

COVID-19 General Order allows employees to take unpaid pandemic leave, annual leave on half pay and annual leave in advance

Details

Created: 14 April 2020

The Western Australian Industrial Relations Commission (**Commission**) will issue a General Order under s 50 *Industrial Relations Act 1979* (WA) amidst the COVID-19 pandemic that allows state system employees to take unpaid pandemic leave, annual leave on half pay and annual leave in advance.

The Commission has implemented these flexible leave arrangements to assist businesses to continue to operate and to preserve employment and the continuity of employment for the benefit of those businesses, their employees and the economy generally.

The terms of the General Order will provide flexibility and leave options to be available to employees for:

1. Unpaid pandemic leave of up to two weeks if the employee is required, by government or medical authorities or acting on the advice of a medical practitioner, to self-isolate or is otherwise prevented from working by measures taken by the government or medical authorities in response to the COVID-19 pandemic;
2. Double annual leave at half pay, by agreement between the employer and employee; and
3. Annual leave to be taken in advance, by agreement between the employer and employee.

These measures will operate from today until 31 July 2020 and may be extended.

The General Order will apply to all private sector employers and employees in the State system, whether covered by an award or not. State system employers generally include sole traders, partnerships, some trusts, some local government agencies and some non-for-profit organisations.

Where an award or industrial agreement contains a more beneficial term than the General Order, the award will apply. Otherwise, where there is conflict between the terms of the General Order and the award, the terms of the General Order will apply.

The Commission issued the Reasons for Decision and the Minutes of Proposed General Order at **10.00am on 14 April 2020**.

The Commission has invited any submissions in writing by **2.00pm on 14 April 2020** as to whether the Minutes reflect the Reasons for Decision.

The Reasons for Decision [can be read here](#).

The Minutes of Proposed General Order [can be read here](#).

COVID-19 GENERAL ORDER PURSUANT TO SECTION 50 OF THE ACT
THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES	COMMISSION'S OWN MOTION	APPLICANT
	-v-	
	(NOT APPLICABLE)	RESPONDENT
CORAM	COMMISSION IN COURT SESSION CHIEF COMMISSIONER P E SCOTT SENIOR COMMISSIONER S J KENNER COMMISSIONER T EMMANUEL COMMISSIONER D J MATTHEWS COMMISSIONER T B WALKINGTON	
DATE	TUESDAY, 14 APRIL 2020	
FILE NO/S	APPL 16 OF 2020	
CITATION NO.		

Result General Order issued

Representation

- Ms C Purcell and Mr B Entrekin on behalf of the Hon. Minister for Industrial Relations
- Mr P Moss on behalf of the Chamber of Commerce and Industry of Western Australia (Inc)
- Ms M Hammat and Dr T Dymond on behalf of UnionsWA
- Ms E Clements on behalf of the Western Australian Local Government Association

Minutes of Proposed General Order

Having heard from Ms C Purcell and Mr B Entrekin on behalf of the Hon. Minister for Industrial Relations, Mr P Moss on behalf of the Chamber of Commerce and Industry of Western Australia (Inc), Ms M Hammat and Dr T Dymond on behalf of UnionsWA and Ms E Clements on behalf of the Western Australian Local Government Association, the Commission in Court Session, pursuant to the powers conferred on it by section 50 of the *Industrial Relations Act 1979* (WA) hereby makes a General Order in the terms set out in the attached Schedule.

CHIEF COMMISSIONER P E SCOTT
FOR AND ON BEHALF OF THE COMMISSION IN COURT SESSION

SCHEDULE – PROVISIONS RELATING TO THE COVID-19 PANDEMIC

1. - APPLICATION

- (1) This General Order applies to each employee as defined in subsection 7(1) of the *Industrial Relations Act 1979* throughout the State of Western Australia, except for public sector employees who are the subject of the Public Sector Labour Relations Circular 6/20 – *Leave arrangements for COVID-19*.
- (2) Where an award or industrial agreement contains a term provided for in this General Order that is more beneficial to an employee, then the more beneficial term shall apply. Otherwise, where there is conflict between the terms of an award or industrial agreement and this General Order, the terms of this General Order shall apply.
- (3) This General Order shall operate on and from the date this General Order issues until 31 July 2020, unless extended on application or at the initiative of the Commission.

2. - UNPAID PANDEMIC LEAVE

- (1) Subject to subclauses (2) and (3), an employee is entitled to take up to two weeks' unpaid leave if the employee is required, by government or medical authorities or acting on the advice of a medical practitioner, to self-isolate or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic. An employer and employee may agree that the employee may take more than two weeks' unpaid pandemic leave.
- (2) The employee must give their employer notice of the taking of leave under subclause (1) and of the reason the employee requires the leave, as soon as practicable. This may be a time after the leave has started.
- (3) The employee who has given their employer notice of taking leave under subclause (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in subclause (1).
- (4) Leave taken under subclause (1) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements.
- (5) Such leave:
 - (a) is available in full immediately rather than accruing progressively during any period of service;
 - (b) will be available until 31 July 2020 (unless extended by further variation depending on the duration of the COVID-19 pandemic);
 - (c) will be available to full time, part time and casual employees (it is not pro-rata);
and

- (d) must start before 31 July 2020, but may end after that date.
- (6) It is not necessary for employees to exhaust their paid leave entitlements before accessing unpaid pandemic leave.
- (7) Such unpaid leave does not operate on a 'per occasion' basis and is available once for those employees compelled to self-isolate, even if they are required to self-isolate on more than one occasion.
- (8) Those caring for others who are compelled to self-isolate are not entitled to unpaid pandemic leave.

3. - ANNUAL LEAVE AT HALF PAY

- (1) Instead of an employee taking paid annual leave at full pay, the employee and their employer may agree to the employee taking twice as much leave at half pay.
- Example: Instead of an employee taking one week's annual leave at full pay, the employee and their employer may agree to the employee taking two weeks' annual leave at half pay. In this example:
- The employee's pay for the two weeks' leave is the same as the pay the employee would have been entitled to for one week's leave at full pay; and
 - One week of leave is deducted from the employee's annual leave accrual.
- (2) Any agreement to take twice as much annual leave at half pay must be recorded in writing and signed by the employee (and a parent/guardian if the employee is under 18).
- (3) The employer must keep the written agreement as part of the employee's employment record.
- (4) The agreed period of leave must start before 31 July 2020, but may end after that date.

4. - GRANTING ANNUAL LEAVE IN ADVANCE

- (1) An employee and employer may agree to an employee taking a period of annual leave in advance of the entitlement being accrued if all of the following conditions are met:
- (a) Any agreement to annual leave in advance must be recorded in writing and signed by the employee (and a parent/guardian if the employee is under 18); and
 - (b) the written agreement must state the amount of leave to be taken in advance and the date on which the leave will commence; and

- (c) the employer must keep the written agreement as part of the employee's employment record.
- (2) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of the period of paid annual leave taken in advance, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued. This provision will continue to apply notwithstanding the expiration of this General Order.
- (3) Where an agreement has been reached under this clause and the leave commenced before the expiration of this General Order, then the arrangement may continue to operate for the period agreed between the parties.