

Coronavirus (COVID-19) – Frequently Asked Questions

An employee has contracted COVID-19 and is required to self isolate for 14 days. What am I required to pay them?

A permanent employee who has contracted COVID-19 is entitled to access their accrued personal leave. If personal leave is exhausted the employee could access accrued annual leave, long service leave, RDO's, TOIL etc. Some employers are applying discretionary special leave (up to 10 days) either as the primary entitlement or a last resort.

A casual employee who has contracted COVID-19 does not generally have an entitlement to any form of paid leave. However, some employers are providing casual employees with special leave (up to 10 days) during a period of self isolation. Casual employees also have access to access New Start or Youth Allowances which are currently subject to reduced or waived waiting periods.

An employee has returned from overseas and is required to self isolate for 14 days. What am I required to pay the employee?

The Federal Government is requiring all persons returning from overseas to self isolate for 14 days. If this affects your employee you will need to consider what payments are available to them.

A permanent employee is not entitled to be paid personal leave as they are not unfit for work or suffering a personal illness or injury. The employee could access other forms of accrued leave including annual leave, long service leave, RDO's, TOIL etc. Some employers are applying discretionary special leave (up to 10 days) either as the primary entitlement or a last resort.

A casual employee will not generally have an entitlement to any form of paid leave. However, some employers are providing casual employees with special leave (up to 10 days) during a period of self isolation. Casual employees also have access to access New Start or Youth Allowances which are currently subject to reduced or waived waiting periods.

Consideration could also be given to the employee working from home during a period of self isolation. This possibility will be impacted by the employee's position, duties, IT access, workplace health and safety, etc.

An employee has had contact with a person who has been diagnosed with COVID-19 and is required to self isolate for 14 days. What am I required to pay the employee?

A permanent employee is not entitled to be paid personal leave as they are not unfit for work or suffering a personal illness or injury. The employee could access other forms of accrued leave including annual leave, long service leave, RDO's, TOIL etc. Some employers are applying discretionary special leave (up to 10 days) either as the primary entitlement or a last resort.

A casual employee will not generally have an entitlement to any form of paid leave. However, some employers are providing casual employees with special leave (up to 10 days) during a period of self isolation. Casual employees also have access to access New Start or Youth Allowances which are currently subject to reduced or waived waiting periods.



Consideration could also be given to the employee working from home during a period of self isolation. This possibility will be impacted by the employee's position, duties, IT access, workplace health and safety, etc.

An employee is required to care for someone who is infected with COVID-19. What am I required to pay them?

If a permanent employee is required to provide care or support for someone who is infected with COVID-19 they would be able to access accrued personal leave. If an employee has exhausted their personal leave accruals they could access other forms of accrued leave including annual leave, long service leave, ROD's, TOIL, etc. If all of these forms of leave are exhausted the employee could access leave without pay.

An employee contracts COVID-19 at work. Is the employee covered by workers compensation?

If an employee contracts COVID-19 at work it is likely that they will be covered by workers compensation insurance. While the relevant legislation varies from state to state, a compensable injury generally includes a disease contracted in the course of employment where employment is a significant contributing factor. The employee would have to establish a link between contracting the disease and work. Currently with relatively few recorded cases, establishing a COVID-19 link is possible. However, as the virus spreads more widely within the general community it will be much more difficult for this link to be established.

An employee is showing flu like symptoms at work. Can I send them home?

If an employee is showing flu like symptoms (whether COVID-19 related or not) at work they can be sent home. This is a standard workplace health and safety obligation. As the employee is displaying flu like symptoms, they would be ill and able to access accrued personal leave.

An employee has been absent from work due to flu like symptoms. Can I require them to provide a medical clearance prior to their return to work?

There are currently heightened concerns regarding the transmission of COVID-19 in the workplace. If an employee has been absent from work due to flu like symptoms it would be reasonable for an employer to make enquiries regarding their ability to safely return to work. These enquiries could include requiring them to obtain a medical clearance indicating that they are not suffering from any disease which may pose a health and safety risk to their work colleagues.

Can I direct employees to stay home as safety precaution?

An employer can direct employees to stay home as a safety precaution. This includes circumstances where there is no obligation on the employee to self isolate and the employee remains ready, willing and able to work. If the employee is a permanent employee they would be entitled to be paid their normal wages for the period of the absence.

An employer could determine not to roster a casual employee if there were legitimate concerns regarding safety. A casual employee would not be entitled to any form of payment. However, some employers are providing casual employees with special leave (up to 10 days).



Consideration could also be given to the employee working from home during a period of self isolation. This possibility will be impacted by the employee's position, duties, IT access, etc...

Can I direct employees to work from home?

An employee is required to comply with a lawful and reasonable instruction given by their employer. Whether a direction for an employee to work from home is a lawful and reasonable instruction will depend upon the nature of the role, terms of their contract of employment, industrial instrument, etc. Each case needs to be considered in all the circumstances.

An employer and employee can agree to working from home arrangements. In coming to any such arrangements specific duties, working hours, IT support, workplace health and safety, etc. need to be considered.

A employee wants to stay home or work from home as a safety precaution. Am I required to agree to this request?

Some employees who may be at a greater risk of acquiring or being impacted by COVID-19 may request to stay home or work from home as a safety precaution. Generally, such a request would be coupled with a detailed explanation from the employee as to their particular circumstances with subsequent consideration by the employer. If an agreement can be reached the employee could work from home, take accrued paid leave or leave without pay.

The Federal Government's ban on mass gatherings has required me to cease operations. Am I required to keep paying my employees?

The Federal Governments decision to ban mass gatherings of more than 100 people has effectively resulted in the closure of many businesses including theatres, sporting stadiums, arenas, convention centres, etc. These closures present significant commercial challenges for their operators.

Section 524 of the Fair Work Act provides employers with an ability to stand down employees without pay. The section provides as follows:-

524 Employer may stand down employees in certain circumstances

(1) An employer may, under this subsection, stand down an employee during a period in which the employee cannot usefully be employed because of one of the following circumstances:

- a) industrial action (other than industrial action organised or engaged in by the employer);*
- b) a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown;*
- c) a stoppage of work for any cause for which the employer cannot reasonably be held responsible.*

Many employers will be required to cease their operations because of the Federal Government's mass gathering ban. These employers cannot reasonably be held responsible for these closures and stoppages of work.



In these circumstances, it is likely that the employers can stand down without pay employees who cannot be usefully employed. A determination of who can be usefully employed is essentially one for the employer. A total stand down of all employees may not be necessary or appropriate. It may be possible to usefully employ some categories of staff but not others. For example, a closure may provide an opportunity to undertake major maintenance programs or other work.

An employer seeking to initiate a stand down of employees may give employees the option of accessing accrued leave entitlements including annual leave, long service leave, RDO's TOIL, etc. as an alternative to leave without pay. The payment of annual leave and long service leave would require the employee's agreement. If an employee did not wish to access accrued leave entitlements they would be required to take leave without pay.

Stand downs without pay are usually associated with short term events of a finite duration such as floods, fires, supplier shortages, etc. The application of shut down to COVID-19 is challenging due to the uncertainty regarding its ongoing impact and duration.

My business is considering a shutdown as the best way to manage the economic and health implications of COVID-19. What am I required to pay my employees?

An employer may face particular circumstances which entitle it to stand down employees as detailed in the previous question.

An employer's ability to stand down employees where the Government has not directly banned their business from operating requires a detailed consideration of the particular circumstances. For example, an employer in the manufacturing industry requires all employees to use particular types of PPE which is no longer available due to stock piling or panic buying caused by COVID-19 concerns. The lack of availability of PPE is likely to trigger an ability to stand down employees (at least while the PPE is unavailable).

The standing down of employees without pay may not be available to all businesses impacted by decreased customers and revenues flowing from the COVID-19 outbreak. These employers will need to develop a detailed COVID-19 response strategy in consultation with their employees. This response could include employees reducing their hours of work, accessing accrued leave entitlements and/or taking leave without pay. In most circumstances these strategies require employee agreement in order to be implemented.

Can I require employees to reduce their hours of work as part of COVID-19 business strategy?

An employer cannot, in most instances, direct a permanent employee to reduce their hours of work. However an employer can reach agreement with its employees to reduce their hours of work permanently or temporarily as part of a COVID-19 business response strategy. Achieving such an agreement usually requires open and honest communication by the employer regarding its financial situation and the challenges it is facing.

Can I direct employees to take some or all of their annual leave as part of a COVID-19 business response strategy?



An employer cannot, in most instances, direct an employee to take annual leave on short notice. However an employer can reach agreement with its employees to take accrued annual leave as part of a COVID-19 business response strategy. Achieving such an agreement usually requires open and honest communication by the employer regarding its financial situation and the challenges it is facing.

The Government has announced the closure of Schools. As number of my employees are now required to care for and supervise their children. What am I required to pay them?

In the event of a School closure a permanent employee is able to access their accrued personal leave in order to provide care or support to a child due to the unexpected emergency. The ability to take accrued personal leave is limited to the period reasonably required to deal with the unexpected emergency. This period may vary depending upon employees personal circumstances. In the situation of a School closure it could reasonably take an employee 2 to 3 days to arrange alternative carers. If alternative carers cannot be arranged the employee could access accrued leave entitlements including annual leave, long service leave, RDO's, TOIL, etc.

A permanent employee has indicated that they intend to travel overseas on annual leave. Can I direct them not to undertake this travel?

An employer cannot direct an employee to undertake overseas travel during annual leave. However, the Federal Government has imposed stringent international travel restrictions including compulsory 14 days self isolation upon return to Australia. Employees should be reminded that such self isolation would be considered leave without pay unless they wish to access accrued leave entitlements including annual leave, long service leave, RDO's, TOIL, etc.

Note: the information contained in this FAQ is for general information only it is not to be considered professional advice and no person should act or refrain from acting on the basis of the information provided. Appropriate professional advice should always be sought based on your particular circumstances.