

This factsheet is part of a series from Legal Aid NSW that aims to help answer your questions about COVID-19 and everyday law.

You may be worried or confused about how COVID-19 will affect you and your everyday life. Sometimes a crisis can make legal problems worse or new problems might develop. Legal Aid NSW understands that there will be a lot of questions about money worries, fines, police, housing, Centrelink, employment, guardianship and mental health. This series of fact sheets will give you helpful information and contacts to assist you to manage all the changes that are happening in our community.

I am a casual employee, what do I need to know?

If you are a casual employee, you do not have as many protections as a permanent employee.

- Your employer can offer you fewer or no shifts.
- You are not entitled to paid personal/carer's (sick) leave if you get sick with COVID-19.
- If you need to self-isolate, you are not entitled to paid sick leave or annual leave.

You do get some entitlements:

- You are entitled to 2 days unpaid carer's leave if you need to care for your child or a family member who is sick.
- Most Awards have been changed to allow employees (including casuals) to take 2 weeks unpaid pandemic leave if:
 - you are required by government, medical authorities or your doctor, to self-isolate; or
 - you are otherwise prevented from working because of measures taken by government or medical authorities in response to the COVID-19 pandemic.

However, some changes to Awards will expire. You should carefully check the version of your Award that applies at the relevant time.

- You might have long service leave if you have worked for the same employer for 10 years or more. You can use long service leave if you need to self-isolate. If you have 5 or more years of service and you are dismissed by your employer or you resign for medical reasons, or some other family or pressing necessity, you are entitled to a proportion of long service leave. You are entitled to 2 months of pay for every 10 years of service. For example, if you have worked for 5 years you will get 1 month's pay. For more information about long service leave, you can contact NSW Industrial Relations.
- If you are a casual employee and had been employed by your employer for more than 12 months as at 1 March 2020, your employer may be eligible to get the JobKeeper payment for your employment.

I am a permanent employee, what do I need to know?

There are lots of ways that COVID-19 might affect you and your work.

Can my employer make me take annual leave, long service leave or reduce my hours?

- If your hours are reduced, it should be by agreement between you and your employer.

- Your employer can tell you to take annual leave if the request is reasonable. The direction to take leave may need to be reasonable, or may not. You should check your Award to see when your employer can tell you to take leave.
- If you have 10 or more years' service, your employer can usually direct you to take long service leave. If you and your employer agree, you can now take any long service leave you have available without the usual one-month notice, and for periods shorter than one month.
- If your employer has qualified for the JobKeeper payment, they can temporarily:
 - Stand you down from work (you must still get paid the JobKeeper payment)
 - Change your duties or your location of work (although there are some limitations on this).
- If you are receiving the JobKeeper payment, your employer can also ask you to take annual leave at full pay or for twice the amount of time at half pay. You cannot refuse to take leave unless you have a good reason. Your employer must leave you with at least 2 weeks of annual leave.
- If you and your employer cannot agree about taking leave while getting JobKeeper payments, you can go to the Fair Work Commission to try and resolve the dispute.

Can my employer cut my pay because of COVID-19?

- Your employer cannot reduce your pay because of COVID-19.
- Your employer can only reduce your pay if you agree to it. You should make sure this is only a temporary agreement. You cannot make an agreement with your employer to get less than the minimum entitlements in your Award or Enterprise Agreement.

If your employer has reduced your pay you should get urgent legal advice.

Can I be stood down without pay?

- You can be stood down if you cannot be usefully employed because work has stopped, and it is not the employer's fault.
- Your employer is not required to pay you if you are stood down.
- If you are covered by an award, enterprise agreement or written contract that deals with stand downs, your employer must follow your contract or enterprise agreement.
- You can only be stood down if you have no work to do, not just if you have less work to do.
- The stand down must also be necessary. A stand down would not be necessary if you can work from home or work in another position.
- If you are getting the JobKeeper payment, different laws apply to standing you down.

Can I be stood down while I am getting JobKeeper?

If you are getting the JobKeeper payment your employer can direct you to work less hours or days if you can't be usefully employed for your normal hours or days because of changes to your employer's business caused by COVID-19 or government initiatives to slow the spread of COVID-19.

A direction to stand you down whilst you are receiving the JobKeeper payment must be in writing and it must be reasonable. You must receive at least the minimum JobKeeper payment or your normal pay for the hours you actually worked while being stood down (whichever is higher).

If you have been given a JobKeeper direction to work less or no hours, you can't use your paid personal leave or compassionate leave to make up for the days or hours that you have been directed not to work. If you and your employer agree, you can use your annual leave to make up your pay for the hours you are not working while you are stood down.

You still accrue annual leave at the rate you normally would have if you had not been given the JobKeeper stand down direction.

You can apply to the Fair Work Commission to resolve disputes JobKeeper stand down directions. You should get legal advice before starting a JobKeeper dispute in the Fair Work Commission.

The Government has told my employer to stop trading. Can I be dismissed?

- If you have been dismissed because your employer has been forced to close, then your dismissal is likely to be a genuine redundancy.
- A dismissal is only unfair if it is harsh, unjust or unreasonable and it is not a genuine redundancy.

I have been dismissed. What are my entitlements?

If you are dismissed, your employer must pay you the entitlements that are owed to you.

In New South Wales, all employees who have 5 or more years of service and are dismissed for any reason except serious and wilful misconduct, are entitled to long service leave. You are entitled to 2 months of pay for every 10 years of service. For example, if you have worked for 5 years you will get 1 month's pay.

Notice

- If you are dismissed because your employer has closed, either temporarily or permanently, your employer must give you notice of the termination of your employment. How much notice you are given depends on how long you have worked for your employer.
- If you are dismissed on the spot and not given notice, your employer should give you a notice payment.
- Casual employees are not entitled to notice.

Redundancy

- If your employer has 15 or more employees and you have been employed for one year or longer, you will usually receive a redundancy payment.
- Apprentices are not normally entitled to redundancy pay.
- In some sectors, employers with fewer than 15 employees are required to pay redundancies.
- It is important to check your award to see what it says about redundancy.
- If your employer is genuinely unable to pay you your redundancy pay, or they have offered you another acceptable job you didn't take, they can apply to the Fair Work Commission for an order to pay you less redundancy pay or no redundancy pay.
- Casual employees are not entitled to redundancy pay.

Leave

- Your employer should pay out your unused annual leave.
- Your employer does not have to pay out your unused paid personal/carer's (sick) leave.

I am sick with COVID-19 and can't go to work. What I am entitled to?

- If you cannot go to work because you are sick with COVID-19, you can take paid personal/carer's (sick) leave, if you have it.
- If you have used all your paid personal/carer's (sick) leave you can ask your employer to use any other paid leave you have left, such as annual leave.
- If you have used up all your paid leave entitlements, you can take unpaid sick leave.
- You must give your employer reasonable evidence of the illness if they ask for it.

Can my employer refuse to let me work from home?

- You do not have a general right to work from home. However, the COVID-19 orders say that people should be working from home if they can.
- Working from home is something that is normally agreed between you and your employer. You should check your contract of employment, award, enterprise agreement or workplace policy to see what it says about working from home.
- Workplace Health and Safety laws apply to you even though you are working from home. If you are concerned about how these laws affect you, you can contact Safe Work NSW on 13 10 50.

I am not sick, but I have to self-isolate. What am I entitled to?

If you are not sick, but you have to self-isolate, your employer doesn't have to pay your normal pay and you are not entitled to use any paid sick leave that you may have.

If you are in this situation you may be able to:

- work from home while you are self-isolating. If this happens you do not need to take any leave and your employment will continue as normal; or
- use any other paid leave that you have available, such as annual leave or long service leave.

If you are covered by an Award, most Awards have been changed to allow employees (including casuals) to take 2 weeks unpaid pandemic leave if:

- you are required by government, medical authorities or your doctor, to self-isolate; or
- you are otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.

If you are not sure whether you are covered by an Award, you can contact the Fair Work Ombudsman to find out.

What if I am not sick, but my employer has told me to stay at home?

- If you are ready, willing and able to work, but your employer tells you to stay at home, your employer should pay you as normal.

What if my employer wants me to go to work, but I want to self-isolate?

- You can try and make an agreement with your employer to work from home or take paid or unpaid leave.

- If you have not been told to stay home by your employer or the government, but you want to, you are not entitled to your normal pay or to paid personal/carer's (sick) leave.
- If you are unable to reach an agreement with your employer and they tell you that you must go to work, then you have to go to work as long as it is safe to do so. If you are not sure whether it is safe to go to work, you can talk to your doctor or call SafeWork NSW on 13 10 50.
- If your employer dismisses you because you decided to self-isolate, you should get urgent legal advice. There is a 21-day time limit to apply for unfair dismissal or general protections dismissal at the Fair Work Commission.

Can I take leave if a family member is sick with COVID-19?

- If you can't work because you need to look after a family member or a member of your household who is sick with COVID-19, you can take paid personal/carer's (sick) leave.
- If you have used all your paid personal/carer's leave entitlements, you can use other types of paid leave like annual leave or long service leave.
- You may also be able to take unpaid personal/carer's leave.
- You must give your employer reasonable evidence of the illness or unexpected emergency if they ask for it.

Am I entitled to paid leave if my child's school has closed because of COVID-19 and I am a carer?

- If your child's school has been closed because of COVID-19 and you can't work because you need to care for your child, you may be able to use your paid personal/carer's leave.
- If you have no paid personal/carer's leave left, you can ask to use your annual leave, or ask to take unpaid leave.

Am I eligible for Centrelink?

There are new ways that Centrelink can help people who are affected by COVID-19. You can find out about your options on the [Centrelink](#) website.

You might be able to get help if:

- You are not going to work because you have to care for children.
- Your employer does not pay any of your wages.
- You have been dismissed from work.
- You are in hospital or in isolation.
- You have no paid personal/carer's leave left and you are in isolation or hospitalised.

Changes to awards

The Fair Work Commission has made some temporary changes to several awards. If your award has been changed, your employer may:

- Reduce your hours of work. Your employer should talk to you about any changes like this.

- Direct you to take annual leave, as long as they give you notice and think about your personal circumstances. You cannot unreasonably refuse this request.
- Ask you to take twice the amount of leave at half pay. You and your employer need to talk about this and make an agreement.

You can find out about the changes to awards at the [Fair Work Commission's](#) website.

Where can I find more information?

There is lots of information about COVID-19 and employment on the [Fair Work Ombudsman](#) website.

The Fair Work Ombudsman also has more information about being stood down while you are on JobKeeper: <https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions#how-a-direction-affects-minimum-entitlements-and-other-conditions>

The best source of information about long service leave is [NSW Industrial Relations](#).

The Fair Work Commission has information about [changes to awards](#) and [JobKeeper changes](#) to workplace laws and resolving JobKeeper disputes. <https://www.fwc.gov.au/about-us/coronavirus-covid-19-updates-advice/jobkeeper-disputes>

The [Australian Tax Office](#) has information about the JobKeeper payment:

There are a range of payments available for workers who have lost their work because of COVID-19. Further information is available from the [Department of Social Services](#) and our factsheet "[COVID-19: Centrelink](#)".

If you have concerns about workplace health and safety including working from home you can contact Safe Work NSW on 13 10 50.

How can I get help?

For free legal help call 1300 888 529 or [call your local Legal Aid NSW office](#).

There is also a series of [factsheets about COVID-19 and the law](#) available on the Legal Aid NSW website to assist you to manage all the changes that are happening in our community.

If you need an interpreter, call the Translating and Interpreting Service on 131 450 and ask for LawAccess NSW. If you find it hard to hear or speak, call the National Relay Service on 133 677 and ask for LawAccess NSW or visit www.relayservice.gov.au.

This factsheet is intended as a general guide to the law. Do not rely on this information as legal advice. We recommend you talk to a lawyer about your situation. This information is correct at the time of writing, however, it may change.