.dhhs.vic.gov.au/assessment-and-testing-criteria-coronavirus-covid-19>.

### **What does ‘infectious period’ mean?**

- The infectious period is the period of time between:
  - the date, being 14 days prior to the onset of symptoms consistent with coronavirus (COVID-19) or a confirmed coronavirus (COVID-19) diagnosis (whichever comes first), and;
  - the day on which the person receives a clearance from isolation from DHHS.

### **What is a positive result of a diagnostic procedure?**

- For the purposes of the OHS COVID-19 Regulations, a positive result includes both a confirmed case and a probable case of COVID-19.

- For further information on confirmed and probable cases see the DHHS website here: <https://www.dhhs.vic.gov.au/assessment-and-testing-criteria-coronavirus-covid-19>.

### **What happens if I didn't know a staff member tested positive for COVID-19?**

- You are required to notify WorkSafe as soon as you become aware an employee, contractor, or employee of a contractor has a confirmed case or a probable case of COVID-19.

### **What happens when you are 'cleared' from isolation?**

- Isolation requirements and clearance from isolation is managed by the DHHS.
- For further information on when you need to isolate or when will be cleared from isolation please contact DHHS on **1800 675 398**.

### **Where can I find out more about this change?**

- You can visit WorkSafe's website here [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au).
- To report an incident, please contact 13 23 60.