

## Coronavirus / COVID-19 – Employees’ rights to leave and pay

Employment Innovations has developed this document to provide guidelines and frequently asked questions regarding coronavirus disease (COVID-19) and employees’ rights to leave and pay.

General government advice regarding coronavirus can be located here:

<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert>

Obligation/Employee entitlement	Situation
<p><b><u>Sick leave (personal/carers leave)</u></b></p> <p><i>Can offer annual leave or unpaid leave (or LSL if applicable) if employee has no accrued paid sick leave (personal/carers leave)</i></p>	<ul style="list-style-type: none"> <li>• Employee is positive to COVID-19</li> <li>• Employee is in Government directed OR optional self-isolation <b><u>and is sick</u></b></li> <li>• Employee is sick with <b><u>any</u></b> illness or injury</li> <li>• Employee 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;               <ul style="list-style-type: none"> <li>○ any illness</li> <li>○ COVID-19</li> <li>○ school closure due to COVID-19</li> <li>○ Government directed isolation of child/dependant due to COVID-19 (NB does not include general coverage for own Government directed isolation as this leave is offered for the unexpected care required for the child, not for the isolation itself– see below)</li> </ul> </li> </ul>
<p><b><u>No paid leave obligation</u></b></p> <p><i>Can offer annual leave (or LSL if applicable) if employee would like to</i></p>	<ul style="list-style-type: none"> <li>• Employee is in Government directed OR optional self-isolation <b><u>and is not sick</u></b> (i.e. has returned from overseas and feels well) *</li> <li>• Employee has come in to contact with a <b>known</b> case of COVID-19 and is in Government directed OR optional self-isolation <b><u>and is not sick</u></b></li> </ul>

	<ul style="list-style-type: none"> <li>• Employee has come in to contact with a <b>suspected</b> case of COVID-19 and is in Government directed OR optional self-isolation <b><u>and is not sick</u></b></li> <li>• Employee is stuck overseas (on a cruise ship etc) due to COVID-19</li> <li>• Casual employees are not entitled to paid sick (personal/carer's) leave. A casual employee who has to self-isolate <b><u>or</u></b> has contracted the Coronavirus must not attend the workplace, without additional payments.</li> </ul>
<p><u>Ordinary pay</u></p>	<ul style="list-style-type: none"> <li>• Employee is working from home (and employer has approved this)</li> <li>• Employee is getting an assessment for fitness for work under the direction of the employer;             <ul style="list-style-type: none"> <li>○ if the result of the assessment is that the employee is sick then they revert to sick leave</li> <li>○ if the result is that they are told to isolate then no paid leave is required (unless they are supplied with a medical certificate stating not fit for work)</li> <li>○ if the result is they are fit for work, they should come back to work</li> <li>○ if the employer insists they don't return for 14 days then they should be paid ordinary pay</li> </ul> </li> <li>• Employer requests an employee to not come to work/isolate which is not in line with Government direction</li> <li>• Employer closes the business/office/location using discretion (<b>not Government directed</b>) as an added precaution but employee's role does not allow for working from home (i.e. works in a café, cleaner, factory worker, manual labour, mechanic etc).</li> </ul>

	<ul style="list-style-type: none"> <li>• Employer closes business temporarily due to a downturn in work/business (refer to redundancy if this is a prolonged situation)</li> </ul>
<b><u>Special leave</u></b>	<ul style="list-style-type: none"> <li>• This does not yet exist for employees – however there is some talk that the Government may need to offer special paid leave (over and above annual leave and/or sick leave) for this pandemic.</li> </ul>
<b><u>Stand down (no pay)</u></b>	<ul style="list-style-type: none"> <li>• Government issued directive for closure (not at the discretion of the business). Seek further advice before actioning</li> </ul>
<b><u>Redundancy</u></b>	<ul style="list-style-type: none"> <li>• Significant downturn in work due to impact of COVID-19 – we’d advise you openly discuss ways to mitigate this with staff such as expressions of interest from employees agreeable to temporarily reduce hours, take annual leave etc</li> <li>• If this is not possible then begin consultation for redundancies.</li> <li>• Guidance on the process to follow when considering redundancies can be found <a href="#">here</a>.</li> </ul>
<b><u>How to support employees</u></b>	<ul style="list-style-type: none"> <li>• Offer working from home options wherever possible</li> <li>• Pay employees when no paid leave type is available to them if practical</li> <li>• Offer EAP to assist with anxiety</li> <li>• Communicate regularly</li> </ul>

\*The Fair Work Ombudsman (FWO) has issued guidance on its [website](#) which suggests a permanent employee should be paid when an employer directs them to stay at home in line with Government advice when the employee is not sick (ie self-isolation after returning from overseas). This conflicts with many commentators’ views that an employee who is required to stay away from work due to Government advice is not entitled to be paid. The FWO says:

*"Where an employer directs a full-time or part-time employee to stay home in line with advice, for example in line with the Australian Government’s health and quarantine advice, and the employee is not sick with coronavirus, the employee should ordinarily be paid while the direction applies"*

We will provide further advice when the FWO clarifies its position.



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The information provided in this knowledge base article is general in nature and is not intended to substitute for professional advice. If you are unsure about how this information applies to your specific situation we recommend you contact [Employment Innovations](#) for advice.