

MASTER BUILDERS SA EMPLOYEE ENTITLEMENTS DURING SHUTDOWN

The following alert has been prepared to assist members to understand their obligations in respect of employee entitlements, following the Marshall government's announcement on 20 July 2021 that the construction industry will be shut down for an initial period of 7 days. This guide is general in nature only and does not constitute legal advice. Members should seek specific advice having regard to their particular circumstances.

Annual leave/annual leave at half pay

Under the National Employment Standards, all permanent employees are entitled to paid annual leave. Annual leave may only be taken for a period agreed between an employee and the employer, which means that it is generally not possible for an employer to direct an employee to take annual leave, unless the employee has an excessive annual leave balance.

Most modern awards – including the On-site Award – currently allow for an employee to take twice as much annual leave at half pay, instead of taking paid annual leave on full pay. The usual rules relating to taking annual leave will generally apply, including that the leave must be taken with the agreement of the employee and employer. Any agreement to take twice as much annual leave at half pay must be recorded in writing, and retained as an employee record.

Personal/carer's leave

Under the National Employment Standards, all permanent employees are entitled to take paid personal (sick) leave in circumstances where the employee is not able to work "because of a personal illness, or personal injury, affecting the employee." Although this definition would not generally apply to an employee who is unable to work due to a direction to self-isolate or other government direction, in some cases it may be appropriate for such absences to be treated as paid personal leave. Employers should consult with employees in relation to whether employees are agreeable to use paid personal leave in these circumstances.

Permanent employees are also entitled to take carer's leave if they are required to provide care or support to a member of their immediate family or household because of an illness, injury or "an

unexpected emergency affecting the member". This means an employee can access their personal/carer's leave accrual if their immediate family or household member requires care or support from the employee. Personal/carer's leave could also be accessed if necessary due to an "unexpected emergency" – such as the decision to close schools without warning – where an employee is required to provide care for their child.

Stand down – Fair Work Act

Section 524 of the Fair Work Act 2009 allows an employer to stand down an employee during a period in which the employee cannot usefully be employed because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible. This would include, for example, a government imposed shutdown of an industry. Employers have no obligation to make payments to an employee during a period of stand down, but the employee will continue to accrue leave in the usual way.

An employee may also elect to utilise other paid leave entitlements, instead of being stood down (see above), in which case the stand down period will commence after the period of paid leave ends (if applicable). Employers who intend to utilise these stand down provisions should consult with employees where practicable, and monitor the government imposed restrictions to ensure that the stand down does not continue beyond a period of time that cannot be lawfully justified.

Working from home

Working from home can and should be accommodated for employees who are able to work from home, where it is reasonably practicable for this to occur. In that event, employees will continue to be paid as normal (i.e. wages), and accrue leave. Where an employee is working from home, the employer continues to have obligations to ensure that an employee's work environment is safe and without risks to health.

Please contact the Master Builders Workplace Relations Team on 8211 7466 for further advice and assistance.