

COVID-19 EMPLOYMENT & LEAVE FAQS FOR EMPLOYERS

Handling employee situations related to the coronavirus

The following answers to frequently asked questions have been developed by Source's legal and HR experts. There are other COVID-19 Employer Response resources on the [Source website](#).

If an employee has symptoms of the coronavirus can we direct them to stay home?

If an employee is showing any symptoms of the coronavirus (e.g. fever, coughing, sore throat, fatigue, shortness of breath) they should be directed to stay home and contact their doctor. They should not be allowed to return to work until their doctor has certified that it is safe for them to return to work. This could include a period of self-isolation if directed by the doctor.

It is recommended that employers send communications to employees directing them not to attend work if they are experiencing any symptoms associated with the coronavirus or have come into close contact with people who have been exhibiting such symptoms.

Can we direct an employee who has been overseas or gone on a cruise to self-isolate for 14 days?

Yes. The government has now made it a requirement for all people entering Australia to self-isolate for 14 days. Employers can direct their employees to follow this requirement.

Employers should monitor the advice issued by the Department of Health and base any directions to self-isolate on this advice. Information about this can be found [here](#).

Employers should consider whether it is possible for employees to work remotely during any period of self-isolation. If it is possible, they should be allowed to do so.

Can we direct an employee who has been in contact with someone who has the coronavirus to self-isolate for 14 days?

If it is known or reasonably suspected that an employee has been in close contact with someone with the virus, the employer should direct them to see their doctor for testing and advice. The employer can direct them not to attend the workplace until their doctor has advised that it is safe to do so, which may include a period of self-isolation.



Can an employee take paid personal leave if they contract the coronavirus?

If a permanent employee is unfit for work because of a personal illness or injury affecting them, they are permitted to take paid personal leave (sick leave). This will apply if the personal illness they have contracted is the coronavirus.

Casual employees are not entitled to paid personal leave.

What if the employee knowingly put themselves in danger of contracting the coronavirus?

It doesn't matter. The right to take paid personal leave is not fault-based. If the employee is unfit for work because they have contracted the coronavirus they will be entitled to take paid personal leave, regardless of how they contracted it.

What if the employee doesn't have any paid personal/carer's leave left?

If an employee has run out of paid personal/carer's leave they can take unpaid leave or choose to use any accrued annual leave. An employer cannot unreasonably refuse a request to take paid annual leave.

Is an employee entitled to paid personal leave if they are not sick but unable to come to work because they are in self-isolation?

If an employee is in self-isolation but has not actually contracted the coronavirus, they will not be unfit for work because of a personal illness or injury affecting them. Therefore, they will not be entitled to paid personal/carer's leave. The employee could ask to use any accrued annual leave.

Do we have to pay an employee their regular pay if they are not sick but are unable to work because they are in self-isolation?

If the employee has gone into self-isolation themselves, because they were directed to do so by their doctor, or because of a government mandate, this will be a period of unpaid leave (unless the employee has contracted the coronavirus, in which case they can take paid personal leave). The employee can also ask to take accrued annual leave.

If the employer has directed the employee to undertake a period of self-isolation, they would usually need to pay the employee their ordinary pay during this time (unless they have contracted the coronavirus, in which case they can take paid personal leave).

It is also possible to stand employees down without pay in certain situations. Under the Fair Work Act, an employer can stand an employee down without pay during a period in which they cannot usefully be employed because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible. It may be possible to rely on these provisions if an employee cannot usefully be employed because of a period of quarantine that is justified based on government guidelines, because it would not be something the employer can be held responsible for. However, it must not be possible for the employee to be usefully employed, so working at home options would also need to be considered. Each



situation will need to be considered on a case-by-case basis and we recommend employers seek advice if they find themselves in this situation.

Employers should also check any applicable awards, enterprise agreements, contract and policies because they may contain provisions that enable employees to be stood down without pay in certain circumstances.

Of course, if an employee can work remotely while they are in quarantine, they would continue to be paid as usual.

What happens if an employee gets stuck on a work trip?

If the employee gets stuck somewhere during a work trip either because of travel closures or being put into quarantine, they would still be considered to be at work until they are able to return safely. Therefore, the employer would need to continue to pay the employee as usual during this time.

What happens if an employee gets stuck during personal travel?

If an employee gets stuck during personal travel, they would not be considered to have returned to work until they have come back safely. Therefore, the employer would not need to pay the employee during this time, unless it is agreed that it be taken as annual leave.

What if the employee contracts the coronavirus while they are taking annual leave?

If an employee becomes unfit for work because of a personal illness or injury affecting them during annual leave, they are entitled to treat that time as paid personal/carer's leave. This would be the case if an employee contracted the coronavirus while they are on annual leave. The time that they are unwell would come off their accrued personal/carer's leave balance, rather than their annual leave balance (even if it was originally approved as annual leave).

What if an employee just stays home because they are afraid of contracting the coronavirus?

In this case it would be up to the employee to get approval for the leave from the employer. It would either need to be taken as unpaid leave or the employee could request to take annual leave.

Can an employee use carer's leave to care for a family member who has contracted the coronavirus?

Permanent employees accrue 10 days of paid personal/carer's leave per year, which can be used for any combination of personal leave or carer's leave. Casual employees are not entitled to paid personal/carer's leave.

Carer's leave can be taken to provide care or support to a member of the employee's immediate family or household who requires care or support because of a personal illness or injury, or unexpected emergency, affecting them.



A member of an employee's immediate family means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling. It also includes a child, parent, grandparent or sibling of a spouse or de facto partner of the employee.

If a member of the employee's immediate family or household has contracted the coronavirus, the employee will be entitled to take paid carer's leave to care for them.

Employees can also take up to 2 days of unpaid carer's leave per occasion if they have no accrued paid personal/carer's leave available. Casual employees are also entitled to 2 days of unpaid carer's leave per occasion.

Can an employee use carer's leave to take care of children affected by school closures?

Carer's leave can be used to provide care or support to a member of the employee's immediate family or household who requires care or support because of an unexpected emergency affecting them. The case law indicates that an unexpected emergency would include where children are unexpectedly home from school because of a school closure. Therefore, employers should anticipate that employees can use carer's leave to stay home to take care of their children if this occurs.

Can an employee use carer's leave to take care of dependent parents affected by the coronavirus?

The same rules would apply for taking care of parents, because they are also considered immediate family members. For instance, if an employee's parents are in a nursing home and there was a closure of the nursing home, it would be an unexpected emergency so the employee could use carer's leave to provide care or support for their parents.

Can we require the employee to provide evidence for taking personal/carer's leave?

Yes. An employer only has to pay an employee for personal/carer's leave if they have provided evidence that would satisfy a reasonable person that the leave has been taken for a permitted purpose. The evidence could include a doctor's certificate or statutory declaration.

Can an employee claim workers compensation in relation to the coronavirus?

Workers compensation is only available for illnesses or injuries sustained in the course of an employee's employment. If the coronavirus was contracted outside of work it would not be compensable. If it was contracted in the course of employment it may be.

Need help?

We're able to help with your employment matters.

Contact [Sean Melbourne](#) if your business needs legal or HR assistance.

Check out other COVID-19 Employer Response resources on the Source website:
<https://www.sourcelegal.com.au/covid-19-response/>