



# COVID-19 AND YOUR RIGHTS AT WORK

## A MEAA Fact Sheet

### CANCELLATIONS AND STAND DOWN

#### **What if my workplace shuts down? Can I be stood down without pay?**

MEAA's view is that a workplace shut down should be the last resort for employers, only to be utilised where a closure or cancellation is unavoidable and outside of the employer's control.

Before entering into a workplace shutdown, employers should consult with employees and the union and discuss the effect of the shut down on employees and measures to reduce adverse effects of the shutdown.

If a workplace is shut down due to COVID-19, best practice would be for employers to pay workers during shut down to minimise the impact on the workers although we note this is not legally enforceable.

However, employees need to be aware that section 524 of the *Fair Work Act* states that if an employee cannot be usefully employed, and the stoppage of work (or a shut down) is outside of the employer's control, the employer is not required to pay employees that are stood down.

If you are covered by an enterprise agreement, other provisions may apply (though most EAs do not have alternate shut-down provisions). If you are covered by a contract, refer to the contract to see if it contains a "force majeure" or "Act of God" clause, because this may affect your legal entitlements.

If employers decide to shut down in accordance with section 524, MEAA will consider asking for the employer or government funders of the employer to pay employees during a shut down.

Unions are seeking that the federal government provide necessary financial support, including additional paid leave to workers, so that workers can meet immediate needs.

If you are stood down without pay, you can contact the MEAA for advice on your specific circumstances.

#### **What if a producer or employer cancels a performance or tour – will I still get paid out the full amount of my contract?**

**Permanent employees** - In normal circumstances, if a producer cancels a tour and it is within the cancellation period, you may be paid out in accordance with your contract which may provide for either payment in full, cancellation fees or notice periods.

Please refer to the contract to see if it has specific terms about a shutdown of "force majeure" or "Act of God".

This means that if the reason for the closure is beyond the control of the employer, they may argue that they are not required to pay their workers the full amount of the contract.

If a section 524 stand down applies, you are not lawfully required to be paid.

**Casual employees** - As casual employees are engaged on an hourly or daily basis, it is not likely to be paid out beyond this engagement. However please check your contract or terms of engagement. Some enterprise agreements will have roster cancellation notice periods which may apply.

MEAA is advocating for employers to mitigate the losses to casual employees by honouring payments for rostered shifts, notice periods and other ongoing payments where applicable.

## PAYMENT OF LEAVE

### Do I get paid leave to take time off to self-isolate?

Where possible, employers should make provisions for you to work from home. However, we recognise this is not likely to be feasible for some workers such as performers and production crew.

**Permanent employees** - In the event an employee is directed by the employer to self-isolate, MEAA's position is that the employer should continue to pay the employee "special leave". Special leave is the term given to paid leave that is provided in addition to legal entitlements including annual and personal leave.

**Casual employees** - Casual workers have no legal entitlement to paid sick leave. However, unions are advocating for workers including casuals to be granted paid "special leave" by employers to minimise the financial impact of COVID-19. We are asking employers to grant paid leave due to the significant public health risk should employees be forced to come to work for financial reasons. Employers should provide paid leave to ensure that there are no barriers or disincentives to self-report, which in turn would assist in minimising risk to others. Some employers are already doing this.

**Independent contractors** - Like casuals, paid leave generally does not apply to independent

contractors; however, again we are asking employers to pay discretionary amounts to mitigate losses to contractors.

### Do I get paid leave if I suspect I may have COVID-19 (self-exclusion)?

This is a more complex issue. If you take time off because you fear that you may have contracted COVID-19, it is advisable to seek medical advice immediately and obtain a doctor issued medical certificate to provide to your employer.

**Permanent employees** - If an employer directs you to remain at home until you have medical clearance, then your employer should continue to pay your wages. If you are unwell, and have enough personal leave remaining then you should be paid personal leave for the time off work. However, unions are advocating for workers including casuals to be granted paid "special leave" by employers to minimise the financial impact of COVID-19. We are asking employers to grant paid leave due to the significant public health risk should employees be forced to come to work for financial reasons. Employers should provide paid leave to ensure that there are no barriers or disincentives to self-report, which in turn would assist in minimising risk to others. Some employers are already doing this.

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**Independent contractors** - Paid leave generally does not apply to independent contractors, however please check the terms of your contract.

**Casual employees** - Paid sick leave does not apply to casual workers.

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### **Do I get paid to take time off to care for family members who may be affected by illness?**

**Permanent employees** - You can access paid carer's leave to care for any immediate family member affected by an illness, which comes out of your personal leave accrual.

**Casual employees** - Casual workers have no legal entitlement to paid carer's leave. However, unions are advocating for workers including casuals to be granted paid "special leave" by employers to minimise the financial impact of COVID-19. We are asking employers to grant paid leave due to the significant public health risk should employees be forced to come to work for financial reasons. Employers should provide paid leave to ensure that there are no barriers or disincentives to self-report, which in turn would assist in minimising risk to others. Some employers are already doing this. You must advise the employer that you are taking the time off for that reason immediately and may need to provide evidence that your family member is sick. You cannot be discriminated against for taking time off to care for immediate family members.

**Independent contractors** - Paid leave generally does not apply to independent contractors, however please check the terms of your contract.

### **I don't have enough sick leave accrued to cover me if I need to take time off due to illness – what will happen?**

**Permanent employees** - If you are a permanent worker and become unwell and have run out of accrued paid personal leave you may seek to access your annual leave or unpaid personal leave.

Unions are advocating for workers including casuals and contractors to be granted paid "special leave" by employers to minimise the financial impact of COVID-19. This is not a legal entitlement but we are asking employers to grant this given the significant public health risk should employees be forced to come to work for financial reasons. Employers should provide paid leave to ensure that there are no barriers or disincentives to self-report, which in turn would assist in minimising risk to others. Some employers are already doing this.

You cannot be discriminated against if you are absent from work for having an illness.

Workers' compensation may be a consideration should you contract the disease in connection with your employment. However, this may be difficult to prove if the virus becomes widespread within the community. As this is an uncharted application of workers compensation law - we can't advise on it specifically but you can speak with a workers compensation lawyer.

### **This is now impacting my ability to make a living – what can I expect from existing or future employers in relation to work I've committed to later in the year?**

The COVID-19 situation is changing rapidly. The impact and spread of the virus is still uncertain. Unions will be seeking that the federal government provide necessary financial support to make sure workers can meet immediate needs, reduce further risk to coworkers and for the overall benefit to the economy.

## PERSONAL HEALTH AND SAFETY

### **I've been in contact with someone who has been in contact with someone else who has tested positive for the virus. What should I do?**

As of March 15, 2020, NSW Health advises the following course of action.

If you have been in contact with a person identified as a close contact of another person with confirmed COVID-19 infection, you do not need to self-isolate (although the close contact does) and don't need to take any other special precautions.

If a close contact develops symptoms and is confirmed as a COVID-19 case, public health authorities will determine who, if anyone, has been in close contact with them while they were infectious, and these people will be directed to self-isolate.

Check federal and state/territories health department websites (see the bottom of this fact sheet) for the latest information.

### **What happens if there is a reported case on my production?**

If you have become aware that there is a reported case of COVID-19 in the workplace – whether it be a fellow worker or an audience member – your employer must take steps to protect workers from exposure and provide a healthy and safe workplace. The following advice applies to all workers including permanent, casual and contractors. Independent contractors are considered 'workers' under work health and safety legislation and are entitled to the same consideration as employees in these circumstances.

We recommend that you ask your employer to provide information on the section or department the person was working in, so that you can determine your proximity to the person who has been diagnosed and what measures they intend to implement.

Employers have an obligation to provide information and training to workers regarding potential health risks. Employers also have obligations to ensure that co-workers are not exposed to known cases or contacts and will be required to provide any contacts of cases to public health authorities.

Workers have obligations to take reasonable care that their acts or omissions do not adversely affect other colleagues (for example, by failing to observe health department advice or recommendations).

Under Work Health and Safety legislation, you have the right to refuse to carry out, or cease work, if you have a reasonable concern that the work would expose you to a serious risk to your health and safety, emanating from an immediate or imminent exposure to a hazard. A serious risk could mean the risk of coming into contact with a confirmed case of COVID-19, however, it may not include a 'suspected case'. If your employer is requiring you to work in circumstances where you think you are exposed to serious risk, please contact your elected Health and Safety Representative ("HSR") or the MEAA.

### **Can I be sacked for refusing to attend work?**

Under Work Health and Safety legislation, all workers have the right to refuse to carry out, or cease work, if you have a reasonable concern that the work would expose you to a serious risk to your health and safety, emanating from an immediate or imminent exposure to a hazard. A serious risk could mean the risk of coming into contact with a confirmed case of COVID-19, however, it may not include a 'suspected case'.

However, it is very important to obtain advice before refusing to attend work, and communicate with your employer in writing should you need to stay home. If your employer refuses to permit you to stay home, seek advice.

**Permanent employees** - If you are a permanent employee and you obtain a medical certificate because you feel unwell, whether physically or

psychologically, your employer cannot lawfully terminate your employment because you are sick.

Seek advice about your particular circumstances before refusing work where your employer is requiring you to continue.

**Casual employees** - If you are a casual employee and you obtain a medical certificate because you feel unwell, either physically or psychologically, your employer cannot legally terminate your employment for that reason, however there is no legal requirement that you be paid.

While casual employment is an insecure form of work, an employer cannot discriminate against you because you have caring obligations for an immediate family member.

**Independent contractors** - Please check the terms of your contract. Best practice would be to speak to your employer about how to manage the situation. Employers have the same obligation to you to provide a safe and healthy workplace and cannot discriminate against you for exercising your right to a safe workplace.

### **I have an underlying health condition that puts me at higher risk – what should I do? Is my employer required to do more for me?**

Some workers – such as older workers, people with chronic health conditions and those who are immunocompromised – may be at higher risk of contracting COVID-19. As the situation with the spread and behaviour of the virus is yet unknown, it is wise to consult regularly with your doctor and seek medical advice about the various risks of attending work and how to take all necessary precautions to avoid exposure. Your doctor can write a medical certificate should they believe you should either work from home, or not attend work at all, if working from home is not a possibility. Unions will seek that special leave be granted for high risk workers and the MEAA can advise on a case-by-case basis if needs be.

## **HOW DOES THIS AFFECT WORK-RELATED INTERNATIONAL TRAVEL?**

### **Do I have the right to refuse to travel for work?**

Under Australian Work Health and Safety legislation you have the right to refuse to carry out, or cease work if you have a reasonable concern that the work would expose you to a serious risk from an immediate or imminent exposure to a hazard. A serious risk would mean the risk of coming into contact with a confirmed case of COVID-19, however, it may not include a 'suspected case'. This applies to all categories of workers i.e. permanent, casual and independent contractors.

### **If I refuse to work, will I still get paid out the full amount of my contract?**

**Permanent employees** - Seek advice if your employer does not consent to ceasing at-risk duties including travel. Whether you get paid would depend on the terms of your contract, how much notice you provided and the particular circumstances of your case.

**Casual employees** - As casual employees are engaged on an hourly or daily basis, it is not likely to be paid out beyond this engagement.

**Independent contractors** - Whether you get paid would depend on the terms of your contract, and how much notice you provided.

### **How do I keep up-to-date with the situation changing so rapidly in relation to COVID-19?**

The Australian Government Department of Health releases the latest information and advice on their website at: [health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert](https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert).

Please refer to the site for regular official updates and for details on how to reduce your risk of contracting

COVID-19. State/territory specific information can be found here:

**Australian Capital Territory:**

[health.act.gov.au/about-our-health-system/novel-coronavirus-covid-19](http://health.act.gov.au/about-our-health-system/novel-coronavirus-covid-19)

**New South Wales:**

[health.nsw.gov.au/Infectious/diseases/Pages/coronavirus.aspx](http://health.nsw.gov.au/Infectious/diseases/Pages/coronavirus.aspx)

**Queensland:**

[qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19](http://qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19)

**Western Australia:**

[healthywa.wa.gov.au/coronavirus](http://healthywa.wa.gov.au/coronavirus)

**South Australia:**

[sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+topics+a+-+z/covid+2019/latest+updates/latest+updates+-+covid-19](http://sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+topics+a+-+z/covid+2019/latest+updates/latest+updates+-+covid-19)

**Tasmania:**

[dhhs.tas.gov.au/publichealth/communicable\\_diseases\\_prevention\\_unit/infectious\\_diseases/coronavirus](http://dhhs.tas.gov.au/publichealth/communicable_diseases_prevention_unit/infectious_diseases/coronavirus)

**Victoria:**

[dhhs.vic.gov.au/coronavirus](http://dhhs.vic.gov.au/coronavirus)

## WHERE TO GET HELP AND INFORMATION

For a range of other resources, including MEAA statements, updated advice to members and tools to inform the union about the impact of the coronavirus on your work and income, go to the dedicated page on our website at [meaa.org/coronavirus](http://meaa.org/coronavirus)

**For advice and assistance, contact MEAA Member Central on 1300 656 513 or [aid@meaa.org](mailto:aid@meaa.org)**



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