COVID-19: VICTORIAN GOVERNMENT DRAWS UPON THE 'BIG STICK' ON COVID-19 NOTIFICATION

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Victoria has introduced the Occupational Health and Safety (COVID-19 Incident Notification) Regulations 2020 (Notification Regulation) requiring an employer to notify WorkSafe Victoria immediately of the following circumstances:

The employer is aware:

- an employee;
- an independent contractor; or
- an employee of an independent contractor;

has a confirmed diagnosis of COVID-19 and attended the employer's workplace during the 'infectious period'.

The 'infectious period' is:

- 14 days prior to the onset of symptoms consistent with COVID-19; or
- a confirmed COVID-19 diagnosis (whichever comes first), and
- until the date on which the person receives a clearance from isolation from the State Department of Health and Human Services.

Additionally, the same notification requirement applies to a self-employed person who attends the workplace during the infectious period. The Notification Regulation commenced on 28 July 2020 and will remain in force for 12 months.

The Notification Regulation goes beyond the previous position to report a case of COVID-19 which could be identified as having occurred in the workplace. The Notification Regulation is clearly a more proactive measure to deal with the 'risk' to health and safety from COVID-19, rather than the manifestation of illness or death and is mirrored with the objects of the legislation. Further it does not require the Regulator to identify the actual source of the risk which could be a different workplace to the employer or a residential premises.

The maximum penalty for non-compliance with the Notification Regulation for a body corporate is 1,200 penalty units, being AU$198,264, and for an individual 240 penalty units, being AU$39,652.

Employers need to be proactive and adopt a systematic approach to the management of the risk to COVID-19. The Notification Regulation requires an employer to take reasonably practicable measures to ensure processes and procedures within its safety management system will achieve compliance in the event notification is necessary. The measures to be implemented will need to suit the size of the business and its undertaking to avoid being unnecessarily burdensome and ineffective.

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Employers should take steps to:

- Communicate the requirements of the Notification Regulation to employees.
- Review current processes and procedures for health monitoring and condition of employees to ensure they incorporate COVID-19 symptoms.
- Review current protocols and procedures for identifying non-employees' attendance at the workplace and maintain accurate records of this.
- Undertake refresher information, instruction and training for employees on recognising symptoms, keeping up good hygiene practices, maintaining social distancing protocols, seeking immediate medical attention including testing if starting to feel unwell and notifying the employer of the circumstances.
- Monitor the effectiveness of the measures and protocols implemented for compliance with the Notification Regulation.

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