

COVID-19 WEBINAR Q&A

Below are high-level responses to some of the questions raised in the COVID-19 Webinar on Wednesday 25 March 2020. Please contact us for specific advice.

We consolidated some similar questions related to Leave Entitlements. We recommend you read through all questions and answers within this Q&A as some questions provide more detailed information than others and may more closely relate to your particular circumstances.

Please note this information may be subject to change as the crisis continues to develop.

Leave Entitlements

*** UPDATE - 8 April 2020:** The Fair Work Commission has decided to introduce the following new temporary measures (until 30 June 2020) into selected modern awards including the *Vehicle Manufacturing Repair Services and Retail Award 2010*:

- **Unpaid Pandemic Leave** - employees to elect to take up to 2 weeks' unpaid leave if the employee is required, by government or medical authorities or acting on medical advice, to self-isolate or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic in circumstances where the employee is required to work at premises operated by an employer.
- **Annual Leave at Half Pay** - employees and their employer can agree for the employee to take twice as much annual leave on half pay. The agreement must be in writing.

See article – "COVID-19 Temporary New Award Provisions".

Can we allow staff to use any sick leave they have if we have to shut down, even if they are not sick or is it only annual leave they can use?

Yes, although the personal (sick) leave entitlement has certain eligibility criteria (i.e. ill or injured), employers and employees are encouraged to explore options that enable an employee to take their accrued leave entitlements during the coronavirus outbreak. This may include taking personal leave by agreement. Keep in mind, however, that this will mean they will have no accrual to rely upon when they do return to work making this a less than optimal option.

Has the requirement for medical certificates been waived for sick leave?

No. The requirement is that the employer can request evidence to support the reason the employee has taken leave (i.e. medical certificate). However, if you have mutually agreed for employees to access their personal leave entitlement even though they aren't sick, then you wouldn't require a medical certificate. Also review your policies and contracts which may include additional terms for when a medical certificate is required.

Just to clear things up - anyone who wishes or is required to self-isolate - their leave is unpaid in the first instance however can we/the employee choose to pay out Personal Leave (if COVID contracted) or Annual Leave and Long Service Leave?

If the employee is required to self-isolate (i.e. under an enforceable government direction), the employer is not required to pay the employee (unless the employee uses paid leave entitlements).

If the employee has COVID-19, they may access their personal (sick) leave entitlement. Otherwise, they may take other paid leave i.e. annual leave or long service leave.

We have already asked some of our employees if they would take leave and they have refused which leaves us very limited options.

You may need to consider redundancies. Please contact us to discuss.

Do we have to ensure any staff members that have been in isolation have a medical certificate issued prior to returning to the business?

If an employee has been in close contact with a confirmed case or developed symptoms, a medical clearance should be sought.

At present the schools are open but if a parent decides they want to keep their kids at home, do they need to use annual leave rather than carer's leave as they are not sick?

Carer's leave applies where the employee needs to look after a family member or a member of their household who requires care or support because of a personal illness, injury or unexpected emergency affecting the member.

If the child isn't sick and there is no unexpected emergency, then the employee will not be eligible for Carer's leave. They can apply to take annual leave instead.

If we get locked down (shutdown) and employees have kids at home they have to take care of due to school closures are they entitled to personal leave as well as annual leave?

If you are shut down (e.g. due to an enforceable government direction), you may be able to stand your employees down without pay under the Fair Work Act. Employers are not required to make payments to employees for the period of a stand down but may choose to pay their employees.

For instance, you may choose to allow your employees access to their annual leave entitlements.

Even if there wasn't a stand down, the employee would not be eligible for personal leave unless they were ill or injured or caring for an immediate family or household member with an illness, injury or unexpected emergency. An employer may use their discretion by agreement with the employee as noted above.

In the instance that an employee's family member has the disease and the staff member must stay home too are they paid? and what type?

If the employee is sick or caring for an immediate family member, they may access their personal/carer's leave entitlement. If they are not sick and are self-isolating, they may access their annual leave entitlement. If the employee is required to self-isolate (i.e. under an enforceable government direction), the employer is not required to pay the employee (unless the employee uses paid leave entitlements).

If an employee is showing some kind of illness - what is our ability and right to send them home and to seek medical advice? Can the employee refuse and state that they are feeling fine?

If you hold a reasonable concern, you may stand the employee down with pay and direct them to see a doctor for assessment and obtain a clearance.

Alternatively, discuss your concerns with the employee and request that they take personal leave as a precaution.

We have some long-term staff (more than 20 years) that we have had the discussion with for annual leave or long service leave and their reply is they will just take sick leave, as they don't want to take annual leave. How can this be managed?

If they are not eligible for sick leave, they won't be able to take it unless you agree. Advice on how to manage these discussions will depend on what the plans are for the business. For instance, does the business intend to continue to trade for as long as it is permitted. Alternatively, is the business considering closing voluntarily.

Please contact us to provide more information so that we can provide you with the most accurate advice.

If they are not sick, you are not eligible to take their personal leave entitlement unless there is a mutual agreement.

Yes. Unless they are eligible to take carer's leave which is the same entitlement.

CONTACT EMPLOYER ASSIST

If you require further advice, please contact Employer Assist on **1300 735 306** or email aaaa@employerassist.com.au

As we are experiencing a high volume of calls and we are taking the time to talk through multiple scenarios and options with members it may take us a little longer to respond to your telephone enquiries. As such, it is our preference if you are able to email enquiries in the first instance and we will call you if we require more information.

This document is intended for general information purposes only and should not be regarded as legal advice. Please contact Employer Assist by Industry Legal Group if you require legal advice. 3466-1515-7519, v. 1