

# Can You Direct Your Employees to Download the COVIDSafe App?

As organisations grapple with the various challenges presented by COVID-19, employers are being reminded that they cannot legally direct employees to download the COVIDSafe mobile app.

The controversial COVIDSafe app is part of the federal government's initiative to slow the spread of coronavirus and is marketed as a key tool in protecting users, their family and friends, as well as means to "save the lives of other Australians."

The purpose of the app is to alert users when they have been in contact with someone who is COVID-19 positive. From a workplace safety perspective, it could be used to quickly determine which workers, or customers, have been put at risk.

And as many workplaces begin to reopen, some employers are undoubtedly wondering whether they have the ability to direct their employees to download COVIDSafe in the name of workplace safety.

The short answer is no. The fact is that the app is not mandatory and requiring a person to download it is prohibited at law.

And the penalties for a breach are significant – a maximum of five years imprisonment or 300 penalty units (\$63,000), or potentially both.

The Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Public Health Contact Information) Determination 2020 (Determination) makes it clear that a 'Person' (which includes an employer) cannot require anyone (including employees) to:

download COVIDSafe; or have COVIDSafe in operation on a mobile telecommunications device; or consent to uploading COVID app data from a mobile telecommunications device to the National COVIDSafe Data Store; collect, use or disclose any data from the COVIDSafe app (unless they are one of the authorities permitted to do so in the Determination) This determination holds true even when the phone in question is owned by the company.

Employers must also ensure that they do not treat any employees adversely because of their decision not to download the app.

A person (including an employer) must not:

refuse to enter into, or continue, a contract or arrangement with another person (including a contract of employment); or take "adverse action" (as defined by the Fair Work Act 2009 (Cth)) against another person; or refuse to allow another person to enter premises; or refuse to allow another person to participate in an activity; or refuse to receive goods or services from another person; or refuse to provide goods or services to another person; because the other person:

has not downloaded COVIDSafe; or does not have COVIDSafe in operation on a mobile telecommunications device; or consent to uploading COVID app data from a mobile telecommunications device to the National COVIDSafe Data Store. However, while it is currently illegal for employers to direct workers to download COVIDSafe, many employers are expected to strongly encourage workers to download the app as part of their general requirement to ensure the safety of the workplace and workers.

<https://myosh.com/blog/2020/05/21/can-you-direct-your-employees-to-download-the-covidsafe-app/>

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