

Employee absence from the workplace due to COVID-19 may occur under a variety of scenarios and employers should be aware of the impact of each scenario on employee leave entitlements and pay.

Fair Work encourages employees and employers to work together to find appropriate solutions that suit the needs of individual workplaces and staff. This may include taking different forms of leave, working from home or another remote location, flexible start/finish times or other rostering changes to reduce group numbers onsite at any one time, or taking extra precautions in the workplace to enable work to continue.

The information below describes the minimum requirements under Fair Work legislation. Employers should consider their obligations under any applicable enterprise agreement, award, employees' employment contracts or workplace policies, which may be more generous.

Casual Employees

Casual employees do not have access to paid sick or carer's leave entitlements under the National Employment Standards.

If casual employees are unable to work a shift because they are sick due to coronavirus (or any other illness/injury) or because they are otherwise required to self-isolate, they are not entitled to pay.

They do have access to 2 days unpaid carer's leave and 2 days unpaid compassionate leave per occasion.

Employers are permitted to cancel rostered shifts without compensating the employee.

Full Time & Part Time Employees

SICK LEAVE

Also known as personal leave or personal / carer's leave, sick leave allows an employee to take time off work to help them deal with personal illness, caring responsibilities or family emergencies.

When does sick leave (personal/carers leave) apply?

Situations where sick leave might apply; if an employee:

- tests positive to COVID-19
- is in Government directed OR optional self-isolation **and is sick**
- is sick with **any** illness or injury
- has to care for or support a member of their immediate family or household who is **sick, injured or has an unexpected emergency** including, but not limited to:
 - any illness
 - COVID-19
 - school closure due to COVID-19
 - Government directed isolation of child/dependant due to COVID-19

Note: An employer can offer annual leave or unpaid leave (leave without pay) or long service leave (if applicable) if the employee has no accrued paid sick leave (personal/carers leave).

Employees who are sick with the coronavirus must not attend the workplace for a prescribed period due to the workplace health and safety legal obligations that both employers and employees have.

Employers can direct employees who are sick with the coronavirus not to come to work and to get medical clearance from a doctor before returning to work. Employers can do this if they're acting reasonably and based on factual information about health and safety risks, which includes relying on the Australian Government's health and quarantine guidelines. Remember, only doctors can diagnose coronavirus.

ANNUAL LEAVE

When does leave Annual Leave (AL) apply?

Situations where annual leave might apply; if an employee:

- is in government directed self-isolation, **and is not sick**
- chooses to stay at home as a precaution (but is not directed to by their employer or as a result of a government order) **and is not sick**
- chooses to keep child home from school (but school not ordered to close under government direction)
- is stuck overseas or on a cruise ship **and is not sick**
- has requested and been approved to take annual leave

LEAVE WITHOUT PAY

When does leave without pay (LWOP) apply?

Leave without pay (LWOP), or unpaid leave is an absence from employment that is authorised or approved by an employer. It is rare for LWOP to be covered under a modern award or an enterprise agreement and is not a statutory entitlement in Australia. It is usually granted at the discretion of the employer. It may apply in any scenario where the employee has exhausted all other leave entitlements, or as other mutually agreed by the employer and employee.

ORDINARY PAY

When does ordinary pay apply?

Ordinary pay usually applies to normal hours worked during the normal span of working hours prescribed.

Ordinary pay is usually required if an employee:

- is requested by the employer to not come to work or to isolate which is not in line with Government direction
- is working from home (and the employer has approved this)
- is getting an assessment for fitness for work under the direction of the employer.

And, if an employer:

- closes the business/office/location using discretion (not Government directed) as an added precaution but employee's role does not allow for working from home.
- closes business temporarily due to a downturn in work/business (refer to *stand down / redundancy information further in this guide if temporary close is a prolonged situation*).

SPECIAL LEAVE

When does special leave apply?

Special leave is an arrangement granted to an employee who needs to be absent from work during working hours which does not come under other types of leave.

Employers offering special leave should consider setting up a new leave type for COVID-19, paid and/or unpaid for those affected.

The Government may need to offer special paid leave (over and above annual leave and/or sick leave) for this pandemic. This could be delivered at a later date as part of a stimulus package for businesses. As of the date on this Guide, special leave provisions have not been legislated.

Stand Down Versus Redundancy

It is highly recommended that employers seek further advice before actioning a stand down or redundancy scenario. Mandatory employment law processes apply in each situation and Fair Work requires employers to comply with all such processes regardless of the current impact of coronavirus on business. Please check applicable awards, EBAs, employment contracts and company policies for specific rules that may apply to your business context before proceeding with these options.

Stand Down - What is it?

A stand down is a temporary work stoppage, with employees being reinstated at a future time. It is not a termination of employment. It is intended to relieve an employer of the obligation to pay wages to employees who cannot be usefully employed in certain limited circumstances. The stand down can be for an indefinite period of time, but only if the situation which has caused the stand-downs - in this case, the coronavirus pandemic - is still ongoing.

When does stand down (no pay) apply?

In relation to COVID-19, an employer may stand down an employee during a period in which the employee cannot usefully be employed because of circumstances including:

- a stoppage of work for any cause for which the employer cannot reasonably be held responsible (COVID-19).
- a government-issued directive for closure (not at the discretion of the business).

The employer is not required to make payments to the employee for the stand down period. However, the employee is entitled to access applicable paid leave entitlements for events that may arise during the stand down period including:

- Sick / carer's leave if the employee is sick or is required to care for a family/household member during the stand down period
- Public holidays (eg upcoming easter public holidays)
- Annual leave – yes, but employer has right to reasonably refuse an annual leave request

Generally, an employer would not be able to “stand down” an employee without pay just because there was a downturn in business caused by COVID-19. However if the Government ordered a business not to open and the employees could not be given any other meaningful work (for example in another part of the business that is not closed, work from home arrangements, different duties that the employee is competent to perform), this will likely give rise to a right to stand-down.

Redundancy - What is it?

Redundancy is a form of employment termination usually caused by factors such as economic conditions, business efficiency, or technological development. To make an employee's role redundant, the employer believes that the role is no longer required to be performed within the business.

When an employee's job is made redundant their employer may have to give them redundancy pay, which is calculated based on years of service. Redundancy pay is generally not applicable when:

- the employee has less than 12 months of service with the employer
- the employer has less than 15 employees (not including irregular casuals)
- the employee is a casual

(unless a modern award, enterprise agreement or contract of employment has more generous terms).

Employees subject to redundancy are also entitled to notice periods (or payment in lieu) and payment of eligible accrued leave entitlements.

When does redundancy apply?

When might redundancy apply:

- **A significant downturn in work**
- When a role and its duties are no longer appropriate or needed within a business

Due to the impact of COVID-19, you should openly discuss ways to mitigate redundancy if possible. Consider talking with staff and seeking expressions of interest from employees who might agree to temporarily reduce hours, take annual leave or leave without pay where possible.

Unfortunately, for many businesses, this may not be possible. If this is the case for you, then begin consultation for redundancies and ensure you follow Fair Work's process.

Change of Employment Conditions

An employer cannot reduce an employee's hours or pay without the employee's agreement. Consultation is required if the employer plans to:

- reduce working hours
- reduce pay rate
- change employment status from full time to part-time or casual

Consider current awards, EBAs, employment contracts and company policies before making a decision regarding a change to employment conditions.

If agreement is reached, record the change of conditions in writing and include the details of what the change in conditions are, when they come into effect, and the date for review.

Fair Work Australia

NOTE: The information in this guide is intended to be general advice only. Please contact Tracey Stewart at Management101 for further assistance specific to the context of your organisation. All information current as of 23 March 2020.

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