

Novel Coronavirus (COVID-19)

Impacts on Leave and Pay Entitlements



The following 'what-if' scenarios are discussed in the light of:

- The entitlement under the National Employment Standards (NES) in the *Fair Work Act 2009* (Cth) for personal/carer's leave—
if the leave is taken:
 - a) *because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or*
 - b) *to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:*
 - (i) *a personal illness, or personal injury, affecting the member; or*
 - (ii) *an unexpected emergency affecting the member.*
- The broad obligations on schools, as employers, under workplace health and safety (WHS) legislation to ensure a safe workplace, and
- The obligations on staff, as employers, under workplace health and safety (WHS) legislation to co-operate with the school in ensuring a safe workplace.

The **Possible Response** outlined below cannot, in the absence of case law or greater regulatory clarity, be guaranteed as appropriate but should provide at least a reasonable basis for action.

All responses are subject to the normal documentation and other requirements being met.

School Closures

Where a school is directed to close, or does so voluntarily, staff would generally be expected to continue to carry out their duties, or suitable alternative duties, if possible, at another location, which could be their home.

In the situation where there has been a confirmed case at the school site and the premises are closed to allow appropriate cleaning obviously staff cannot be onsite. However, **it may still be possible during any period of mandated closure for staff to continue to work at school**. This will be dependent upon the precise nature of the closure direction – but staff working in a school without students is largely analogous to the situation of many other businesses. Schools should monitor any closure notices carefully.

Whether duties, or alternative duties, can be performed or not, all staff who are fit and available for work would continue to be eligible for payment, although some allowances may not be applicable during these periods for general (non-teaching) staff. Normal leave entitlements would be available for other staff unable to work or already on leave.

Working from Home

In all scenarios, as an alternative to paid or unpaid leave, where it is feasible for the employee and the School, consideration could be given to working from home during any absence. This is not a statutory entitlement and it would clearly be only feasible in limited positions. At the risk of stating the obvious, working from home is work and normal pay would continue.

Non-Statutory Additional Leave Benefits

The provision of additional leave entitlements to be accessed during this outbreak has been broadly sought by the ACTU and some individual unions, in some cases as a backup, in others as the first leave utilised. Some governments have introduced tailored leave arrangements, e.g. [NSW Government](#) and [WA Government](#), and some Catholic employer bodies likewise, e.g. [CCER](#) covering Catholic schools in NSW and ACT. Schools should make their own enquiries regarding what arrangements may be in place in their jurisdiction.

After considering the arrangements in other sectors schools will need to determine what approach to additional leave to take at an individual school level. **We encourage schools**, however, to consider paying staff who are currently overseas, having left before the applicable requirements were announced, and need to self-isolate upon their return but cannot work from home. Schools could consider offering up to 10 working days additional paid leave in a similar manner to Catholic schools in NSW / ACT or to provide up to 5 working days additional paid leave with the remaining leave being taken from personal leave balances. Obviously, a consistent approach should be followed across all staff in these circumstances.

We would not recommend the extension of this benefit to those leaving after the Government's recommendation not to travel. Consistent with the approach taken by Catholic Schools in ACT and NSW **we suggest** that staff who choose, against Government advice to go on non-essential travel overseas after midnight on 15 March:

- not be approved to work from home and not be paid during the required self-isolation period upon their return
- not be able to access personal/carer's leave for the mandatory self-isolation period upon their return, unless they are sick or caring for a sick member of their family or household
- are able to access any available annual or long service leave on request.

Diagnosed or reasonably suspected of COVID-19

In the scenarios below we refer to employees (or a person subject to care) who are "Diagnosed or reasonably suspected of COVID-19" which would include those:

- testing positive to COVID -19,
- having been tested while awaiting results, and
- meeting the criteria for testing (on the basis of symptoms and applicable overseas travel or close contact with a confirmed COVID-19 case or severe community-acquired pneumonia and there is no clear cause) – who should be seeking testing.

An employee in these circumstances, in our view, would meet the requirement of “*not fit for work because of a personal illness*”.

A “*member of the employee’s immediate family, or a member of the employee’s household*” in these circumstances may be suffering a “*personal illness*” which could require care and support.

Scenarios Involving Employee themselves

Description of Scenario	Minimum Response (noting discussion above regarding additional benefits)
Employee diagnosed or reasonably suspected of COVID-19	<p>Exclusion mandated under Government requirements.</p> <p>Access to personal / carer’s leave entitlements under the NES.</p> <p>If this is exhausted access may be available to other paid leave, if available, in accordance with the general practices of the school.</p>
Employee symptomatic, has returned from overseas, but is not subject to mandatory exclusion because of time of return from overseas (e.g. prior to midnight 15 March from non-targeted countries)	<p>Exclusion not mandated under Government requirements.</p> <p>School may seek to exclude employee to meet WHS obligations as a precautionary measure and direct testing to be undertaken.</p> <p>The presence of COVID-19 symptoms <i>would seem to allow</i> the absence to be categorised as ‘<i>not fit for work because of a personal illness</i>’ and entitled to personal / carer’s leave entitlements under the NES.</p> <p>We recommend additional benefits outlined above be considered.</p>
Employee is asymptomatic, has returned from overseas, but is not subject to mandatory exclusion because of time of return from overseas (e.g. prior to midnight 15 March from non-targeted countries)	<p>Exclusion not mandated under Government requirements.</p> <p>School may seek to exclude employee to meet WHS obligations as a precautionary measure.</p> <p>Without any COVID-19 confirmation, mandatory exclusion requirements or symptoms, it would be difficult to categorise the absence as ‘<i>not fit for work because of a personal illness</i>’ and entitled to personal / carer’s leave entitlements under the NES.</p> <p>As the absence is at the direction of the School regular payment would be anticipated.</p>

Description of Scenario	Minimum Response (noting discussion above regarding additional benefits)
<p>Employee is symptomatic and subject to mandatory exclusion because of overseas travel which commenced prior to announcement but not tested.</p>	<p>Exclusion mandated under Government requirements.</p> <p>School may direct testing to be undertaken.</p> <p>Access to paid personal leave as “diagnosed or reasonably suspected of COVID-19”.</p> <p>We recommend additional benefits outlined above be considered.</p>
<p>Employee is asymptomatic but subject to mandatory exclusion because of overseas travel which commenced prior to relevant announcements.</p>	<p>Exclusion mandated under Government requirements.</p> <p>Prior to confirmation of COVID-19 absence <i>might</i> be able to be considered as ‘<i>not fit for work because of a personal illness</i>’ and entitled to personal / carer’s leave entitlements under the NES as a result of Government mandated exclusion.</p> <p>If not determined to be categorised as ‘<i>not fit for work because of a personal illness</i>’ the absence could be granted as leave without pay or other form of paid leave, annual or long service leave, if available, on the basis that the employee is unable to fulfil their employment duties.</p> <p>We recommend additional benefits outlined above be considered.</p>
<p>Employee is symptomatic and subject to mandatory exclusion because of overseas travel which commenced AFTER recommendation not to travel but not tested.</p>	<p>Exclusion mandated under Government requirements.</p> <p>School may direct testing to be undertaken.</p> <p>Access to personal leave as “diagnosed or reasonably suspected of COVID-19”.</p> <p>We do NOT recommend additional benefits outlined above be considered.</p>

Description of Scenario	Minimum Response (noting discussion above regarding additional benefits)
<p>Employee is asymptomatic but subject to mandatory exclusion because of overseas travel which commenced AFTER recommendation not to travel.</p>	<p>Exclusion mandated under Government requirements.</p> <p>As indicated above we recommend –</p> <ul style="list-style-type: none"> • not be approved to work from home and not be paid during the required self-isolation period upon their return • not be able to access personal/carer’s leave for the mandatory self-isolation period upon their return, unless they are sick or caring for a sick member of their family or household • are able to access any available annual or long service leave on request.
<p>Employee is asymptomatic, not subject to mandatory exclusion but wishes to self-isolate as a precaution.</p>	<p>While the School remains open, in the absence of any particular WHS issues, staff are expected to attend and carry out their duties.</p> <p>The absence could be granted as leave without pay or other form of paid leave, annual or long service leave, if available, on request and subject to the usual School requirements.</p>
<p>Employee is asymptomatic, not subject to mandatory exclusion but wishes to self-isolate as a precaution but has a pre-existing medical condition.</p>	<p>While the School remains open, in the absence of any particular WHS issues staff are expected to attend and carry out their duties.</p> <p>Medical advice should be sought to allow consideration of what response is taken, noting that a ‘potential’ illness does not indicate a present lack of fitness for work. Appropriate safeguarding measures may be more appropriate.</p> <p>The absence could be granted as leave without pay or other form of paid leave, annual or long service leave, if available, on request and subject to the usual School requirements.</p>

Scenarios Involving Employee providing care

Description of Scenario	Preliminary Response
<p>Employee providing care or support for immediate family or household member diagnosed or reasonably suspected of COVID-19.</p>	<p>Access to personal / carer’s leave entitlements under the NES.</p> <p>If this is exhausted access may be available to other paid leave, if available, in accordance with the general practices of the school.</p>
<p>Employee seeks absence to provide care or support for immediate family or household member, who is symptomatic has returned from overseas, but is not subject to mandatory exclusion because of time of return from overseas (e.g. prior to midnight 15 March from non-targeted countries)</p>	<p>Staff should be directed to avoid close contact with such family members to avoid infection.</p> <p>The presence of COVID-19 symptoms <i>may</i> allow the absence to be categorised as ‘<i>because of a personal illness</i>’ and entitled to personal / carer’s leave entitlements under the NES.</p> <p>If not determined to be categorised as ‘<i>because of a personal illness</i>’ the request, if granted, would seem to be for leave without pay or other form of paid leave, annual or long service leave, if available.</p> <p>School may seek to exclude employee to meet WHS obligations as a precautionary measure if they have had close contact with family member. In this situation, as the absence is at the direction of the School, regular payment would be anticipated.</p>
<p>Employee seeks absence to provide care or support for immediate family or household member who is asymptomatic, has returned from overseas, but is not subject to mandatory exclusion because of time of return from overseas (e.g. prior to midnight 15 March from non-targeted countries)</p>	<p>Exclusion not mandated under Government requirements.</p> <p>Without being diagnosed or reasonably suspected of COVID-19 or subject to mandatory exclusion requirements, it would be difficult for the care and support to be described as necessary ‘<i>because of a personal illness</i>’ and entitled to personal / carer’s leave entitlements under the NES.</p> <p>Request, if granted, would seem to be for leave without pay or other form of paid leave, annual or long service leave, if available.</p>

Description of Scenario	Preliminary Response
<p>Employee seeks absence to provide care or support for immediate family or household member who is asymptomatic but subject to mandatory exclusion because of overseas travel which commenced prior to announcement.</p>	<p>Without being diagnosed or reasonably suspected of COVID-19 it would seem to be difficult for the care and support to be described as necessary <i>'because of a personal illness'</i> and entitled to personal / carer's leave entitlements under the NES.</p> <p>If not determined to be categorised as <i>'because of a personal illness'</i> the request, if granted, would seem to be for leave without pay or other form of paid leave, annual or long service leave, if available.</p>
<p>Employee seeks absence to provide care or support for immediate family or household member who is symptomatic and subject to mandatory exclusion because of overseas travel which commenced prior to relevant announcements.</p>	<p>Staff should be directed to avoid close contact with such family members to avoid infection.</p> <p>The COVID-19 symptoms and mandatory exclusion requirements may allow care and support to be described as necessary <i>'because of a personal illness'</i> and entitled to personal / carer's leave entitlements under the NES.</p> <p>If not determined to be categorised as <i>'because of a personal illness'</i> the request, if granted, would seem to be for leave without pay or other form of paid leave, annual or long service leave, if available.</p> <p>School may seek to exclude employee to meet WHS obligations as a precautionary measure if they have had closed contact with family member. In this situation, as the absence is at the direction of the School regular payment would be anticipated.</p>

IMPORTANT NOTE: All responses outlined above are general in nature and may be affected by the individual circumstances of the situation.

Further scenarios will be addressed as requested – please email to mspencer@csa.edu.au.

Date of Preparation: 17 March 2020.