

Have you been affected by the Coronavirus?

If your employment has been affected as a result of the Coronavirus (COVID-19) it is important to know your legal rights.

For non-state or non-local government employees the *Fair Work Act 2009* (Cth) (**FW Act**) sets out the minimum statutory entitlements.

Additional employment entitlements may also apply if your employment is governed by an award or Enterprise Agreement (**EA**) or if you have a written employment contract.

If you're working and struggling because of injury or illness you may also have entitlements through your superannuation, other insurance policies or under the *Workers Compensation Rehabilitation Act 2003* (Qld) (**WCRA**).

This advice is general in nature and may vary in specific circumstances. Always consult your union before taking action.

How is COVID 19 or Coronavirus affecting business?

Many businesses that rely on customers physically attending their premises in the exchange of good and services have faced a significant downturn in trade due to:

- new laws forcing them to shut down services or limit their operations
- customers staying at home, and
- customers working from home.

The travel, hospitality, retail and sporting industries are among those most exposed to major upheaval. Other businesses are also being negatively impacted as customers cut spending due to layoffs, bankruptcies and uncertainty surrounding the aftershocks of Coronavirus.

Can my employer reduce my hours?

Generally, an employer cannot reduce the hours of a permanent full-time or part time employee without their consent. However, special rules may apply in the modern award, EA or the contract of employment so it's important to check with your union.

Changes to an employee's span of hours may also be possible under an award or EA.

An employer can decide the shifts they offer a casual employee and there is no guarantee of work. However some casuals have rights in their award or EA or because they've worked regularly and systematically for 12 months.

If your hours are reduced or changed, talk to your union.

Can my employer stand me down?

The FW Act allow employers to stand down employees without pay when they can no longer be usefully employed due to work stoppages which the employer cannot be held responsible for.

For an employer to stand down an employee it is not sufficient to merely show that there has been an economic downturn. The employer must consider prospects of useful employment elsewhere in the business. As a result, employers may need to exhaust other options of work such as working from home or offering the employee alternative work. They should also explore employees taking paid leave. They should consult with the union before standing down employees.

Where an employer stands down employees pursuant to the provisions of the FW Act, the employer will not be required to make payment to those employees for the period of the stand-down, unless an EA provides otherwise.

Employers with an EA will be required to refer to comply with the terms of their EA in respect of stand down procedures.

Where an employer has stood down an employee under the terms of an EA, any dispute about the stand down may be dealt with under the EA's dispute settlement clause. Alternatively, an application may be made for contravention of the EA.

Otherwise, a dispute can be brought under the FW Act.

If your employer is contemplating a stand down, immediately talk to your union.

For further information, contact us today:

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Can I access social security benefits whilst stood down?

The Social Security Act defines unemployment as including a period where someone has been stood down. Hence you can access social security benefits when stood down. In addition, depending on the size of your employer and its reduction in turnover, whether you are stood down or not, you may be entitled to the jobkeeper payment of \$1500/fortnight.

Could I be made redundant?

Many employers whose business are affected by the Coronavirus may be forced to retrench their employees. This is called redundancy.

Under the FWA, a redundancy should be genuine, meaning:

- your employer no longer needs your job to be done by anyone due to operational reasons
- your employer has complied with any consultation provisions under an award or EA, and
- your employer has considered whether it would have been reasonable to redeploy you within its enterprise or an associated enterprise.

If you have genuinely been made redundant, you may be entitled to redundancy pay. You must have been employed at your job for at least 12 months and there are provisions around the size of the company. Talk to your union about what you are entitled to.

What happens if my employer cannot afford to pay my redundancy entitlements?

If your employer cannot afford to pay your redundancy entitlement because they become insolvent or bankrupt, you may be eligible for assistance through the Fair Entitlements Guarantee (FEG).

FEG is a Commonwealth Government funded scheme that provides for payment of some outstanding entitlements owed to employees when their employer is unable to pay its debts due to bankruptcy or insolvency.

To be eligible for assistance through the FEG, you must be an Australian citizen, or the holder of a permanent visa or a special category visa at the time employment ended.

There is also a requirement for the employee to prove the debt they are owed.

If you're unsure about your entitlements to apply for FEG, please speak with your union.

What are my entitlements if I get made redundant?

Your entitlement to a payment on redundancy may come from the FW Act or an industrial instrument, like an EA.

If I receive a FEG payment what will I receive? Are the entitlements the same as an EA?

As noted previously, your entitlement to a redundancy may come from the FW Act or another industrial instrument such as an EA.

If your employment is governed by an EA, you will be entitled to the benefits set out in the relevant clauses of the EA. However under the FEG scheme, the amount an employee is entitled is capped at a weekly wage of \$2,451.00 and an employee can receive 4 weeks' pay for each full year of service.

What should I do if I have suffered an injury or illness?

If you have suffered an injury or illness at work, you should consider your rights to lodge a Workers Compensation claim and/or a superannuation disability claim.

Can I lodge a Workers Compensation claim if I am no longer working?

If you have sustained an injury arising out of or in the course of your employment, you should notify your employer as soon as possible.

Workers will often delay lodging a Workers Compensation claim because:

- they are not aware of the severity of their injury;
- have concerns about job security; or
- may not be aware of their Workers Compensation entitlements.

If you have suffered an injury or illness at work and are considering ceasing work, don't delay in seeking advice from Maurice Blackburn about your potential entitlements or lodging a Workers Compensation claim.

If the insurer rejects a claim or terminates any of your entitlements immediately seek legal advice.

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Can I access Workers Compensation if I have contracted Coronavirus at work?

Coronavirus falls within the definition of injury contained in s 32(1) of the WCRA.

Section 32(3) of the WCRA provides that an injury includes:

“a disease contracted in the course of employment, whether at or away from the place of employment if the employment is a significant contributing factor to the disease.”

If you have contracted Coronavirus at work you may be entitled to make a Workers Compensation claim, however you will need to establish that your injury was sustained in the course of your employment and that employment was a significant contributing factor.

Proving you contracted Coronavirus at work may prove difficult as the virus spreads in the community.

If you believe you have contracted Coronavirus at work you should seek legal advice.

If you have been required to self-isolate, but have not contracted coronavirus you will not be entitled to make a workers compensation claim.

If I have an accepted Workers Compensation claim should I make a claim for Income Protection (IP)?

If you have an accepted Workers Compensation claim, seek advice about a claim for IP as each policy can differ in terms of benefits and the feasibility of making a claim.

If I have an accepted Workers Compensation claim should I make a claim for Total and Permanent Disablement (TPD)?

Yes. You can make a claim for your TPD benefits as this will not affect your Workers Compensation benefits.

I received a redundancy package, can I still pursue a lump sum claim for my Workers Compensation Injuries?

Yes. If you have suffered an injury at work which has caused damage to you physically or psychologically, you may be entitled to a lump sum payment. You can pursue this claim and still keep your right to weekly payments, medical expenses and return to full time work.

I received a redundancy package, can I still pursue a Common Law (negligence) Claim?

Yes. The redundancy package may offset against any compensation you are entitled but it does not preclude you from bringing a personal injuries claim.

Maurice Blackburn can pursue the claim for you on a “no win, no fee”* basis.

When should I lodge a Superannuation Disability claim?

If you're working and struggling because of injury or illness, you should consider lodging a TPD or IP claim.

Most superannuation funds provide default life and disability insurance for members over 25, with an account balance greater than \$6,000. The insurance cover can pay a lump sum benefit in the event that you are permanently unable to perform suitable work due to injury or illness, including Coronavirus.

If you have IP and are unable to work due to any injury or illness, including Coronavirus, you may be able to claim monthly payments while you are unwell. Waiting periods apply and can vary from a few weeks, to several months depending on your policy.

Members may also have cover for time off work through EBA, employer, or personal insurance policies and it is important to check.

Some policies may have exclusions for pandemic or epidemic related illnesses. If you are unsure if you are covered, Maurice Blackburn provides members with a free super & insurance check so you know where you stand.

Importantly, to access TPD or IP entitlements, your injury does not have to be work-related. For example, if you are unable to work due to an injury or illness injury suffered at home or in the community, you may be eligible for these entitlements.

If you leave your employment by resigning or accepting a redundancy without lodging a superannuation disability claim first, it may be rejected. This is because some insurance policies require that claims be made prior to ceasing work or within specified period after work ends, or may apply a restricted disability definition if you were not working when you suffered the injury or illness.

If the insurer rejects your claim immediately seek legal advice.

*Conditions apply

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Disability claims can be complicated and take a long time. The disability definitions in many superannuation insurance policies are not straightforward. Common disputes can arise with respect to the assessment of a disability claim, including:

- the date of disability
- which disability definition applies, and
- whether the claimant has capacity for alternative work.

If you:

- have already stopped working because of an injury or illness
- if you are thinking about stopping work because of an injury or illness
- if you are concerned that your employer might sack you, while you are suffering from an injury or illness, or
- if you are offered or might be offered a redundancy and are suffering from an injury or illness

we recommend that you get advice regarding your superannuation entitlements to.

Our superannuation insurance team provide a free check for cover and you can contact them by calling 1800 305 568.

COVID-19 and early access to your super

The federal government has recently announced that people facing unemployment and other financial stress as a result of the COVID-19 pandemic will be granted early access to their super.

Eligible individuals will be able to apply through the [myGov website](#) to access up to \$10,000 of their superannuation before 1 July 2020, and up to a further \$10,000 from 1 July 2020.

If you would like further information and guidance, please see the government's [fact sheet](#).

Importantly, withdrawing your super may cause you to lose your death and disability insurance cover if your super account balance falls below \$6,000 and you have not opted to keep your cover, even if your employer is still making contributions.

This is especially important if you have a medical condition that may cause you to cease work in the future or affect their job security, because it could leave you uninsured.

We recommend you seek financial advice before you decide to withdraw super and can refer you to a financial adviser if you don't have one already.

Information correct as at April 2020

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