

MEMBER BRIEFING NOTE

COVID-19 leave entitlement changes

DATE: 8 APRIL 2020



PURPOSE

The purpose of this briefing note is to provide a summary of COVID-19 leave entitlement changes that were recently approved by the Fair Work Commission to most modern awards (including those relevant to members of Consult Australia).

BACKGROUND

The global spread of COVID-19 (a strain of coronavirus) was confirmed as a pandemic by the World Health Organization in mid-March 2020.

The Australian and state/territory governments have iteratively implemented a range of health measures to slow the spread across the country. This includes self-isolation requirements, restrictions on certain types of mass gatherings, and providing instructions and/or advice to the public and employers on how they can minimise risks.

These health measures, and the spread of the pandemic, have created circumstances where the ability for an employee to attend their usual workplace for work commitments is impacted through restrictions or discouragements outside of their control. Most modern awards do not have normal leave entitlements for these types of public health events (particularly if the employee is not eligible or does not have personal leave) and this has been described as a 'regulatory gap' in the awards system from COVID-19.

A summary on how modern awards align to corresponding industries is available [here](#).

SUMMARY

On its own initiative, the Fair Work Commission proposed to vary most modern awards (a list of applicable awards is below) to provide entitlements for unpaid 'pandemic leave' and the flexibility to take leave at half pay. These entitlements proposed are time limited until 30 June 2020, and are in response to COVID-19.

The Fair Work Commission ran a full consultation process on these changes from 1-8 April, before approving the changes to applicable awards on 8 April.

Applicable awards

A full list of applicable awards impacted by these approved changes are [available here](#) (at paragraph 108).

This includes the following awards which may be relevant (amongst others) to Consult Australia members:

- *Professional Employees Award 2010*
- *Architects Award 2010* – future award from 4 May 2020
- *Surveying Award 2020*
- *Clerks – Private Sector Award 2010*

MEMBER BRIEFING NOTE

COVID-19 leave entitlement changes

DATE: 8 APRIL 2020



- *Legal Services Award 2020*
- *Manufacturing and Associated Industries and Occupation Award 2010*

Unpaid 'pandemic leave'

An employee covered by one of the applicable modern awards may take up to two-weeks unpaid leave if the employee is required by government or medical authorities (or acting on medical advice) to self-isolate or is otherwise prevented from working. This includes measures by government or medical authorities that would impact circumstances where an employee is required to work at premises operated by their employer.

The model term for this amendment requires:

- That the employee gives notice of the taking of this leave to the employer;
- An employee must give evidence to the employer (if requested) that would satisfy a 'reasonable person' that the leave is taken for this reason; and
- That this leave does not affect any other paid or unpaid leave entitlements, and counts as service for the purpose of entitlements under their award and the National Employment Standards.

This leave entitlement is only available on a one-off basis (rather than per occasion) before 30 June. It will therefore not cover an employee needing to self-isolate more than once.

The Fair Work Commission has noted on a practical level that they envision applicable employees are likely to access any available paid leave entitlements before utilising an entitlement for unpaid pandemic leave, however this amendment makes no requirements to exhaust other leave entitlements first.

Flexibility to take annual leave at half pay

An employee covered by one of the applicable modern awards may agree with their employer to take up to twice as much annual leave at half the rate of pay.

The clause for this amendment requires any agreement to take leave in accordance with this entitlement to be recorded in writing and retained as an employee record. This ensures there is a record of agreement in order to protect the interests of both parties and to minimise the risk of subsequent disputes.

The clause for the amendment also notes that leave loading entitlements, such as those under the *Professional Employees Award 2010*, remain unchanged. For example, if an employee is taking two weeks leave under this clause and are normally eligible for leave loading, they will be entitled to one week's leave on full pay including leave loading.

The Fair Work Commission also noted that there are no impediments in most modern awards to an employee reaching an agreement with their employer to move from full-time to part-time employment, which is another option if reduced hours are being considered.

MEMBER BRIEFING NOTE

COVID-19 leave entitlement changes

DATE: 8 APRIL 2020



OTHER MEASURES

The Federal Attorney-General, the Hon Christian Porter MP, has advised that the Australian Government's COVID-19 JobKeeper wage subsidy will be available for employees taking unpaid 'pandemic leave' if the employer and employee are also eligible for this scheme.¹ The wage subsidy has also been designed to be applicable if employees are taking annual leave and is a one-size-fits all payment, so the annual leave at half pay entitlement would also be captured by the JobKeeper scheme.

The Fair Work Commission have also noted in their summary that they designed these COVID-19 leave entitlement changes to align with the JobKeeper wage subsidy scheme and flagged that alignment was key to ensure they are taken up (and for the indirect health benefits of these changes to be achieved).

Consult Australia's briefing note on the COVID-19 JobKeeper wage subsidy scheme is [here](#).

RELATED LINKS

Fair Work Commission, [COVID-19 leave entitlement changes – consultation process and decision](#)

Gilbert + Tobin, [COVID-19: Proposed pandemic leave – changes to modern awards](#)

Kin & Wood Mallesons, [COVID-19: Variations of modern awards](#)

CONTACT US

If you have any questions, please contact:

James Robertson

Policy Advisor

Consult Australia

james@consultaaustralia.com.au

This Briefing Note provides a summary only of the subject matter covered, without the assumption of duty of care by Consult Australia. The summary should not be relied on as a substitute for legal or other professional advice.

¹ ABC News, [Unpaid pandemic leave or annual leave at half-pay for coronavirus self-isolation \(3 Apr 20\)](#)