



WHAT ARE YOUR WORKPLACE RIGHTS AND OBLIGATIONS IN THE TIME OF COV-ID 19?

PLEASE NOTE: THIS IS GENERAL ADVICE ONLY AND APPLICATION TO ANY INDIVIDUAL OR PRACTICE MUST TAKE INTO ACCOUNT THE PARTICULAR CIRCUMSTANCES OF THAT INDIVIDUAL OR PRACTICE.

1. COMMONWEALTH DEPARTMENT OF HEALTH – 14 DAY ISOLATION ADVICE

The current [Commonwealth Department of Health \(DoH\) 14-day Isolation Directive](#) ('Directive') (also on AMA (ACT) website), has resulted in an obligation for an employer to pay a 'captured' employee during the period of work absence as if it were authorised paid leave. The Directive is understood to mean that while the employee is technically ready, willing and available to work, the employer is, in fact, unilaterally excluding an employee so as not to permit attendance at the workplace.

Further, it is expected that an employer take reasonable steps to inquire whether any other of its employees may be captured by the Directive. In this case the employer has a duty to keep their employees 'safe' by directing an employee not to attend work.

Accordingly, members are advised to inform themselves so as to be reasonably satisfied their employee(s) is captured. Presuming the captured employee is not displaying symptoms, because the person is not actually ill and is at the time in fact 'fit for work' and the [National Employment Standards](#) ('NES') entitlement (set out in the *Fair Work Act 2009*) to paid personal leave is not triggered or available because the NES offers no relevant entitlement unless there is an illness or injury.

Reasonably, the employer should either offer the captured employee authorised paid leave (rather than requiring, for example, access to accrued annual leave / unpaid leave / personal leave) OR, where practicable, enable flexible, work from home, arrangements in which case there is no requirement for leave to be granted.

Members are advised that the Directive has serious implications, in so far as it creates for the employer the opportunity to issue a lawful and reasonable direction to require the captured employee not attend work. The existence of the direction means the employer maintains obligation to pay the captured employee during the work absence as authorised paid leave.

Members are reminded that under the *Fair Work Act 2009* there is a provision that prohibits discrimination for short term illness and injury, payment for leave will assist avoiding general protections (i.e. adverse action) or discrimination claims made by an aggrieved employee.

Carers' Leave

An employee may have carer responsibilities for an immediate family member or member of their household who is captured by the Directive.

For example, a child is unable to attend their school or childcare facility. Consequentially, this means the employee needs to request to be absent from their workplace to look after that child.

The NES entitlement to paid carers leave applies assuming an accrual balance exists. Where the balance is insufficient or exhausted, access to accrued paid annual leave and then, after the latter's exhaustion, unpaid leave must be provided.

An employee's right of access to this entitlement arises through information provided to the employer that would satisfy a reasonable person.

2. HEALTH & SAFETY IN THE WORKPLACE

In general terms, all workplace safety laws demand that an employer, as far as reasonably practicable, ensure a safe system of work to alleviate any hazard.

As in other Australian jurisdictions, ACT workplace health & safety laws require an employer to ensure so far as is reasonably practical, that employees and others are provided with a safe working environment and without risk to health and safety. Accordingly, as an employer, you have an obligation to identify potential risks and to do what is reasonably practical to minimise such risks.

In this health emergency, some employers have decided to offer working from home arrangements, or where this is not possible, to implement other preventative measures such as social distancing, deferring non-essential tasks, or in the case of a medical practice, contacting patients to advise the practice before attendance.

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

See **WORKSAFE ACT** link:

<https://health.act.gov.au/about-our-health-system/novel-coronavirus-covid-19>

<https://www.legislation.act.gov.au/a/2011-35/default.asp>

https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/4201/~/legislation-and-codes-of-practice

It is important for members to remember that if you offer the working-from-home option, your WH&S obligations still apply. This obligation will also extend to your patient record and privacy obligations. Members are advised to contact their Medical Defence Organisation to ensure that the correct policy settings are in place with respect to staff remotely accessing patient records.

3. THE LEGISLATIVE FRAMEWORK FOR AMA (ACT) MEMBERS WHO HAVE EMPLOYEES

Beyond the WH&S legislation, the NES prescribes legal minimum entitlements for all employees in the ACT. While the NES applies in the ACT, this advice is confined to NES covered 'employees' as distinct

from 'contractors' (noting that many of our members work as contractors or engage contractors in private practice).

Individual or local arrangements, operating via employment contracts, policy or employer discretionary arrangements, may vary entitlements, but these arrangements must not be less than the NES.

Similarly, collectively bargained workplace agreements such as the [ACT Medical Practitioners Enterprise Agreement](#) may differ from the NES, but not so as to be less than the prescribed minima.

Can I stand down an employee?

Under section 524 of the **Fair Work Act 2009** an employee(s) can only be stood down without pay if they cannot be usefully employed due to one of the following circumstances:

- Industrial action
- A breakdown in machinery for which the employer cannot reasonably be held responsible
- A stoppage of work for any cause for which the employer cannot reasonably be held responsible

The most common causes for such a close-down are severe and inclement weather or natural disaster. Standing down without pay is not generally available due to a deterioration of business and trading conditions or because an employee has COV-ID 19.

If an employee has requested to stay at home as a precautionary measure, or are directed by their employer not to attend work, an employer will need to discuss with such an employee the terms of any arrangements that may best suit both parties.

Leave Options

Leave options may include the taking of annual leave or long service leave. Working from home, while not leave, is another option provided it is practical and productive.

The NES entitlement to paid carers leave applies, assuming an accrual balance exists. Where the balance is insufficient or exhausted, access to accrued paid annual leave and then, after the latter's exhaustion, unpaid leave must be provided. As noted above an employee's right of access to this entitlement arises through information provided to the employer that would satisfy a reasonable person.

Are casuals entitled to be paid?

Under the NES, casuals do not have paid personal/carers' leave and are not paid when not attending work.

This would apply where a casual employee may have contracted COV-ID 19 or may be required to self-isolate. The scheme of casual employment sees casual employees paid a 25% loading (or whatever is applicable) in lieu of annual and personal leave.

Unpaid Carer's leave is available to casual employees.

4. OTHER RESOURCES FOR EMPLOYEES, EMPLOYERS AND PRACTICE OWNERS

<https://www.amansw.com.au/coronavirus-information/>

<https://coronavirus.fairwork.gov.au/>

<https://treasury.gov.au/coronavirus/businesses>

<https://www.avant.org.au/Resources/Public/Coronavirus/>

<https://www.mdanational.com.au/mda-national-coronavirus-advice/service-to-our-members-through-covid19>

<https://www.mips.com.au/articles/covid-19-update-for-practitioners>

If you have further questions or concerns, please contact me on 0403 328 084 or industrial@ama-act.com.au or Peter Somerville on 0417 047 764.

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