

Circular No. 141/2020

29 July 2020

COVID-19 Update—Paid pandemic leave—Health sector awards—Decision by the Fair Work Commission

Background

Members would be aware from AFEI's previous Circular ([136/2020](#)), that the Fair Work Commission (**the Commission**) recently issued a Decision regarding the proposed introduction of 2 weeks paid pandemic leave (for each occasion) for employees covered by a number of **health sector awards**. Although that decision, on 8 July 2020, rejected the unions' claim for such paid leave, the Commission indicated it would give the claims further consideration, if the Commission deemed necessary.

Members are also aware (see AFEI Circular [139/2020](#)) that the Commission issued a Statement on 22 July 2020 indicating that, due to the influx of coronavirus cases in Victoria, it had determined a preliminary view that it would grant the unions' claims for the **Aged Care Award 2010**. On Friday, 24 July 2020, the Commission issued a further Statement indicating a further preliminary view that the paid pandemic leave would be extended to employees '**engaged in aged care**' but covered by the **Nurses Award 2010** and the **Health Professionals and Support Services Award 2020**.

AFEI and the Australian Chamber of Commerce and Industry opposed the proposed provisions, having regard for Federal and State government financial assistance to aged care employees in Victoria, and concerns about the application of the proposed entitlements. These concerns included the entitlement extending to cases of community transmission, that is, 'not contracted at or in connection with work', despite the Commission's earlier Decision that such paid leave would not be justified, and also that the new entitlement would be "unfunded and unrecoverable". In response to this second point the Commission stated:

"We see no reason why, if a labour hire agency charges a residential aged care facility for the cost of the new entitlement in connection with any casual staff supplied, why that cost would not then be recoverable by the facility from the Government under the funding arrangements (as a wages cost associated with any required self-isolation of industry workers). We are confident that this is a matter that will be the subject of productive discussion between the industry and the Commonwealth Government."

On 27 July 2020 the Commission issued its Decision confirming the entitlements to (up to) 2 weeks paid pandemic leave for each permissible occasion in each of the abovementioned awards, commencing Wednesday, 29 July 2020.

Who do the new provisions apply to?

The paid leave entitlements apply to weekly (full time and part time) employees and 'regular and systematic' casual employees covered by the awards who are **engaged in the aged care industry**, that is, employees engaged in the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility.

The paid leave entitlement will apply on each occasion the employee is prevented from working (including working from home) for one of the following reasons:

- a. they are required by government or medical authorities to self-isolate or quarantine;
- b. they are required by their employer to self-isolate;
- c. they are displaying symptoms of COVID-19 or are suspected to have come into contact with a potential positive case and have been required to self-isolate by a medical practitioner;
- d. they have been tested for COVID-19 and have not received their results; or
- e. they are required to self-isolate due to any other measures taken by the government or medical authorities.

Are their conditions for eligible employees to take paid pandemic leave?

There are conditions, including:

- an employee is not eligible to take paid pandemic leave instead of paid personal/carer's leave;
- an employee must agree to undertake a COVID-19 test at the earliest opportunity;
- notice and evidence requirements which must be satisfied, including evidence that would satisfy a reasonable person that the leave is taken for an eligible reason;
- an employee is not entitled to paid pandemic leave where the employee becomes entitled to workers compensation benefits as a result of contracting COVID-19;
- where self-isolation results from the advice of a medical practitioner (as distinct from a requirement of the employer or a government medical authority), it will be necessary for a medical certificate to be produced; and,
- the employee is prevented from working from home.

What is the date of effect and duration of the entitlements?

The paid pandemic leave entitlements in the ***Aged Care Award 2010***, the ***Nurses Award 2010*** and the ***Health Professionals and Support Services Award 2020*** commence on Wednesday, 29 July 2020, and apply up until 29 October 2020 but may end after that date.

If you need further information or assistance

If you have any questions, please contact **AFEI** on **02 9264 2000** and one of our advisors can assist you.