



Directing employees to take annual leave during the coronavirus outbreak

Who can use this template letter?

You can use this template letter if you're an employer and need to direct an employee to take annual leave during the coronavirus outbreak.

! IMPORTANT

JobKeeper and annual leave

Employers can't force employees to take their annual leave as a condition of them getting the benefit of the JobKeeper payment.

Previously, employers under JobKeeper could ask their eligible employees to take some of their accrued annual leave, with some conditions. From 28 September 2020 this no longer applies. JobKeeper employers and employees need to follow the usual rules for taking and requesting annual leave, including those set by an award or agreement.

Temporary changes to workplace laws during coronavirus

Due to the coronavirus outbreak, some awards have been temporarily varied to allow employers to direct employees to take paid annual leave (and in some circumstances, unpaid leave). If your award has been varied in this way, you can use this template letter to direct your employee to take annual leave. Find out whether your [award has been temporarily changed](#) at coronavirus.fairwork.gov.au

Separate to the coronavirus outbreak, some awards already allow an employer to direct employees to take paid or unpaid annual leave due to a temporary close down or because they've built up excessive annual leave. For more information go to our [Directing an employee to take annual leave page](#) at www.fairwork.gov.au/leave

Direction to take excessive annual leave

If your employee has an excessive build-up of annual leave (generally when they have more than 8 weeks, or 10 weeks for shiftworkers) and you're directing them to take annual leave to reduce this balance, please use our [Direction to take excessive annual leave template](#) at www.fairwork.gov.au/templates

When and how can I use this template letter?

Employers and employees usually agree for employees to take paid annual leave. **In that circumstance, you don't need to use this template letter.**

In some circumstances, employers can require employees to take paid or unpaid annual leave.

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this template is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

Whether an employer can direct an employee to take paid or unpaid annual leave due to coronavirus usually depends on:

- what the relevant award or enterprise agreement says, and
- why the employer needs the employee to take the leave (eg. because the business will be closed for a period of time due to coronavirus or because the employer does not need as many staff as usual due to a downturn in business).

Check your award or enterprise agreement for the different circumstances of when leave can be taken and what the requirements are for that leave in each circumstance. [Find out more about awards and agreements](http://www.fairwork.gov.au/awards-and-agreements) at www.fairwork.gov.au/awards-and-agreements

If there is no award or enterprise agreement that applies to the employee, the Fair Work Act allows the employer to direct them to take paid annual leave if the direction is reasonable. There is no specific ability to direct an employee to take paid or unpaid leave due to circumstances relating to coronavirus under the Fair Work Act. However, a direction to take annual leave may be reasonable where, for example, the employer is temporarily shutting down its business because of the impact of the coronavirus outbreak.

It's best practice, and may be required by an award or enterprise agreement, for you to notify affected employees in writing if you are directing them to take annual leave.

Check your award or enterprise agreement for the rules that apply to you. Your employment contracts or workplace policies might also have rules or guidelines that you need to follow.

For more information about [JobKeeper stand downs and your workplace rights and obligations around coronavirus](#) see coronavirus.fairwork.gov.au

! IMPORTANT

Make sure you're using the latest version of this template letter by [downloading the most up-to-date version](#) from coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus

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Checklist: What employers should consider before directing employees to take annual leave due to the coronavirus outbreak

Before using this template letter, you should:

Step 1 – Consider other options

We encourage you to try to work together with the employee to find the most beneficial and workable solutions for your situation.

Before directing your employee to take annual leave, we encourage you to explore all options available, which may include seeking agreement from your employee to take a period of paid annual leave, working from home, or taking extra health and safety precautions in the workplace.

[Find out about your workplace entitlements and obligations](#) if you're affected by the outbreak of coronavirus at coronavirus.fairwork.gov.au including information about the JobKeeper scheme and award changes, flexible work arrangements, workplace health and safety, and pay and leave entitlements.

Step 2 – Find out what government help there might be for your situation

[Government services and agencies have information, advice and services](#) relating to coronavirus available at coronavirus.fairwork.gov.au

Step 3 – Check your award or enterprise agreement

Whether you can direct an employee to take annual leave due to coronavirus usually depends on what your award or enterprise agreement says. For example, you might be able to direct an employee to take paid or unpaid annual leave during a temporary close down or if they have an excessive accrued balance.

You should also consider the employee's employment contract and any relevant workplace policies.

Check your award or agreement to confirm:

If you're allowed to direct the employee to take paid annual leave

Reminder: If you intend to direct an employee to take excess paid annual leave, please use our [Direction to take excessive annual leave template letter](#) at www.fairwork.gov.au/templates

- ✓ [Find your award](#) at www.fairwork.gov.au/awards
- ✓ [Find enterprise agreements and other registered agreements](#) on the Fair Work Commission website at www.fwc.gov.au/awards-and-agreements/agreements
- ✓ [Find more information on directing an employee to take excess annual leave](#) at www.fairwork.gov.au/leave

If your award or agreement has added flexibility during coronavirus and what that might allow you to do

Due to the coronavirus outbreak, some awards have been temporarily changed to add flexibility about when employers can direct their employees to take annual leave. There are rules that you need to follow to give these kinds of directions.

- ✓ Find whether your [award has been temporarily changed](#) at coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws

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Employers and their employees may also be able to vary their enterprise agreement in certain circumstances to introduce additional flexibility to help address the impacts of coronavirus. This might include changes to allow for directions to take annual leave. There are rules about how this can be done.

- ✓ [Find out more about varying enterprise agreements due to coronavirus](http://www.fwc.gov.au/about-us/coronavirus-covid-19-updates-advice/covid-19-enterprise-agreements) on the Fair Work Commission website at www.fwc.gov.au/about-us/coronavirus-covid-19-updates-advice/covid-19-enterprise-agreements

If there are any requirements or conditions in your award or agreement you must fulfil before you direct an employee to take their annual leave, such as giving a period of notice before the leave starts

If your business is temporarily closing down – if you're able to direct the employee to take unpaid leave for all or part of the close down period (and in what circumstances this will apply eg. what happens if the employee does not have enough accrued paid annual leave to cover the period).

What entitlements may apply during the period of paid annual leave – check the award or agreement to confirm:

- If you need to pay annual leave loading or other entitlements during the period of paid annual leave
- what rate of pay you need to pay the employee's annual leave at, including if a public holiday falls within their period of leave
- is the employee entitled to take sick or carer's leave instead of annual leave, if they or a member of their household falls sick while they are taking annual leave.

Find more information at www.fairwork.gov.au/leave on:

- ✓ [what rate of pay you need to pay the employee while they are on leave](#)
- ✓ [employees taking annual leave over a public holiday](#)

Step 4 – Talk to the affected employees

Before giving a direction to take annual leave, we encourage you to discuss the direction with the employee and provide them with the opportunity to ask questions. You might have to take this step under your award, enterprise agreement or the employee's employment contract (or under a relevant workplace policy).

If you are required to notify and consult with the employee prior to directing them to take annual leave, or to consider their personal circumstances, you should make sure the employee has had an opportunity to discuss their circumstances with you, and that you have considered their concerns carefully, including any alternative options that may be available.

You should ensure that the employees understand things like:

- the reasons for the proposed direction to take annual leave
- the amount of annual leave you will direct them to take
- for business close downs – that they will receive paid annual leave (or in some cases, unpaid leave), and
- that this annual leave will be deducted from their accrued entitlements.

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Need help?

- ✓ Complete our short course about having [difficult conversations in the workplace](#) at www.fairwork.gov.au/learning
- ✓ Read our [Consultation and cooperation in the workplace best practice guide](#) at www.fairwork.gov.au/how-we-will-help/templates-and-guides
- ✓ Submit an enquiry online through [My account](#) at www.fairwork.gov.au/register
- ✓ Contact us on 13 13 94 (select the prompt for the coronavirus hotline).

Step 5 – Use this template letter to issue the direction to the employee

! IMPORTANT

This template letter has been colour coded to assist you to complete it accurately. You simply need to replace the **red < > writing** with what applies to your employee and situation.

Explanatory information is shown in *blue italics* to assist you and **should be deleted once you have finished the letter.**

Provide the letter to the employee and keep a copy of the letter for your records. The employee must receive it at least the required minimum notice period before the start of the leave period.

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TEMPLATE LETTER – Directing employees to take annual leave during the coronavirus outbreak

<Print on your business letterhead>

<Date>

Private and confidential

<Insert employee's full name>

<Insert employee's residential address>

Direction to take annual leave due to the coronavirus outbreak

Dear <insert first name>

We all find ourselves in an unprecedented and difficult time due to the impacts of the coronavirus outbreak.

[Explanatory information – please delete once you have finished the letter]

Some employers are required to notify and consult with their employees prior to issuing them with a direction to take annual leave.

Consulting employees

Under some temporary changes to awards (made to increase flexibility for employees and employers to manage the impacts of coronavirus), employers may also be required to consider their employees' personal circumstances before they issue a direction to take leave.

You should therefore meet with the employee and discuss why you are considering directing them to take leave, and give them the opportunity to discuss any concerns they have (including their personal circumstances) before you issue the direction. You should then refer to this meeting in the letter to them.

Notifying employees

When you direct the employee to take annual leave, you must provide them with at least the required minimum written notice of the start date of the leave. Check your award or agreement for the minimum notice period that will apply. Notice can't be given retrospectively. Some awards or agreements have different notice periods where the direction to take annual leave is related to coronavirus.

As discussed with you on <insert date of consultation with employee>, in accordance with <insert relevant clause number> of the <insert award or registered agreement title> (the <Award/Agreement>), I am writing to inform you that <insert business/company name that employs the employee who is being directed to take annual leave> requires you to take annual leave from <insert commencement date> to <insert end date>, due to <insert reason for direction ie. due to a temporary business close down during coronavirus>.

<Insert business/company name> is required to provide you with at least <insert length of notice period> notice of a requirement to take annual leave under clause <insert relevant clause number> of the <Award/Agreement>. Please consider this letter as your <insert period of notice> notice, commencing on the date of this letter <date of the letter>.

What will I receive while I'm on leave?

[Explanatory information – please delete once you have finished the letter]

If the direction to take annual leave is because the business is closing down for a period due to coronavirus, and an employee doesn't have enough paid annual leave to cover the whole period, under some awards the employer can direct the employee to take unpaid leave. The period of unpaid leave may still count as service for accruing entitlements under the award and the National Employment Standards.

Check your award to see if this applies to you and what requirements and conditions may need to be met. [Find more information](http://www.fairwork.gov.au/leave) at www.fairwork.gov.au/leave

For this period, you are being directed to take:

- **<insert period of paid annual leave eg. 2 weeks>** of paid annual leave. This period of leave will be deducted from your accrued entitlement.
- *[Delete if not applicable]* **<insert period of unpaid leave>** of unpaid leave.

[Explanatory information – please delete once you have finished the letter]

While the employee is on leave they are entitled to be paid their base hourly rate of pay. Check your employment contracts, award or agreement to determine what the employee's hourly rate of pay is when they take paid annual leave. More information on [determining the rate of pay for an employee on annual leave](http://www.fairwork.gov.au/leave/annual-leave/payment-for-annual-leave) is available at www.fairwork.gov.au/leave/annual-leave/payment-for-annual-leave

During the period of paid annual leave, your base rate of pay for your ordinary hours of work will continue to be paid to you. *[Delete if not applicable]* Annual leave loading is also payable for this period.

[Explanatory information – please delete once you have finished the letter]

Public Holidays

If a public holiday falls during a period when the employee is on paid annual leave, they are entitled to be paid their normal base rate of pay for that day. The public holiday is also not counted as a day of leave (ie. if the employee takes 10 days leave and a public holiday falls on a normal working day during that period of paid leave, the employee will be paid their normal base rate of pay for all 10 days, but only 9 days will be deducted from their annual leave balance). This is different for employees who are on unpaid parental leave. More information on [annual leave and public holidays](http://www.fairwork.gov.au/leave/public-holidays/not-working-on-public-holidays) is available at www.fairwork.gov.au/leave/public-holidays/not-working-on-public-holidays

Sick or carer's leave

If the employee gets sick or needs to care for a member of their family or household who gets sick while they are on paid annual leave, the employee might be able to take sick or carer's leave. If that occurs, you cannot deduct from their annual leave balance for the days they are sick or caring for someone who is sick, and instead you will need to deduct sick or carer's leave for those days. Find more information on [payment for annual leave](http://www.fairwork.gov.au/leave/annual-leave/payment-for-annual-leave) at www.fairwork.gov.au/leave/annual-leave/payment-for-annual-leave

If a public holiday falls during this period of leave and you would ordinarily have worked on that day, then you will be paid for the public holiday at your base rate of pay (**<insert hourly base rate of pay>**).

If you get sick during this period of leave, or if you need to care for someone who gets sick, you might be able to take sick or carer's leave. Please contact **<insert name of appropriate contact>** if that happens, as soon as possible.

Where can I go for support?

Should you have any questions in relation to this letter, please contact me on **<insert contact details>**.

For up to date information about your workplace entitlements and obligations, including information about directions to take annual leave, visit the [Fair Work Ombudsman's website](http://www.fairwork.gov.au) at www.fairwork.gov.au. This website includes recent updates and key links to other government information and assistance that may assist you during this time.

Thank you for your understanding during this difficult time.

[Explanatory information – please delete once you have finished the letter]

We've included a couple of additional tips below to help you improve communication to your employees. You may wish to make the letter more personal by:

- *Hand signing or adding a digital handwritten signature to the letter*
- *Sending the letter from a person that the employee recognises, like their manager (rather than from an individual the employee may not know).*

Yours sincerely,

<Insert name>

<Insert position>