

## Coronavirus and Australian workplace laws

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We will continue to update the information on our website as the situation develops and as needed. We encourage you to regularly check this page for more information.

Find out about your workplace entitlements and obligations if you're affected by the outbreak of coronavirus (also referred to as COVID-19).

Please visit the Australian Government:

- [Department of Health website \(https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov\)](https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov) - for the latest information on the virus, including requirements and conditions for isolation and quarantine periods and when testing should be sought
- [Services Australia website \(https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19\)](https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19) - for information and services to help you if you're affected by coronavirus, including Centrelink payments and support.

We encourage employees and employers to work together to find appropriate solutions that suit the needs of individual workplaces and staff. This may include taking different forms of leave, working from home, or taking extra precautions in the workplace.

If you have an urgent enquiry about your workplace entitlements or obligations, please [contact us \(www.fairwork.gov.au/contact-us\)](http://www.fairwork.gov.au/contact-us) on 13 13 94 and select the prompt for the Coronavirus hotline.

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### Where can I get information on health and safety in the workplace?

We can provide information about workplace entitlements such as taking sick and annual leave.

For information about health and safety in the workplace, including legal obligations of employers and employees, go to:

- the Australian Government [Department of Health \(https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov\)](https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov) - for the latest information and advice about coronavirus
- your State or Territory Public Health Unit's website - for local coronavirus response activities and advice
- [Safe Work Australia \(https://www.safeworkaustralia.gov.au/doc/coronavirus-covid-19-advice-pcbus?20\)](https://www.safeworkaustralia.gov.au/doc/coronavirus-covid-19-advice-pcbus?20) - for information and referrals about managing the risks of contracting coronavirus in the workplace
- your State or Territory workplace health and safety body ([www.fairwork.gov.au/website-information/related-sites#workplace-health-and-safety](http://www.fairwork.gov.au/website-information/related-sites#workplace-health-and-safety)) - who can also assist with [workers compensation \(www.fairwork.gov.au/leave/workers-compensation\)](http://www.fairwork.gov.au/leave/workers-compensation) enquiries
- [Comcare \(Commonwealth\) \(https://www.comcare.gov.au/home\)](https://www.comcare.gov.au/home) - for Australian Government employees and for employees of organisations which self-insure under the scheme
- [Smart Traveller's webpage on the Coronavirus \(https://www.smartraveller.gov.au/news-and-updates/coronavirus-covid-19\)](https://www.smartraveller.gov.au/news-and-updates/coronavirus-covid-19)
- [Office of the Australian Information Commissioner \(OAIC\) \(https://www.oaic.gov.au/privacy/guidance-and-advice/coronavirus-covid-19-understanding-your-privacy-obligations-to-your-staff/\)](https://www.oaic.gov.au/privacy/guidance-and-advice/coronavirus-covid-19-understanding-your-privacy-obligations-to-your-staff/) - for information on privacy obligations for private sector employers (including health sector providers) relating to coronavirus.

## When can employers direct employees to stay away from their usual workplace under workplace health and safety laws?

Safe Work Australia (<https://www.safeworkaustralia.gov.au/media-centre/news/businesses-must-have-measures-place-protect-workers-risk-coronavirus>) <sup>1</sup> has information about when an employer can direct employees to stay away from their usual workplace under the model workplace health and safety laws.

More information:

- [State or Territory workplace health and safety bodies \(www.fairwork.gov.au/website-information/related-sites#workplace-health-and-safety\)](http://www.fairwork.gov.au/website-information/related-sites#workplace-health-and-safety) - for information on State and Territory workplace health and safety
- the Australian Government [Department of Health \(https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov\)](https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov) <sup>2</sup>.

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## What happens if an employee or their family member is sick with coronavirus?

Employees who are sick with the coronavirus cannot attend the workplace for a period due to the workplace health and safety legal obligations that both employers and employees have.

Employers can direct employees who are sick with the coronavirus not to come to work. Employers can do this if they're acting reasonably and based on factual information about health and safety risks, which includes relying on the Australian Government's health and quarantine guidelines.

Full-time and part-time employees who cannot come to work because they are sick with coronavirus can take paid sick leave. If an employee needs to look after a family member or a member of their household who is sick with coronavirus, or suffering an unexpected emergency, they are entitled to take paid carer's leave. An employer cannot require an employee to take sick or carer's leave. However, in these circumstances, the employee is not entitled to be paid unless they use their paid leave entitlements.

Under the Fair Work Act, casual employees are entitled to 2 days of unpaid carer's leave per occasion. Full-time and part-time employees can take unpaid carer's leave if they have no paid sick or carer's leave left. Employers should consider their obligations under any applicable enterprise agreement, award, employees' employment contracts or workplace policies, which may be more generous.

An employee must give their employer reasonable evidence of the illness or unexpected emergency if their employer asks for it. This will also apply to situations relating to coronavirus.

Under the Fair Work Act, an employee is protected from being dismissed because of their temporary absence due to illness or injury.

More information:

- [Paid sick and carer's leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave)
- [Long periods of sick leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/long-periods-of-sick-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/long-periods-of-sick-leave)
- [Unpaid carer's leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/unpaid-carers-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/unpaid-carers-leave)
- [Notice and medical certificates \(www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/notice-and-medical-certificates\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/notice-and-medical-certificates) .

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## What if an employee is stuck overseas or is required to be quarantined or to self-isolate?

Employees should contact their employer immediately if they are unable to attend work because they cannot return from overseas, are required to enter quarantine or to self-isolate because of the coronavirus.

The Fair Work Act does not have specific rules for these kinds of situations so employees and employers need to come to their own arrangement. This may include:

- working from home or another location (if this is a practical option), noting they should review any applicable enterprise agreement, award, employment contracts or workplace policies
- taking sick leave if the employee is sick
- taking annual leave
- taking any other leave available to them (such as long service leave or any other leave available under an award, enterprise agreement or employment contract)
- arranging any other paid or unpaid leave by agreement between the employee and the employer.

### **Example: Employee required to self-isolate - unable to work from home**

Franklin has just returned to Australia from overseas and has to self-isolate for 14 days, due to the Australian Government's self-isolation rules for overseas arrivals. He contacts his employer immediately to let them know he can't come into work as a result of a government order.

After discussing the requirements of the role with his employer, they agree that working from home isn't possible for the type of work that Franklin does. As Franklin has 3 weeks of annual leave accumulated, they both agree that Franklin will take annual leave for 2 weeks to cover the self-isolation period.

### **Example: Employee required to self-isolate - able to work from home**

Amelia is required to self-isolate for 14 days after being in close contact with a confirmed case of coronavirus. She contacts her employer immediately to let them know she can't come into work.

After discussing the requirements of the role with her employer, they agree that Amelia can work from home during the self-isolation period as long as she feels well.

After 1 week of self-isolation, Amelia starts to feel unwell. She calls her employer to let them know the change in her health. Amelia stops working from home and takes sick leave.

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.

However, if an employee cannot work because they are subject to a government order requiring them to self-quarantine, the employee is not ordinarily entitled to be paid (unless they use leave entitlements). In this case, their inability to work is because of a government order, not because of their employer.

If an employee cannot work due to travel restrictions (for example, they are stuck overseas), they are not entitled to be paid (unless they use paid leave entitlements).

Employers should consider whether their obligations are impacted by any applicable enterprise agreement, award, employees' employment contracts or workplace policies, which may be more generous.

More information:

- [Paid sick and carer's leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/payment-for-sick-and-carers-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/payment-for-sick-and-carers-leave)
- [Unpaid carer's leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/unpaid-carers-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/unpaid-carers-leave)
- [Annual leave \(www.fairwork.gov.au/leave/annual-leave\)](http://www.fairwork.gov.au/leave/annual-leave)
- [Long service leave \(www.fairwork.gov.au/leave/long-service-leave\)](http://www.fairwork.gov.au/leave/long-service-leave)
- the Australian Government [Department of Health website \(https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov\)](https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov) <sup>↗</sup> - for the latest information on the virus, including requirements and conditions for isolation and quarantine periods and when testing should be sought
- [Services Australia website \(https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19\)](https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19) <sup>↗</sup> - for information and services to help you if you're affected by coronavirus, including Centrelink payments and support.

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## **What if an employee wants to stay home as a precaution?**

Employees who want to stay at home as a precaution (but who are not directed to by their employer or as a result of a government order) need to come to an arrangement with their employer that best suits their workplace, such as making a request to work from home (if this is a practical option) or to take some form of paid or unpaid leave, such as annual leave or long service leave. Normal leave application processes in the workplace apply. If the employee does not enter into an arrangement with their employer or use paid leave, they are not entitled to payment in these circumstances. You can find information on self-quarantine requirements on the Australian Government [Department of Health's website \(https://www.health.gov.au/resources/publications/coronavirus-covid-19-isolation-guidance\)](https://www.health.gov.au/resources/publications/coronavirus-covid-19-isolation-guidance) <sup>↗</sup>.

Employees are encouraged to discuss their level of risk of contracting coronavirus with their doctor, workplace health and safety representative or the appropriate Commonwealth, State or Territory workplace health and safety body.

Employees who do not work because they have a reasonable concern about an imminent risk to their health or safety are not taking industrial action. This is provided they are not failing to comply with a direction to perform other appropriate and safe work.

More information:

- [Taking annual leave \(www.fairwork.gov.au/leave/annual-leave/taking-annual-leave\)](http://www.fairwork.gov.au/leave/annual-leave/taking-annual-leave)
- [Long service leave \(www.fairwork.gov.au/leave/long-service-leave/default\)](http://www.fairwork.gov.au/leave/long-service-leave/default) .

#### **Example: Employee chooses to self-isolate due to health concerns**

Jeff wants to self-isolate as a precaution because he has a weakened immune system. He contacts his employer to discuss his concerns and asks to work from home for the next few weeks.

Jeff's employer is already aware of his condition. They check their working from home policy and conduct a risk assessment to make sure Jeff's home office will be safe for him to use. They then let Jeff know that they're happy to let him work from home for the next 2 weeks.

Jeff and his employer agree that after 2 weeks, they'll review the arrangement to make sure it's working and to discuss whether it's still necessary.

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## **What if an employer wants their employees to stay home as a precaution?**

Under workplace health and safety laws, employers must ensure the health and safety of their workers and others at the workplace as far as is reasonably practicable. Workers also have responsibilities under those laws.

If an employee is at risk of infection from coronavirus (for example, because they've recently travelled from overseas, or have been in close contact with someone who has the virus), employers should request that they work from home (if this is a practical option - see below) 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. However, if an employee cannot work because they are subject to a government order requiring them to self-quarantine, the employee is not ordinarily entitled to be paid (unless they use leave entitlements).



Employers should consider whether their obligations are impacted by any applicable enterprise agreement, award, employees' employment contracts or workplace policies, which may be more generous.

Under the Fair Work Act, an employee can only be stood down without pay if they cannot be usefully employed because of equipment break down, industrial action or a stoppage of work for which the employer cannot be held responsible. The most common scenarios are severe and inclement weather or natural disasters.

Standing down employees without pay is not generally available due to a deterioration of business conditions or because an employee has the coronavirus. Enterprise agreements and employment contracts can have different or extra rules about when an employer can stand down an employee without pay. Employers are not required to make payments to employees for the period of a stand down, but may choose to pay their employees.

Employers need to balance their legal obligations, including those relating to anti-discrimination.

More information:

- [Casual employees \(www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees\)](http://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees)
- [Directing an employee to take annual leave \(www.fairwork.gov.au/leave/annual-leave/directing-an-employee-to-take-annual-leave\)](http://www.fairwork.gov.au/leave/annual-leave/directing-an-employee-to-take-annual-leave)
- [Protection from discrimination at work \(www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work\)](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work)
- the Australian Government Department of Health website (<https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov>)  - for the latest information on the virus, including requirements and conditions for isolation and quarantine periods and when testing should be sought
- Services Australia website (<https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19>)  - for information and services to help you if you're affected by coronavirus, including Centrelink payments and support.

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## **When can employees work from home?**

Working from home arrangements are usually agreed between an employer and employee. An employer who wants to direct an employee to work from home should review their obligations under any applicable enterprise agreement, award, employment contract or workplace policy. Employers should also consider the nature of the work involved and the suitability of the employee's home.

Workplace health and safety laws still apply even when an employee is working from home.

Where employees are required to record their hours of work (for example, in relation to annualised wage arrangements under some modern awards), this needs to continue when they are working from home. Employers and employees are encouraged to discuss how this should occur.

More information:

- [your State or Territory workplace health and safety body \(www.fairwork.gov.au/website-information/related-sites#workplace-health-and-safety\)](http://www.fairwork.gov.au/website-information/related-sites#workplace-health-and-safety)
- [Comcare \(Commonwealth\) \(https://www.comcare.gov.au/home\)](https://www.comcare.gov.au/home) <sup>PDF</sup> - for Australian Government employees and for employees of organisations which self-insure under the scheme.

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## What about casual employees and independent contractors?

Casual employees do not have paid sick or carer's leave entitlements under the National Employment Standards and usually are not entitled to be paid when they do not work (for example, if they miss a shift because they are sick due to coronavirus or because they are otherwise required to self-isolate). Casual employees are paid a casual loading instead of paid leave entitlements. Employers should also consider their obligations under any applicable enterprise agreement, award, employees' employment contracts or workplace policies.

Independent contractors are not employees and do not have paid leave entitlements under the Fair Work Act. However, there are special provisions that deem contract outworkers in the textile, clothing and footwear industry to be employees for the purposes of most protections under the Fair Work Act. Where these provisions apply, the contract outworker should be treated as an employee.

More information:

- [Casual employees \(www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees\)](http://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees)
- [Independent contractors \(www.fairwork.gov.au/find-help-for/independent-contractors\)](http://www.fairwork.gov.au/find-help-for/independent-contractors)
- [Outworkers \(www.fairwork.gov.au/find-help-for/outworkers\)](http://www.fairwork.gov.au/find-help-for/outworkers) .

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## What if I cannot attend work because my child's school is closed due to concerns about the coronavirus?

Employees who cannot come to work because they need to care for a child whose school has closed will ordinarily need to use paid leave entitlements to be paid for their absence.

Paid carer's leave is available to full-time or part-time employees 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 or unexpected emergency affecting the member. A school closing on short notice and for a short period due to concerns about coronavirus (for example, because someone at the school has tested positive) is an unexpected emergency for this purpose.

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

An employee must give their employer reasonable evidence of the unexpected emergency if their employer asks for it. This will also apply to situations relating to coronavirus.

Other arrangements that may be available include:

- working from home (if this is a practical option and consistent with any applicable award, enterprise agreement, employment contract or workplace policy) or other flexible working arrangements
- taking annual leave
- taking any other leave (such as long service leave or any other leave available under an award, enterprise agreement or employment contract)
- taking any other paid or unpaid leave by agreement between the employee and the employer.

More information:

- [Paid sick and carer's leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/payment-for-sick-and-carers-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/payment-for-sick-and-carers-leave)
- [Unpaid carer's leave \(www.fairwork.gov.au/leave/sick-and-carers-leave/unpaid-carers-leave\)](http://www.fairwork.gov.au/leave/sick-and-carers-leave/unpaid-carers-leave)
- [Annual leave \(www.fairwork.gov.au/leave/annual-leave\)](http://www.fairwork.gov.au/leave/annual-leave)
- [Long service leave \(www.fairwork.gov.au/leave/long-service-leave\)](http://www.fairwork.gov.au/leave/long-service-leave) .

### Example: Employee needs to care for a child during school closure

Alastor has just received an email from his child's primary school letting him know that the school will be closed from tomorrow for 48 hours because a student at the school has tested positive to coronavirus. Alastor immediately contacts his employer to let them know he'll need to stay at home during the closure to care for his child.

They discuss whether working from home is an option, but decide that given Alastor needs to actively care for his child he is unable to work at his normal capacity.

Alastor's employer lets him know that he can take paid carer's leave and that he needs to provide his employer with evidence of the school closure. Alastor forwards the email from the school to his employer as evidence.

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## What if I need to let employees go or reduce their working hours?

Some employers may need to make employees' positions redundant in response to a business downturn. If an employee's job is made redundant their employer may have to give them redundancy pay. The Fair Work Act has requirements that employers have to meet before they can terminate an employee's employment, such as providing notice.

If an employer seeks to vary employees' work rosters, they should review any applicable enterprise agreement, award, employment contracts or workplace policies. Particularly for full-time and part-time employees, an employer is usually required to seek employees' agreement to change their rosters.

Under the Fair Work Act, an employee is protected from being dismissed because of a temporary absence due to illness or injury. The Fair Work Act also includes protections against being dismissed because of discrimination, a reason that is harsh, unjust or unreasonable or another protected right. These protections continue to operate in relation to employees impacted by coronavirus.

More information:

- [Redundancy pay & entitlements \(www.fairwork.gov.au/ending-employment/redundancy/redundancy-pay-and-entitlements\)](http://www.fairwork.gov.au/ending-employment/redundancy/redundancy-pay-and-entitlements)
- [Notice & final pay \(www.fairwork.gov.au/ending-employment/notice-and-final-pay\)](http://www.fairwork.gov.au/ending-employment/notice-and-final-pay)
- [Final pay \(www.fairwork.gov.au/ending-employment/notice-and-final-pay/final-pay\)](http://www.fairwork.gov.au/ending-employment/notice-and-final-pay/final-pay)
- [Rosters \(www.fairwork.gov.au/employee-entitlements/hours-of-work-breaks-and-rosters/rosters\)](http://www.fairwork.gov.au/employee-entitlements/hours-of-work-breaks-and-rosters/rosters)
- [Protection from discrimination at work \(www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work\)](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work)
- [Unfair dismissal \(www.fairwork.gov.au/ending-employment/unfair-dismissal\)](http://www.fairwork.gov.au/ending-employment/unfair-dismissal) .

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## Can employees be directed not to travel?

Employers can direct employees not to undertake work-related travel if this is necessary to meet workplace health and safety obligations or is otherwise a lawful and reasonable direction.

Employers are unlikely to be able to direct an employee not to undertake private travel.

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### Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: **13 13 94**

#### Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

### Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: **13 36 77**. Ask for the Fair Work Infoline **13 13 94**

Speak & Listen: **1300 555 727**. Ask for the Fair Work Infoline **13 13 94**

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.