



Hutchinson
Legal

Temperature
Checks

Commercial &
Retail Rent Relief

COVID-19
Helpful Links

WINTER 2020

Insight

Are employers allowed to carry out temperature tests on employees?

Yes, employers can carry out temperature tests on willing employees, but the test should be a 'no contact' test, and employers are not allowed to force employees to submit to a temperature check.

Employers have obligations to maintain a safe workplace and they have a right to restrict access to the workplace given the obvious health risks associated with COVID-19. Taking the temperature of an employee's forehead with a handheld 'no contact' thermometer is not time consuming or intrusive and therefore asking an employee to undertake a temperature check is a reasonable management direction. Using contact methods to take a temperature reading is usually not reasonable.

If employers do conduct temperature testing, they are bound by the Privacy Act 1988 (Cth) and need to ensure they comply with the Australian Privacy Principles, as an employee's temperature is sensitive information.

In the present environment an employee who refuses to undertake a temperature test can be considered to have failed to follow a reasonable management direction and the employer can take appropriate action against the employee. When the declared state of emergency is over however, asking to take the temperature of workers may no longer be reasonable.

Employers also need to be mindful that temperature testing employees is not an accurate guide as to whether an employee has COVID-19 and they should factor this into any actions they intend to take that adversely affect the employee.

If an employee's temperature is high, it raises an issue of what actions are

available to an employer. Does the employer send the employee home? If so, is the employee entitled to be paid, especially as they have turned up ready, willing and able to work? Allowing an employee to work at the work premises may expose the employer to damages claims from other employees who subsequently contract COVID-19 and their exposure can be traced to the employee who had a high temperature and was allowed to work.

We suggest a common sense and mutually respectful approach be taken by both employers and employees.

The employer should clearly explain to the employee the risks to the workplace and ask the employee to return home to work from home if possible. If work cannot be done at home the employer can either grant special leave, sick leave, or if the employee chooses it, annual leave or leave without pay. The employee should also be requested to be formally tested for COVID-19. Ideally the employer should have explained the procedure in advance of starting any testing on employees.

Employers on JobKeeper may also consider issuing a stand down direction to the affected employee, though employers need to ensure they follow the correct procedures before issuing the stand down direction.

If you are uncertain of your rights and obligations in these uncertain times, please obtain legal advice.

"How many lessons of faith and beauty we should lose, if there were no winter in our year!"

THOMAS WENTWORTH
HIGGINSON

FAST FACTS

-11.7°C

The lowest recorded temperature in Victoria was on 3 July 1970 in Falls Creek.

21 June 2020

The Winter Solstice (the day with the fewest hours of sunlight for the year) for the Southern Hemisphere

36-37°C

The normal temperature range for adults.

COVID-19 Helpful Links:

For the latest Australian Government coronavirus advice and updates, go to: <https://www.australia.gov.au/>

For the latest Victorian Government coronavirus advice and updates, go to: <https://www.dhhs.vic.gov.au/coronavirus>

For information about the COVID-19 status in Australia and other coronavirus public health information, go to: <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert#travellers-and-visitors>

For COVID-19 government resources available to the general public, go to: <https://www.health.gov.au/resources/collections/novel-coronavirus-2019-ncov-resources>

For information and links to the Coronavirus Australia app, go to: <https://www.health.gov.au/resources/collections/novel-coronavirus-2019-ncov-resources>

For information about government COVID-19 financial assistance, go to: <https://moneysmart.gov.au/covid-19/financial-assistance>



Rent relief for commercial and retail tenants

The COVID-19 pandemic has brought changes to retail and commercial leasing laws. The Federal Government introduced a mandatory Code of Conduct for landlords and tenants. The Victorian Government has made regulations that apply to retail and commercial leases.

Mandatory Code of Conduct Regulations

The regulations provide for rent waivers and deferrals for tenants who are registered for JobKeeper. Tenants must make a written request for rent relief to the landlord. The request must state that the lease is an eligible lease and provide evidence that the tenant is participating in the JobKeeper scheme. The tenant must also provide financial information to enable the landlord to make a decision on what to offer. The landlord then has 14 days to make an offer for rent relief.

The amount of rent relief a landlord may offer must take into account all the circumstances of the lease, including the reduction in the tenant's turnover, the tenant's and landlord's financial position and whether any outgoings have been waived or reduced.

The rent relief offered by the landlord must be 50% by way of waiver and 50% by way of deferral. If a deferral of rent is agreed to, the tenant has the greater of 24 months or the balance of the lease to pay the deferred rent. If less than 24 months is remaining on the lease, the landlord must offer the tenant an extension of the lease term to allow for up to 24 months to pay the agreed deferred rent.

If a tenant is not able to operate its business from the premises, the landlord must consider waiving outgoings.

If the parties cannot agree, the matter is referred to mediation at the Victorian Small Business Commission. If mediation fails, the parties may take the dispute to VCAT or court.

It is very important that any agreement between the landlord and tenant is documented in writing and signed by both parties to be a valid variation of the lease.

If you require advice regarding the process for rent relief or assistance drafting an agreement, please telephone us on (03) 9870 9870.

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