

Coronavirus (COVID-19) – Frequently Asked Questions

We have detailed below some of our more commonly asked questions.

We don't have enough work for our employees (all or some), what options do we have?

If an employer requests employees to stand down outside of any government advice to do so and simply because business has slowed down, whilst you can request your employees take paid or unpaid leave, if they refuse, you are obligated to pay them their normal earnings.

Many employers are experiencing a severe down turn in business at present, whilst a forced stand down without pay is not lawful for those outside of Government Advice or those whose employees have not agreed to be stood down without pay - there are options open to you to manage through this period.

If a business is required to temporarily cease all or part of its operations due to government advice, this would be deemed to be outside of the employer's control.

If the business' supplier has been required to temporarily close or the only customer(s) of the business have been forced to close, this would be deemed also to be outside of the employer's control.

In these situations, the employer may stand down affected employees without pay. This is because the employees cannot be usefully employed.

It is important to note however that consideration must be given to redeployment of staff to other duties if there is availability for this rather than stand down.

Whilst legally, there is no obligation on an employer to accept a request for accrued leave, it would be considered best practice to allow this to be accessed.

Whilst the business may be forced to cease certain operations, there may still be work than some employees can do and considerations for work from home to enable continued payment to employees can occur.

If you are in receipt of JobKeeper, the Fair Work Act has been amended to complement the JobKeeper scheme. As such, an eligible employer can direct an employee in receipt of JobKeeper to either fully or partially stand down.

My employee is required to self-isolate so do I have to pay them?

An employee who is either awaiting test results, are a positive COVID-19 case, or are a direct contact of a positive case are required to self-isolate under the direction of the Government.

As such, you do not have an obligation to pay them for any absence. The employee may request personal leave if they are demonstrating any symptoms or annual or long service leave.

Am I required to pay allowances such as car or phone if my employee is stood down or self-isolating?

An employee who is paid allowances as a separate line item in their contract or payslip and not part of an all inclusive salary amount is not entitled to payment of allowances that are applicable to the use of their personal phone or vehicle for work purposes.

Modern awards generally provide detail around how allowances can be calculated if they are to not be paid for absences. It is important to review your relevant award to determine how this will occur.

My employee is refusing to attend work as they are scared of contracting COVID-19. What can I do?

Whilst in days prior to COVID-19 an employee could be subject to disciplinary action, the process of dealing with this type of situation remains unchanged: -

- Speak to the employee to understand their concerns. Remember they may have a genuine fear or anxiety or be in a higher susceptibility category that you are not aware of.
- Reassure them of the steps you are taking as an employer to adhere to the medical guidance
- Talk about ways to alleviate their concerns
- Can you consider work from home for this employee?

If after discussion, you are unable to accommodate a work from home scenario and they continue to be concerned about attending the workplace, you do not have an obligation to pay them as they have elected to be absent for work. It would be best practice however to allow them to access their accrued entitlements or pay them as normal (if you can afford to).

Whilst this can be a frustration for employers, we recommend great caution when implementing any disciplinary outcome to an employee who has concerns about exposure.

My employee asked for carer's leave to care for their child who cannot attend childcare or school?

If an employee has a genuine fear for the safety of their child, or the safety of family members who may be in higher susceptibility categories, they may have genuine reason that their child is unable to attend for school.

If the school or childcare provider is closed, the employee may need to care for their child.

Personal leave is available to care for someone in an unexpected emergency – this qualifies.

Permanent employees have an entitlement to access paid personal/carer's leave and casual employees are able to take unpaid carer's leave to care for their children.

If the children are teenagers, you may discuss the appropriateness of taking personal leave in this instance.

Remember evidentiary requirements continue to apply and for carer's leave in these situations, it could be from a medical provider, or evidence of the school closure.

Can I get my employees to take annual leave?

An employee can consult and seek agreement with employees to take leave. This agreement can result in part or all of the employee's leave balance to be taken without limits.

Some modern awards provide clauses that allow employers to direct leave to be taken by employees with excessive leave balances. Generally, these clauses include notice criteria and a certain amount of leave to remain after leave has been taken.

The Fair Work Act has been temporarily amended to include provisions to complement the JobKeeper Scheme. These JobKeeper Enabling Directions enable an employer to direct employees who are in receipt of JobKeeper to take leave with 3 days written notice as long as they have a 2 week leave entitlement remaining after the leave is taken.

Note: some modern awards and the Fair Work Act temporary amendment allow for leave to be taken at half pay.