

Fact Sheet: COVID-19 and Workplace Relations

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1. An employee is required to self-isolate

If an employee cannot work because they're subject to an enforceable government direction requiring them to self-quarantine, the employee isn't ordinarily entitled to be paid unless they use leave entitlements. Employees should discuss their leave options with their employer, whether this is paid or unpaid.

2. An employee is sick with COVID-19

Employees who are sick with coronavirus cannot attend the workplace for a period due to the requirement by Australian Government's health and quarantine guidelines.

Full-time and part-time employees who cannot come to work because they're sick with coronavirus can take paid personal leave. If the employee doesn't have enough accrued paid leave to cover their absence, they can access unpaid sick leave.

3. A member of an employee's family or household is sick with COVID-19

A full-time or part-time employee who is required to look after an immediate family member or member of their household who's sick with coronavirus is entitled to access paid personal leave. Full-time and part-time employees are entitled to take 2 days of unpaid carer's leave per occasion if they have no paid personal leave left.

Casual employees may access two days of unpaid carers leave per occasion under the NES.

TOPIC at a glance:

- Leave available to employees will depend on the circumstances surrounding their absence
- Standing down of staff should be considered a last resort and the legality of a stand down will differ from one employer to the next
- Reducing staff hours or pay can't always be done – check the relevant headings for more information

Resources:

- [Coronavirus and Australian workplace laws](#) (Fair Work Ombudsman)
- [Guide to Managing Redundancy](#)



4. An employee's child's school or childcare centre has closed

Employees who cannot come to work because they need to care for a child whose school or childcare centre has closed will ordinarily need to use paid leave entitlements to be paid for their absence unless it was unexpected emergency affecting the member. Employers can request proof of this, which will usually be a letter from the school to the parent advising of the closure. Some states have modified their school holiday dates, in which case an employee may not have a letter from the school and the employer may use the government direction as proof.

Casual employees are entitled to 2 days of unpaid carer's leave per occasion. Full-time and part-time employees are also entitled to take 2 days of unpaid carer's leave per occasion if they have no paid sick or carer's leave left.

5. Directing high-risk staff to not attend work as a precaution

If an employee is considered high-risk of infection from coronavirus, employers may request that they work from home or not work during the risk period.

Where an employer directs a full-time or part-time employee not to work due to workplace health and safety risks, but the employee is ready, willing and able to work, the employee is generally entitled to be paid while the direction applies.

6. Standing down staff

Where a business has no work or reduced work available to employees due to a downturn in business caused by COVID-19, employers must continue to pay full-time and part-time employees who are ready, willing and able to work, unless the employees are covered by an award or agreement that contains specific stand down provisions applicable to this situation.

Award free full-time and part-time employees will continue to be paid by the employer unless their contract of employment contains a stand down provision applicable to this situation.

An employer and employee can agree that the employee takes a period of accrued annual leave or long service leave during a period when business is impacted.

There are limited circumstances where a business can legally stand down staff without pay. This should be assessed on a case-by-case basis and the circumstances will be different for every employer, so Members should proceed with caution if planning to stand down staff without pay.

In order to stand down staff without pay, employers need to demonstrate that:

- There is a stoppage of work.
- There is no alternative meaningful work that can be performed by the employees who are being stood down.
- The employer cannot reasonably be held responsible for the cause of the stoppage of work

Standing down staff without pay should always be a last resort, so any meaningful work you can give to employees, including home-based work, should always be considered before standing staff down. This can mean that a government direction to shut down trade may not, in and of itself, be reason enough to stand down staff.



7. Redundancy due to a downturn in business

Some employers may be facing potential redundancies due to a downturn in business caused by COVID-19. Where an employer intends to make staff redundant, they must first hold discussions and consult with all employees who may be affected by the decision. If an employee nominates a union to represent them, that union must also be notified and consulted.

If 15 or more staff are being made redundant, an employer must provide notice of the proposed redundancies to Centrelink.

For more information on redundancies and the consultation process, see our [Guide to Managing Redundancy](#).

8. Transferring an employee to lower paid duties

Transferring an employee to lower paid duties can only be done with the agreement of both the employer and employee. Varying an employee's contract of employment to transfer the employee to lower paid duties may amount to a termination of the original contract of employment and creation of a new contract.

The employer is still required to provide notice of termination or payment in lieu of notice (PILN). The amount of notice required is the same notice the employee would have been entitled to if their employment had been terminated.

The notice period is paid at the employee's higher paid rate under the original contract of employment. If opting for PILN, and the employee is now working in lower paid duties, the employee receives the difference between their original amount and their lower paid duties for the duration of the notice period.

Employees are not generally required to accept a transfer to lower paid duties. Where an employee refuses to accept an employer's decision to transfer them to lower paid duties, the employee could argue that the employer has terminated their contract of employment. The employer would then be required to provide notice of termination or payment in lieu of notice and a full-time or part-time employee may be entitled to redundancy pay.

9. Reducing an employee's hours

As a general principle, variations to an employment contract reducing a full-time or part-time employee's contracted hours can only be done by agreement between the employer and employee. Sometimes an agreed variation reducing an employee's contracted hours can amount to a termination of the original contract of employment and creation of a new contract.

For example, permanently changing a full-time employee to a part-time employee is a significant change to the employee's original contract of employment, terminating the full-time contract and creating a new part-time contract. In this situation, an employer would be obliged to provide notice of termination (of the original contract) or payment in lieu of notice. The amount of notice of the reduction in working hours would be the same notice the employee would have been entitled to if their employment had been terminated.

The notice period is worked according to the employee's working hours under the original contract of employment. In the case of PILN, where the employee is now working reduced hours, the amount paid as PILN equals the difference between the amount the employee would have been paid



according to their original working hours and the reduced hours they are now working for the duration of the notice period.

Usually, a full-time or part-time employee is not required to accept a reduction in hours. Where an employee refuses to accept an employer's decision to reduce the employee's working hours, they could argue that their contract of employment has been terminated. The employee would then be entitled to notice of termination or PILN and may be entitled to redundancy pay.

Awards, industrial agreements or contracts of employment may have provisions allowing an employer to change a full-time or part-time employee's working hours without the employee's agreement. Check your relevant industrial instrument or contact Jobs Australia to ensure you comply with these provisions.

10. More information

If you would like more information on any of the above scenarios, or are unsure whether these apply to your organisation, please contact Jobs Australia's Workplace Relations team on 1800 331 915.