

# THE NEW PANDEMIC LEAVE AND ANNUAL LEAVE FLEXIBILITY RULES

9 April 2020

The Fair Work Commission has introduced unpaid pandemic leave and annual leave flexibility provisions into most modern awards. This measure however will have very little practical impact. We explain why, and what the new provisions mean.

## Who is covered by the new provisions?

The provisions cover most employees who are covered by a modern award. The list of awards that contain the new provisions are set out in the Appendix.

## Unpaid pandemic leave

The unpaid pandemic leave provisions permit any employee to take up to two weeks' unpaid leave if they are required to self-isolate by government or medical authorities, or acting on the advice of a medical practitioner. It also applies if an employee is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.

The leave only applies in circumstances where the employee is consequently prevented from working, so won't apply to employees who can work from home.

The period of leave must start before 30 June 2020, but may end after that date.

Most employers would have allowed an employee to take unpaid leave if they were required to self-isolate, so these provisions change very little. The measure is really designed to protect employees in those rare cases where they are fired because they are required to take time off to self-isolate.

We note that, if an employee is also unfit for work because they have contracted the coronavirus, they would be entitled to take paid personal leave.

An employee must give their employer notice of taking pandemic leave, and the reason for taking the leave, as soon as practicable (which may be after the leave has started). If required by the employer, they must also give the employer evidence that would satisfy a reasonable person that the leave is taken for a valid reason.

### **Annual leave at half pay**

The provisions relating to annual leave allow an employer and employee to agree that, instead of taking annual leave on full pay, the employee will take twice as much annual leave at half the rate of pay. This has to be done by agreement and can't be forced on an employee.

A period of leave taken in this way must start before 30 June 2020, but may end after that date.

Any agreement to take twice as much leave at half pay must be recorded in writing and retained as an employee record.

These provisions don't change much either, because employers could do a similar thing previously by combining annual leave with leave without pay. This change just formalises it and adds record keeping requirements.

### **Need help?**

We are able to help you manage your workforce during this difficult time. Contact [Sean Melbourne](#) if your business needs legal or HR assistance.

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

## Appendix

### Awards that contain the new provisions

Aboriginal Community Controlled Health Services Award 2010  
Aged Care Award 2010  
Air Pilots Award 2010  
Aircraft Cabin Crew Award 2010  
Airline Operations-Ground Staff Award 2010  
Airport Employees Award 2010  
Alpine Resorts Award 2010  
Aluminium Industry Award 2020  
Ambulance and Patient Transport Industry Award 2020  
Amusement, Events and Recreation Award 2010  
Animal Care and Veterinary Services Award 2020  
Aquaculture Industry Award 2020  
Architects Award 2010  
Asphalt Industry Award 2010  
Banking, Finance and Insurance Award 2020  
Book Industry Award 2020  
Broadcasting, Recorded Entertainment and Cinemas Award 2010  
Business Equipment Award 2010  
Car Parking Award 2020  
Cement, Lime and Quarrying Award 2010  
Cemetery Industry Award 2020  
Children's Services Award 2010  
Cleaning Services Award 2010  
Clerks - Private Sector Award 2010  
Commercial Sales Award 2010  
Concrete Products Award 2010  
Contract Call Centres Award 2010  
Corrections and Detention (Private Sector) Award 2020  
Cotton Ginning Award 2020  
Dry Cleaning and Laundry Industry Award 2010  
Educational Services (Post-Secondary Education) Award 2010  
Educational Services (Schools) General Staff Award 2010  
Educational Services (Teachers) Award 2010  
Fast Food Industry Award 2010  
Fitness Industry Award 2010  
Food, Beverage and Tobacco Manufacturing Award 2010  
Funeral Industry Award 2010  
Gardening and Landscaping Services Award 2020  
General Retail Industry Award 2010  
Graphic Arts, Printing and Publishing Award 2010  
Hair and Beauty Industry Award 2010  
Health Professionals and Support Services Award 2010  
Higher Education Industry-Academic Staff-Award 2010  
Higher Education Industry-General Staff-Award 2010  
Horse and Greyhound Training Award 2010  
Horticulture Award 2010  
Hospitality Industry (General) Award 2010  
Journalists Published Media Award 2010  
Labour Market Assistance Industry Award 2010

Legal Services Award 2020  
Live Performance Award 2010  
Local Government Industry Award 2010  
Mannequins and Models Award 2010  
Manufacturing and Associated Industries and Occupations Award 2010  
Marine Tourism and Charter Vessels Award 2010  
Market and Social Research Award 2020  
Meat Industry Award 2010  
Medical Practitioners Award 2020  
Miscellaneous Award 2010  
Nursery Award 2020  
Nurses Award 2010  
Passenger Vehicle Transportation Award 2010  
Pastoral Award 2010  
Pest Control Industry Award 2010  
Pharmaceutical Industry Award 2010  
Pharmacy Industry Award 2010  
Poultry Processing Award 2010  
Premixed Concrete Award 2020  
Professional Diving Industry (Recreational) Award 2010  
Professional Employees Award 2010  
Racing Clubs Events Award 2010  
Racing Industry Ground Maintenance Award 2020  
Rail Industry Award 2010  
Real Estate Industry Award 2020  
Registered and Licensed Clubs Award 2010  
Restaurant Industry Award 2010  
Road Transport (Long Distance Operations) Award 2010  
Road Transport and Distribution Award 2010  
Salt Industry Award 2010  
Seafood Processing Award 2020  
Security Services Industry Award 2010  
Silviculture Award 2020  
Social, Community, Home Care and Disability Services Industry Award 2010  
Sporting Organisations Award 2020  
State Government Agencies Award 2020  
Storage Services and Wholesale Award 2010  
Sugar Industry Award 2010  
Supported Employment Services Award 2010  
Surveying Award 2020  
Telecommunications Services Award 2010  
Textile, Clothing, Footwear and Associated Industries Award 2010  
Timber Industry Award 2010  
Transport (Cash in Transit) Award 2010  
Travelling Shows Award 2020  
Vehicle Manufacturing, Repair, Services and Retail Award 2010  
Waste Management Award 2010  
Water Industry Award 2020  
Wine Industry Award 2010  
Wool Storage, Sampling and Testing Award 2010