

## **Disclaimer**

*This is general guidance only on minimum entitlements. You should seek advice from your union on your specific industry and circumstances. Applicable enterprise agreements, awards, employment contracts or workplace policies may have more generous conditions for workers, including casuals.*

## **Where do I look to find out my work rights?**

Minimum terms and conditions for most workers<sup>[1]</sup> are contained in the National Employment Standards in the *Fair Work Act 2009* and the relevant modern award for your industry.

You may have a collective or enterprise agreement in your workplace which provides more generous entitlements. Terms and conditions of your work may also be found in a written contract of employment or workplace policies and procedures.

You have the right to healthy and safe work. Each State and Territory has Work Health and Safety (WHS) laws which provide rights for workers, health and safety representatives (HSRs) and unions to enforce healthier and safer work practices.

Contact your union if you are unsure where to find your work rights.

## **What does my employer need to do?**

WHS laws require employers to take every step they reasonably can to eliminate or minimise the risk of workers and others contracting COVID-19. This will require employers to have a COVID-19 workplan containing a range of control measures, depending on the type of industry you work in.

There is no vaccine currently available for COVID-19. The most effective control is to identify potential carriers of the virus and support them to self-isolate to avoid exposing others.

Employers must genuinely consult workers and unions on measures to control the health and safety risks of COVID-19. Workers should be provided with clear direction and guidance about what is expected of them, in particular:

- workers should know when to stay away from the workplace
- what action to take if they become unwell, and
- what symptoms to be concerned about.<sup>[2]</sup>

We know that the most effective action employers can take is to ask employees to identify potential exposure to COVID-19 and to financially support them to self-isolate with paid special leave.

Financial disadvantage presents a serious barrier to self-reporting and self-isolating, particularly for casuals and low-paid workers, and therefore presents a risk that needs to be controlled through the provision of paid special leave. Casual and low-paid workers who do not have access to paid leave, particularly those with dependents, are likely to experience serious financial pressure to continue to come to work. No worker should be forced to choose between health and safety measures and their pay cheque.

For more information on employer best practice click [here](#)

## **Does my employer have to let me work from home?**

In the circumstances, your employer should facilitate your working from home if your job can be performed remotely. Social distancing (working remotely) is the most effective way that exposure to COVID-19 can be controlled. If your employer doesn't do this, you should contact your union for advice about whether it is safe to attend the workplace (see below).

## *Can I refuse to work?*

Under WHS laws you have the right to refuse work or cease work if there is a reasonable concern that you would be exposed to a serious risk to your health and safety from an immediate or imminent hazard. A serious risk of exposure to a COVID-19 infection would meet this definition.

You should seek immediate advice from your union and/or workplace HSR if you think there is a serious risk of exposure to COVID-19 at work.

An HSR is authorised to direct a worker to cease unsafe work if they have a reasonable concern that a worker would be exposed to a serious risk to health and safety from an immediate or imminent hazard. HSRs should consult and attempt to resolve the issue with the business first, unless the risk is so serious and immediate or imminent that it is not reasonable to consult. If work ceases or is refused, you and/or the HSR must tell your employer as soon as possible.

You may be asked to carry out alternative work, such as working from home. You should comply with this direction, as long as it is safe and appropriate for you to do so.

An HSR may also choose to issue a Provisional Improvement Notice (PIN) which requires an employer to make a change to a work practice to reduce or eliminate a risk. HSRs must first consult with the employer about the issue. After the HSR has issued the PIN, the employer has 7 days to fix the health and safety matter. If the issue is still unresolved after 8 days the HSRs has the right to call in an inspector.

For more information about the health and safety risks of COVID-19 please click [here](#)

## *I'm sick and I've been directed to stay at home. Is this legal?*

Employers can direct employees who have COVID-19 or who are at risk of infection not to come to work for a period of time or until they are medically cleared.

Such directives must be lawful and reasonable, which means employers must act fairly based on factual information about genuine health and safety risks, including the Australian Government's health and quarantine guidelines. WHS laws require workers and other people at workplaces to comply, so far as they are reasonably able, with a reasonable instruction given by an employer. Workers have a duty to take reasonable care for their own health and safety and to not adversely affect the health and safety of others.

If you are directed to stay at home for health and safety reasons, you must be paid. Employers are not entitled to stand employees down without pay in these circumstances. You should not be asked to use your annual leave or long service leave, as this is for rest and recreation.

If you are a casual employee, you should ask your employer for **paid special leave** for the period of isolation. You should put this request in writing. You should consider whether there is an enterprise or collective agreement, award, employment contract or workplace policy that affects your entitlements. Even if you do not have an entitlement to apply for paid special leave in an enterprise agreement or workplace policy, there is nothing stopping your employer from agreeing to provide paid special leave on request.

## ***I'm actually busier because of COVID-19, can I be made to work extra hours?***

Some workers, for instance those in healthcare or other essential services, may find that there is more work because of COVID-19. Workers can be required to work additional hours, but only if those hours are reasonable. Whether additional hours are reasonable requires considering a number of things like whether overtime is payable, your role, any family responsibilities you might have and work health and safety considerations. You have the right to refuse to work additional hours that are unreasonable.

## ***What if I'm stuck overseas due to a travel ban or required by the government to quarantine or self-isolate?***

You should notify your employer of this situation as soon as practicable and request access to paid leave. You should be able to use your existing leave entitlements if you wish. If you have none, you should apply in writing for paid special leave. You should not lose wages as the result of a travel ban.

## ***I'm not sick but I've been directed to self-isolate or work from home. Is this legal?***

Employers may be able to direct employees to work from home or self-isolate, so long as such a directive is lawful and reasonable, permitted by any applicable enterprise agreement or award, and/or necessary to meet WHS obligations.

Employers have an obligation to ensure that work from home arrangements are safe and healthy, so far as reasonably practicable, including providing appropriate equipment. Workers in this situation should not lose any pay or incur additional costs. Any costs associated should be reimbursed by your employer. If you are prevented from coming to work, you must be paid your ordinary salary while the direction applies. Casual workers are encouraged to make a written application for special leave to support them financially during any employer-directed isolation period (see below).

## ***I'm not sick with COVID-19 and do not meet the criteria for quarantine, but I would prefer to stay home.***

There are a number of reasons why a worker might wish to take a cautious approach and stay away from the workplace, including their age or a medical condition, or having responsibility for the care of a newborn. If there is a medical reason that you need to avoid attending work, you should obtain medical evidence and apply for paid personal/carers leave if you have it available to you. If you do not have paid personal/carers leave available, or are not entitled to access it in the circumstances, you should apply to your employer for paid special leave in writing, providing reasons. This is not yet a universal entitlement, but there is nothing preventing an employer from implementing a best practice response and agreeing to provide paid leave to all their workers impacted by COVID-19, including casuals.

Workers seeking to self-isolate should not be financially disadvantaged for doing so.

You may also ask your employer for a temporary change to your working arrangements, including hours and location. In light of government directives encouraging social distancing, employers should make reasonable accommodations to facilitate working from home. Where this is not possible, employers should extend paid special leave to workers to protect them and others from a risk of infection.

Under WHS laws, you are permitted to refuse or cease work because you have a reasonable concern about an imminent risk to your health or safety. If you are given a reasonable direction to perform

alternative work (such as working from home) you should comply with it, as long as it is appropriate and safe for you to do so.

## **How much sick leave do I have?**

Under the NES all employees, other than casual employees, are entitled to a minimum of 10 days of paid personal/carers leave per year. Enterprise agreements, awards, employment contracts or workplace policies should be reviewed in case they have more generous conditions for workers, including casuals.

Your personal/carers leave entitlement accrues progressively throughout the year and accumulates from year to year. Your employer must legally keep a record of how much personal/carers leave you have accrued. An employer cannot force you to use your personal/carers leave. You can access personal/carers leave if you cannot work because of an illness or injury; or if a member of your immediate family or household member requires care or support because of an illness or injury or 'unexpected emergency'.

Unless otherwise provided in your award or an enterprise or collective agreement, personal/carers leave must be paid at a minimum at your base rate of pay for your ordinary hours of work. Full-time and part-time employees can take unpaid carers leave if they have no paid carers leave left. You must give your employer notice that you are taking personal/carers leave 'as soon as practicable', which can be after the leave has already started. If your employer asks for it, you must provide 'evidence that would satisfy a reasonable person' that you or someone you are caring for is ill or injured or experiencing an unexpected emergency. This could include for example a doctor's certificate or a statutory declaration.

Given the requirement to self-isolate for 14 days, it is likely that workers may exhaust accrued personal/carers leave entitlements. If you are impacted by COVID-19 and have used all your personal/carers leave, you should apply in writing to your employer for paid special leave so that you are not financially disadvantaged.

## **Schools and childcare may be closed for an extended period and I need to care for my children**

Employers should take positive steps to assist workers to manage any increased family responsibilities arising from COVID-19. Under the *Fair Work Act*, you can request a change to your hours or work location if you are responsible for caring for a sick child or adult, or a person with disability or a person who is frail and aged. Your employer must discuss and genuinely consider your request and only refuse on reasonable business grounds. A written response must be provided to you. You have this right if you are a casual or non-casual worker with at least 12 months service.

It is against the law for an employer to terminate your employment or treat you less favourably because of your family responsibilities. Contact your union if you believe you have been discriminated against based on increased family responsibilities arising from COVID-19.

## **Do I have to use my annual leave or long service leave?**

Under the NES all employees, other than casual employees, are entitled to a minimum of 4 weeks paid annual leave per year. Shift workers are entitled to a minimum of 5 weeks paid annual leave per year.

Depending on your length of service and industry, you may have access to long service leave, including long-term casuals in some states and territories.

Annual leave and long service leave are for rest and recreation. Generally the taking of annual leave is by agreement between workers and employers. You cannot be directed to access your annual leave or long service leave to cover the cost of isolation or quarantine periods but you may want to seek access to annual leave to take a break from work. Employers cannot unreasonably refuse a request to take paid annual leave. Employers may have the right to direct the taking of excessive amounts of annual leave (not LSL) – there will be notice periods for this. You should check your collective agreement or award and contact your union.

### ***I'm a casual employee. What am I entitled to?***

Casual employees are generally not entitled to paid personal/carers leave or annual leave. However, if you are directed by your employer not to attend work, or you need to self-isolate, then you should ask your employer in writing to provide special paid leave to cover the period of isolation or quarantine. This is not yet a universal entitlement, but there is nothing preventing an employer from implementing a best practice response and agreeing to provide paid leave to all their workers impacted by COVID-19, including casuals. Workers should not be financially disadvantaged because of quarantine or self-isolation.

Casual workers caring for someone with COVID-19 can access up to 2 days of unpaid carers leave per occasion if an immediate family or household member requires care or support because of an illness or injury or 'unexpected emergency'. In addition, casual workers are entitled to 2 days unpaid compassionate leave per occasion if a member of an employee's immediate family or household dies or contracts or develops a life-threatening illness or injury.

Casual workers with at least 12 months service are also able to request flexible work arrangements to care for a sick child or adult, or a person with disability or a person who is frail and aged. Enterprise agreements, awards, employment contracts or workplace policies should be reviewed in case they have more generous conditions for casual workers.

### ***I'm being treated unfairly because my employer suspects that I have COVID-19***

A worker must not be harassed or unlawfully discriminated against because of an illness or suspected illness, or because of their race, colour, national extraction or social origin. Under the *Fair Work Act*, a worker must not be fired because they are temporarily absent from work due to illness or injury. However, employers are permitted to act lawfully and reasonably to mitigate health and safety risks to workers and others, including to reduce the spread of an infectious disease. You should contact your union if you feel you have been unlawfully discriminated against or harassed because of COVID-19 impacts.

### ***Can I get workers' compensation benefits if I'm sick?***

Workers who contract COVID-19 in the course of their employment will be able to claim workers' compensation benefits for any time lost or medical care required.

It may be challenging to prove the required connection with work in light of the growing number of community infections. You should contact your union for assistance if you are unable to work due to a COVID-19 infection caused by work.

## **Can my employer stand me down?**

The Fair Work Act 2009 allows employers to stand employees down without pay in certain circumstances when employees cannot be usefully employed. It may be possible for employees to be usefully employed performing other work for the employer rather than being stood down.

If stand downs are raised or you and/or your colleagues are stood down, you should contact your union immediately.

There are several alternatives to stand down, which employers should instead explore. These include access to accrued paid leave (e.g. annual leave), transfer to other sites, including work-share arrangements and flexible working arrangements, such as working from home.

The effect of a stand-down is that you remain employed, although you are not required to perform work and you are not paid during the period of the stand-down. However, you continue to accrue annual leave and personal leave entitlements while you are stood down.

## **Can I be made redundant?**

An employer can make an employee redundant if they no longer require the job to be done by anybody. A redundancy has to be genuine, and this includes complying with any requirements to consult prior to making a decision. A worker who is made redundant needs to be given notice, and paid severance pay.

If your employer is contemplating making workers redundant, you should contact your union.

## **Can my employer make me download the Federal Government's COVID- Safe app onto a phone or other device?**

No. Although the COVID-Safe app has wide acceptance as a useful tool to combat the spread of COVID-19 and its use is being encouraged by health experts, you cannot be required to download the app onto either your own, or a company-owned device. Nor can an employer take action against you for reasons that include a failure to download the app. You should contact your union immediately if you have been disadvantaged at work for failing to download the app.

[1] Some state and local government employees and certain businesses in WA are not covered by the Fair Work Act – <https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system>

[2] <https://www.safeworkaustralia.gov.au/doc/coronavirus-covid-19-advice-pcbus>