

The purpose of this fact sheet is to provide private sector employers with information regarding leave arrangements for COVID-19, stand-down situations and the current Healthcare Critical Worker isolation, testing & furloughing protocols.

Note: The WA State Industrial Relations System covers employers operating as a sole-trader or partnership whereas the Federal Industrial Relations System (Fair Work) covers employers operating as a Constitutional Corporation (e.g., Pty Ltd). Where the employing entity is a trust, it is the nature of the trustee that matters (e.g., is the trustee a sole-trader, a partnership or a Company as per the above). Any Members who are unsure what system they are covered by should seek advice from the AMA (WA) Workplace Relations team.

Paid Leave

The usual annual leave and long service leave entitlements continue to operate during the pandemic period, with the normal leave application processes in the workplace applying.

Personal (sick) Leave:

Whether in the State or Federal system, if an employee is unwell due to COVID-19 and unfit for work, then the ordinary provisions for personal (sick) leave apply. Permanent full-time or part-time employees are entitled to utilise their accrued personal/sick leave entitlements.

Carer's Leave:

If a permanent employee is required to provide care or support for a member of their immediate family or household who is sick with COVID-19, then they can access carer's leave through utilising their accrued sick/carer's leave entitlement.

Carer's leave can apply in the event that an employee needs to provide care or support to a member of their immediate family/household due to an unexpected emergency – both [State](#) and [Federal](#) regulators have advised that unexpected closures of day-care centres or schools fit the criteria of an “unexpected emergency”.

If an employee has exhausted their accrued sick/carer's leave entitlement, then they are entitled to access two days unpaid carer's leave per occasion, which is also available to casual employees.

Unpaid pandemic leave

Employees such as nurses and administrative staff who are employed under either the State or Federal system currently can access up to 2 weeks' unpaid pandemic leave (or more by agreement with their employer) if they're prevented from working:

- as a result of being required to self-isolate by government or medical authorities, or acting on the advice of a medical practitioner; or
- by measures taken by government or medical authorities in response to the pandemic (for example, an enforceable government direction restricting non-essential businesses).

Unpaid pandemic leave is available in full immediately to full-time, part-time and casual employees, they are not required to accrue it and it is not pro-rata for employees who don't work full-time. Unpaid pandemic leave doesn't

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affect other paid or unpaid leave entitlements and generally, counts as service for entitlements under the relevant awards and legislation - with the exception of Long Service Leave (LSL) for State system employees in certain cases¹.

Currently, unpaid pandemic leave provisions are scheduled to end in most Federal system awards from 30 June 2022², and for State system employees the leave must commence before September 30 2022³.

Federal system employers can find further information online [here](#) and State system employers can find further information online [here](#).

Unpaid Stand Downs (Federal system employers)

Employers may be able to stand their employees down during the COVID-19 pandemic for various reasons.

This includes when:

- The Business has closed because of an enforceable government direction (which means the employee can't be usefully employed, even from another location); or
- There's a stoppage of work due to lack of supply for which the employer can't be held responsible.

Before standing down employees, employers will need to consider alternatives including:

- Working from home arrangements if suitable, depending on the nature of the employee's work;
- Changes to duties, hours of work or rosters. Employers should discuss with employees' temporary changes to their duties, rosters, or hours if this can keep an employee working;
- Accessing paid or unpaid leave. This can include the taking of accrued annual leave, any other paid leave such as long service leave, or unpaid leave such as 2 weeks of unpaid pandemic leave

During a stand down employees are unable to access sick, carers or compassionate leave. They can access annual leave, long service leave or other forms of paid leave by agreement with their employer.

Members should seek specific advice from the AMA Workplace Relations team at the time prior to considering standing any employees down or any other similar action. Further information can be found online [here](#).

Stand Downs (State system employers)

Where there is no work or reduced work available to employees, employers must continue to pay full time and part time employees who are ready, willing, and able to work unless the employees are covered by a WA award which contains specific stand down or break down provisions which cover this scenario.

Full-time and part-time award free employees would need to continue to be paid by the employer unless they have a written contract of employment that contains stand down provisions.

An employer and employee can agree to utilise a form of paid leave during a period when the business is impacted. This can include annual leave or long service leave. An employer cannot direct an employee to access either form of paid leave and there must be genuine agreement between the employer and employee.

Members should seek specific advice from the AMA Workplace Relations team at the time prior to considering standing any employees down or any other similar action. Further information can be found online [here](#).

¹ Whilst unpaid pandemic leave doesn't "break service" for LSL, it may not count as "continuous service" for LSL for State system employees' dependent upon specific award coverage and terms – seek further advice from AMA if needed.

² This date may be extended further by the Fair Work Commission

³ This date may be further extended by way of a General Order from the WAIRC

Loss of Income – Government payments for Employees

Employees who lose income due to COVID-19 (either due to testing/isolation requirements or COVID-19 related illness or carer's absence) may be eligible to receive either the Western Australia COVID-19 Test Isolation Payment (\$350 payment) or the Australian Government's Pandemic Leave Disaster Payment (\$750 per seven days).

Further information, including eligibility criteria, on the WA COVID-19 Test Isolation Payment, can be found online [here](#); and on the Pandemic Leave Disaster Payment [here](#).

Healthcare Critical Workers – asymptomatic close contact protocols

As WA has entered a very high caseload environment, there are new testing and isolating protocols in effect.

Under the [COVID Transition \(Healthcare Critical Worker\) Directions](#) (the **HCCW Directions**), healthcare workers who are asymptomatic close contacts and meet the definition of a Healthcare Critical Worker (**HCCW**) may be able to continue working during the usual isolation period provided certain criteria and conditions are met. Healthcare services are not required to register their Healthcare critical workers for exemption.

The definition of a (**HCCW**) is someone whose role cannot be undertaken at home who; cannot be covered temporarily; or cannot be safely replaced by another employee; and who performs work in the healthcare industry that:

- is critical to the COVID-19 response, or
- is critical to the continuation of critical services that prevent significant harm (including loss of life, catastrophic impacts to safety or welfare or lack of access to essential goods or services) to any person in the community, or
- is necessary for the safe continuation of services in the healthcare industry; or
- provides specialist skills in the healthcare industry (*only where they are also a category of worker as per Schedule 1 of the HCCW Directions*); or
- the Chief Health Officer (**CHO**) has designated a person or class of persons as a HCCW.

COVID-19 information for Health professionals including the *WA COVID-19 Healthcare Worker Furloughing Guidelines* are available online [here](#) and the *COVID-19 Community Healthcare Practice Guidelines* are available online [here](#).

Requesting a HCCW attend work during their isolation period should be a last resort, and employers should make reasonable efforts to plan alternative strategies for replacement employees – Members should refer to the above Guidelines to assist their decision-making process, assessment of risk and to understand the requirements.

If requesting a HCCW return to work, an employer must ensure they have undertaken a critical worker mitigation assessment, established a system for the recording of rapid antigen test (**RAT**) results, and provided confirmation to the HCCW that they are requested to attend work during a healthcare worker furlough period.

HCCW are only exempt from isolation to attend work and must otherwise continue to isolate as per the usual [testing and isolation protocols](#). Where a HCCW has been requested to return to work by their employer and has consented, the HCCW must follow strict conditions including:

- Being fully vaccinated including a third dose if eligible
- Providing a daily negative RAT result to their employer
- Wear a mask at all times outside their home as well as wear any PPE their employer requires
- Travel alone and avoid public transport
- Self-isolate when not at work
- Use reasonable endeavours to maintain physical distancing of 1.5m from other people in the workplace

If at any time they develop symptoms, return a positive RAT test, or are confirmed as a positive COVID-19 case, then they are no longer permitted to attend work and must follow the symptomatic close contact/positive case protocols.

Members should contact the AMA (WA) Workplace Relations team for any questions relating to the information provided in this fact sheet.