

**EMPLOYER**  
**ASSIST** BY ilg INDUSTRY  
LEGAL  
GROUP



**AUSTRALIAN AUTOMOTIVE  
AFTERMARKET ASSOCIATION**

# EMPLOYER'S GUIDE TO COVID-19

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# WHAT WE WILL COVER

## **General Health and Safety**

Hygiene practices, self-isolation/quarantine, and alternative work arrangements.

## **Leave**

Entitlements and what leave applies in various situations.

## **Temporary Closure/Shortage of Work**

Provisions for employers in relation to employees.

# GENERAL HEALTH AND SAFETY

*Workplace health and safety laws require employers to ensure (as far as reasonably practicable) the health and safety of their workers and others in the workplace.*

- Encourage good hand hygiene by everyone at the workplace (including customers) by providing access to hand hygiene stations on entry and exit and encouraging them to only touch what they intend to purchase.
- Provide access to facilities for good hygiene such as adequate supply of soap, water and toilet paper. Ensure these are kept clean and stocked.
- Encourage workers to practice good hygiene i.e. hand washing and sanitising, covering coughs and sneezes, limiting contact with others/social distancing - 4 square metres for enclosed spaces/gatherings in addition to general practice of 1.5 metres distance.
- Ensure regular, scheduled cleaning of your workplace (especially frequently touched areas).
- Use PPE appropriately.
- Do what you can to reduce psychological risks.

# GENERAL HEALTH AND SAFETY

## SELF-ISOLATION / QUARANTINE

### 14 day self-isolation will be required if:

- **Confirmed Case:** You have COVID-19
- **Close Contact with Confirmed Case:** You have been in close contact with a confirmed case of COVID-19
- **International Travel:** You arrive in Australia after midnight on 15 March 2020
- **Interstate Travel:** You arrive in Tasmania (midnight 20 March), the Northern Territory (4:00pm 24 March), Western Australia (1:30pm 24 March), South Australia (4:00pm 24 March) and Queensland (12.01am 26 March). See State/Territory government websites for details on exemptions e.g. essential travel/services, border communities etc.

**Note:** An employer is not required to pay an employee who is subject to an enforceable government direction to self-isolate which prevents the employee from working unless the employee uses paid leave entitlements or is able to work from home.

# GENERAL HEALTH AND SAFETY

## ALTERNATE WORK ARRANGEMENTS

- If possible, consider allowing employees to **work from home**:
  - By **mutual agreement** (i.e. as a preventative measure or in event employee is self-isolating but otherwise fit to work); and
  - Ensure **safe systems** in place (working on equipment that is safe for use, ergonomic considerations are met, hours of work monitored and your workers compensation insurance covers workers working from home).
- Working from home may not be suitable or possible for many businesses/workers in this industry. However, consider for office workers, administration, HR, sales etc.).
- Employees who work from home should be paid as normal.

# LEAVE ENTITLEMENTS

## ANNUAL LEAVE (NES)

- **Permanent employees:**

- Taken by agreement (e.g. if employee is self-isolating but is not sick/working from home)
- If an agreement cannot be reached, directions to take annual leave must comply with the Fair Work Act and/or Awards.

The VMRSR Award allows employers to direct employees who have an excessive leave balance of at least 8 weeks (10 for shiftworkers) to take a period of leave (at least 1 week) provide their remaining balance is not less than 6 weeks. Also, at least 8 weeks notice must be provided.

- **Entitlement:** 4 weeks for each year of service or 5 weeks for shiftworkers (see Award/Agreement definition)
- Accumulates and is paid out on termination (inc. leave loading where applicable)

# LEAVE ENTITLEMENTS

## PERSONAL / CARER'S LEAVE (NES)

- **Permanent employees:**

- Taken when:
  - **Sick Leave** - not fit to work (i.e illness such as COVID-19 or injury);
  - **Carer's Leave** - providing care or support to an immediate family or household member because of an illness, injury or unexpected emergency.
- **Entitlement:** 10 days' paid for each year of service - accumulates but is not paid out on termination.

- **Casual employees:**

- **Entitlement:** 2 days of unpaid carer's leave for each occasion.

**Example of unexpected emergency:** Parent needs to leave work as school has closed on short notice because someone at the school has tested positive for COVID-19.

**Immediate Family** means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or a child, parent, grandparent, grandchild or sibling of a spouse or de-facto partner of the employee.

# LEAVE ENTITLEMENTS

## **LONG SERVICE LEAVE**

Long service Leave entitlements vary by State/Territory. However, depending on the jurisdiction, some employees may be eligible to take their LSL accrual. Employers may also be able to direct employees to take their LSL.

## **UNPAID LEAVE**

If an employee has exhausted their paid leave entitlements, an employer may authorise a period of unpaid leave.

For example, if an employee requests to stay at home as a precaution (i.e. is not sick or required to self-isolate) but has no paid leave entitlements, the employee may take unpaid leave by agreement with the employer.



# TEMPORARY CLOSURE

## STAND DOWN (WITHOUT PAY)

Under the Fair Work Act, an employee can only be stood down without pay if they cannot be usefully employed because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible. Whether an employer can rely on this provision will depend on the facts. However, employers should act cautiously. You must be able to show:

- there is a **stoppage of work**;
- the employees to be stood down **cannot be usefully employed** (which is not limited to the work an employee usually performs); and
- the cause of the stoppage must also be one that the **employer cannot reasonably be held responsible for**.

Employers are not required to make payments to employees for the period of a stand down but may choose to pay their employees. An employee is not stood down while taking authorised paid or unpaid leave. Employees accrue leave as normal during a stand down.

**Note:** Enterprise agreements and contracts may have different or additional stand down provisions. Check these first.

## STAND DOWN (WITH PAY)

Employers cannot generally stand down employees simply because of a deterioration of business conditions or because an employee has COVID-19. If an employer unlawfully stands down employees without pay, the employees will likely be able to recover unpaid wages.

# EXAMPLES

Fair Work provides the following examples of when employers may be able to stand down employees:

- **Directed to Shut Down:** if there was an enforceable government direction requiring the business to close (which means there is no work at all for the employees to do, even from another location);
- **Workforce has had to Self-Isolate:** if a large proportion of the workforce was required to self-isolate with the result that the remaining employees/workforce cannot usefully be employed; or
- **Lack of Supply:** if there was a stoppage of work due to lack of supply for which the employer could not be held responsible.

This is not an exhaustive list.

# SHORTAGE OF WORK

## TERMINATION/REDUNDANCY

Some businesses may need to make positions redundant in response to business downturn as a result of COVID-19. First consider:

- Are we a small business (less than 15 employees). Generally small businesses don't have to pay redundancy pay when making an employee redundant. However, usual obligations in relation to notice periods and leave payouts will apply.
- Can we reduce the hours of casuals.
- Can we temporarily reduce permanent hours by mutual agreement.
- Can we reach an agreement with staff to take a period of paid/unpaid leave.

Employers will need to comply with the usual redundancy obligations including **consultation requirements**.

# Q&A



# CONTACT DETAILS

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