



COVID-19 & your employment rights

10 September 2021



This information is based on basic minimum entitlements in the *Fair Work Act*. Check your employment contract, award or enterprise agreement as you might have more generous entitlements.

Not sure if you are covered by an award? Check the Fair Work Ombudsman's online ['Find my award'](#) function.

The information below should not be relied upon as legal advice. If you would like more information or legal advice, please call the Women's Legal Centre ACT on (02) 6257 4377.

2021 Lockdown

During the 2021 lockdown, people in Canberra can only leave the house for essential reasons, including employment, healthcare, to obtain groceries and two hours of exercise daily.

Can I still go to work?

The current government advice is that if you can work from home, you should be working from home, and employers must allow workers to work from home if it is reasonably practicable to do so.

Under the ACT Health Directions, Canberrans can leave their homes to attend **essential employment**.

Essential employment includes work performed for an essential provider. Essential providers include:

- Essential retail (including supermarkets, banks, post offices, pharmacies, petrol stations)
- Hospitality (takeaway, meal delivery or to provide emergency food relief)
- Services (including essential government, crisis support, disability support, court, vets, childcare or school, commercial cleaners, urgent repair and maintenance)

Essential workers also include people who perform work in many other fields, including health and emergency services. Further detail on who is an essential worker is available [here](#).

Can my employer stand me down without pay?

You and your employer should work together to find solutions that suit both of you.

You can be stood down without pay if you cannot be usefully employed because of a stoppage of work for which your employer cannot be held responsible.

If you are stood down without pay, you remain employed for the duration and you will still accrue leave

during the stand down. Your employer should communicate with you about a stand down.

Some workers may be eligible for the COVID-19 disaster payment which has been extended to the ACT. More info can be found at [Services Australia](#).

I've been stood down and can't access paid sick leave or paid maternity leave

Employers are not currently required to pay personal leave or carers' leave to employees who have been stood down.

If your employer is refusing to pay you your paid maternity leave, please contact us for assistance.

My employment has been terminated because of lockdown

If you are dismissed from your employment because of lockdown, you can consider making an unfair dismissal claim. There are eligibility requirements for these claims and a strict 21-day time-limit applies to making a claim.

Depending on the circumstances, you may also be able to bring what is called a 'General Protections' claim, which is subject to the same strict 21-day time limit.

If you are thinking about making an unfair dismissal claim or an unfair dismissal claim, we encourage you to seek legal advice as soon as possible.

I think I've been discriminated against because of disability or because of COVID-19

Federal and territory law makes it unlawful for an employer to discriminate against a worker because of a disability. Disability includes an illness you have now, have had in the past, are believed to have had or may have in the future.

Employers have an obligation to make reasonable adjustments to accommodate a worker's disability. For instance, it may be discriminatory for your employer to require you to come into the workplace if you have a disability that makes you particularly vulnerable to COVID-19 and are otherwise able to work from home. Working from another location is a form of reasonable adjustment.

However, there are some circumstances in which it will not be unlawful to discriminate against a worker on the basis of their disability.

If you feel you have been discriminated against, it may be possible to make a discrimination complaint to the Australian Human Rights Commission or ACT Human Rights Commission.

If you think you have been discriminated against, we encourage you to seek legal advice.

Do I have to be vaccinated to work?

COVID-19 vaccines are mandatory for workers in certain sectors, including aged care workers, quarantine workers, and some health care workers. Each state and territory has different public health directions which state which workers are required to be vaccinated to attend work. For other workers that do not fall within these categories, vaccines are not mandatory to attend work.

In the ACT, COVID-19 vaccines will be mandatory for residential aged care facility workers from 17 September 2021. Residential aged care facility workers who have not had at least one dose of a COVID-19 vaccination, and do not have an exemption from the ACT Chief Health Officer, will not be able to enter or remain on facility sites in the ACT.

In NSW regions surrounding the ACT, a similar direction applies to residential aged care facility workers. In NSW, health care workers who work for the NSW Health Service or public health organisations, in the private sector at a private health facility or as a

registered paramedic are required to have a first dose of the vaccine by 30 September 2021 and a second dose by 30 November 2021.

For other workers, COVID-19 vaccinations have not been made mandatory by the ACT Health Directions. However, the government has indicated that vaccinations against COVID-19 may become a requirement for travel to certain destinations or for people working in certain high-risk workplaces.

However, employers can direct their employees to get a vaccine, and employees are required to comply with lawful and reasonable directions from their employer. Whether or not a direction to get vaccinated is lawful or reasonable will be highly dependent on the specific circumstances of a case.

If your employer has directed you to get a vaccine, and you are unsure about your rights, we encourage you to seek legal advice.

My employer says I need to go to work but I'm not an essential worker

In general, employees are required to comply with lawful and reasonable directions from their employer. However, employers need to comply with government health directions.

Non-essential businesses, including non-essential retail must close for the duration of the lockdown. The current government advice is that if you can work from home, you should be working from home.

If your employer is requiring you to attend the workplace and you believe this is inconsistent with health directions, please contact the Centre for advice.

If you cannot attend the workplace because of health directions but cannot perform your job from home, you can seek to access any paid leave entitlements, e.g. annual leave or long service leave.

Can my employer force me to work from home?

In general, employees are required to comply with lawful and reasonable directions from their employer. Given the current government advice is to work from home where you can, it is likely to be lawful and reasonable for your employer to direct you to do so.

Employees working from home or another location must still be paid for the work they are doing.

If you are working from home, your employer is still obliged to provide you with a safe working environment. If you don't have the necessary equipment to work safely from home, ask your employer to provide what you need to continue working safely.

Can my employer change my regular roster or hours of work?

Your employer should discuss any changes with you before they happen, and generally your agreement is required. Check your award (awards are documents that contain minimum terms of conditions of employment in a particular industry or occupation), or enterprise agreement for your employer's obligations.

As a result of COVID-19, there were changes to many awards, including the Restaurant Award, Hospitality Award, and Clerks Award, which provided greater flexibility for employers to change duties, reduce hours of work, and direct employees to take annual leave. Many of these changes to awards are no longer in place. It is important to check your award.

Do I need to wear a mask at work?

If you need to go to work, you will need to wear a face mask unless you fall within one of the exemptions. You can find the list of exemptions [here](#).

I've been asked to do a lot of extra hours, do I have to?

If you're a full-time employee, your employer can only require you to work 38 hours per week plus 'reasonable additional hours'. Your award or enterprise agreement will most likely include additional information about additional hours and overtime rates.

I am a frontline worker and I am getting abused by customers

Your employer has a duty to ensure your health and safety at work. You also have obligations to keep yourself safe. If you are receiving abuse at work, you should notify your manager and/or workplace health and safety officer and ask them to take steps to address the situation.

I am an essential worker and I am worried about my safety at work

Your employer has a duty to ensure your health and safety at work. You also have obligations to keep yourself safe.

If you have concerns about your workplace and its compliance with health directions, you can speak to your workplace health and safety officer and/or speak to Worksafe ACT.

What is pandemic leave?

In 2020, the Fair Work Commission added two weeks unpaid pandemic leave to 99 awards. If you are covered by one of these awards, you can access up to two weeks' unpaid pandemic leave if you cannot work because you are required to self-isolate or because of measures taken by government or medical authorities (e.g. government directions restricting non-essential businesses).

Full-time, part-time and casual employees are eligible for the new pandemic leave. You do not need to use your paid leave before accessing unpaid pandemic

leave. Your employer can ask for evidence, such as a medical certificate.

I'm pregnant and don't feel safe at work. What can I do?

If you are fit for work but cannot continue your present duties due to illness or risks from your pregnancy, your employer must transfer you to a safe job if one is available.

If there is no safe job available, you may be entitled to paid no safe job leave (you must also be eligible for unpaid parental leave).

If you want to work from home as a precaution, and haven't been directed to stay home by your employer or because of a government health direction, you will need to come to an arrangement with your employer.

I am working from home and experiencing family violence

Make sure you keep in regular contact with your employer and ask for support and information if needed.

Family violence services are still operating and available to assist you. You can contact the DVCS 24/7 Crisis Line (02) 6280 0900 or chat to them [online](#). If you are in immediate danger, call 000.

I am an essential worker but can't attend work because my children are at home

The current government advice is for children to be kept at home where possible.

During the lockdown period, schools, early childhood education/care and out-of-school-hours care are permitted to remain open for children of parents who are essential workers and cannot work from home.

If you cannot attend the workplace because you need to care for a child, you can negotiate a work from home

arrangement with your employer. You could also discuss flexible hours so you can still meet your daily hours or outputs (e.g., you might be able to work when kids are asleep).

If you're not able to work due to your caring responsibilities, you can apply for carer's leave. Part-time and full-time employees are entitled to and accrue 10 days paid personal/carer's leave per year, plus an additional 2 days unpaid carer's leave. You could also request to use your annual leave or any long service leave if you run out of carer's leave. Casuals are entitled to 2 days of unpaid carer's leave.

Get Help

The Centre is delivering services during the 2021 Lockdown.

You can ring our Advice and Intake Line on 02 6257 4377, Monday-Friday, 9am-5pm.

You can also request assistance through our [website](#).