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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Fair Work Amendment (COVID-19) Bill
2020**

No. , 2020

(Senator Faruqi)

**A Bill for an Act to amend the *Fair Work Act 2009*,
and for related purposes**

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A Bill for an Act to amend the *Fair Work Act 2009*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Fair Work Amendment (COVID-19) Act 2020*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments to the National Employment Standards

Fair Work Act 2009

1 Section 12

Insert:

paid COVID-19 leave means paid COVID-19 leave to which a national system employee is entitled under section 106F.

2 Subsection 17(2) (note)

Omit “and unpaid family and domestic violence leave”, substitute “, unpaid family and domestic violence leave, and paid COVID-19 leave”.

3 Paragraph 61(2)(e)

Omit “and unpaid family and domestic violence leave”, substitute “, unpaid family and domestic violence leave, and paid COVID-19 leave”.

4 Division 7 of Part 2-2 (heading)

Omit “and unpaid family and domestic violence leave”, substitute “, unpaid family and domestic violence leave, and paid COVID-19 leave”.

5 After Subdivision CA of Division 7 of Part 2-2

Insert:

Subdivision CB—Paid COVID-19 leave

106F Entitlement to paid COVID-19 leave

- (1) An employee is entitled to 14 days of paid COVID-19 leave in a 12 month period.
- (2) Paid COVID-19 leave:

Schedule 1 Amendments

Part 1 Amendments to the National Employment Standards

- (a) is available in full at the start of each 12 month period of the employee's employment; and
 - (b) does not accumulate from year to year; and
 - (c) is available in full to all employees, including part-time and casual employees.
- (3) For the purposes of subsection (2), if an employee is employed by a particular employer:
- (a) as a casual employee; or
 - (b) for a specified period of time, for a specified task or for the duration of a specified season;
- the start of the employee's employment is taken to be the start of the employee's first employment with that employer.
- (4) The employee may take paid COVID-19 leave as:
- (a) a single continuous 14 day period; or
 - (b) separate periods of one or more days each; or
 - (c) any separate periods to which the employee and the employer agree, including periods of less than one day.
- (5) To avoid doubt, this section does not prevent the employee and the employer agreeing that the employee may take more than 14 days of paid or unpaid leave to deal with the impact of COVID-19.
- (6) This section applies to a 12-month period referred to in paragraph (2)(a) that:
- (a) begins after the commencement of this section; or
 - (b) began before the commencement of this section but had not expired immediately before that commencement.

106G Taking paid COVID-19 leave

- (1) The employee may take paid COVID-19 leave if any of the following occur (whether before or after the commencement of this section):
- (a) the employee has been diagnosed with COVID-19;
 - (b) the employee is unable to attend work because the employee's workplace has been shut down because of COVID-19;

- (c) the employee is subject to self-isolation or quarantine measures in accordance with a Commonwealth, State or Territory government policy relating to COVID-19;
- (d) the employee is caring for another person who:
 - (i) has been diagnosed with COVID-19; or
 - (ii) is subject to self-isolation or quarantine measures in accordance with a Commonwealth, State or Territory government policy relating to COVID-19.

Note: The notice and evidence requirements of section 107 must be complied with.

- (2) To avoid doubt, the employee may take paid COVID-19 leave for a period that occurs before the commencement of this section if that period occurs in a 12 month period for the employee to which subsection 106F(6) applies.
- (3) An employer must not refuse a request by an employee to reverse a leave application previously made if the request is for the purposes of applying for paid COVID-19 leave.

106H Payment for paid COVID-19 leave

If, in accordance with this Subdivision, an employee takes a period of paid COVID-19 leave, the employer must pay the employee:

- (a) for an employee other than a casual employee—at the employee's base rate of pay for the employee's ordinary hours of work in the period; and
- (b) otherwise—at the daily rate of pay equal to the average of the daily rates of pay paid to the employee over the previous 12 month period (or such lesser period for which the employee has been employed by the employer).

106J Confidentiality

- (1) Employers must take steps to ensure information concerning any notice or evidence an employee has given under section 107 of the employee taking leave under this Subdivision is treated confidentially, as far as it is reasonably practicable to do so.
- (2) Nothing in this Subdivision prevents an employer from disclosing information provided by an employee if the disclosure is required

Schedule 1 Amendments

Part 1 Amendments to the National Employment Standards

by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information covered by this section that is personal information may also be regulated under the *Privacy Act 1988*.

106K Entitlement to days of leave

What constitutes a day of leave for the purposes of this Subdivision is taken to be the same as what constitutes a day of leave for the purposes of section 85 and Subdivisions B and C.

6 At the end of subsection 107(3)

Add:

; or (e) if it is paid COVID-19 leave—the leave is taken for a reason specified in subsection 106G(1).

Part 2—Amendments relating to workers generally

Fair Work Act 2009

7 Subsection 9(5B)

Repeal the subsection, substitute:

- (5B) Part 6-4B contains special provisions about workers. It allows the FWC to make COVID-19 leave orders that extend the paid COVID-19 leave provisions of this Act. It also allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying.

8 Section 12 (at the end of the definition of *employee*)

Add:

Note 4: See also Division 1A of Part 6-4B (COVID-19 leave orders).

9 Section 12 (at the end of the definition of *employer*)

Add:

Note 4: See also Division 1A of Part 6-4B (COVID-19 leave orders).

10 Section 12

Insert:

COVID-19 leave order: see subsection 789FBA(1).

11 Section 12 (at the end of the definition of *national system employee*)

Add:

Note 3: See also Division 1A of Part 6-4B (COVID-19 leave orders).

12 Section 12 (at the end of the definition of *national system employer*)

Add:

Note 3: See also Division 1A of Part 6-4B (COVID-19 leave orders).

13 Paragraph 576(1)(q)

Repeal the paragraph, substitute:

(q) workers (Part 6-4B).

14 Paragraph 675(2)(j)

Before “Part 6-4B”, insert “Division 2 of”.

15 Part 6-4B (heading)

Repeal the heading, substitute:

Part 6-4B—Workers

16 Section 789FA

Repeal the section, substitute:

789FA Guide to this Part

This Part contains special provisions about workers.

Division 1A provides for the making of COVID-19 leave orders by FWC that extend the paid COVID-19 leave provisions of this Act to workers.

Division 2 allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying.

17 Before Division 2 of Part 6-4B

Insert:

Division 1A—COVID-19 leave orders

789FBA COVID-19 leave orders

- (1) The FWC may make an order (a *COVID-19 leave order*) that:
 - (a) the provisions of Subdivision CB of Division 7 of Part 2-2 of this Act specified in the order; and
 - (b) any other provisions in this Act specified in the order that are considered necessary to give effect to the order;
-

apply to work performed by the workers to whom the order applies for the constitutionally-covered businesses required to comply with the order.

Workers to whom the order may apply

- (2) A COVID-19 leave order may apply (subject to subsections (4) and (5)) to:
 - (a) a worker; or
 - (b) two or more workers; or
 - (c) a class of workers.
- (3) Without limiting paragraph (2)(c), the class may be described by reference to one or more of the following:
 - (a) a particular industry or part of an industry;
 - (b) a particular kind of work;
 - (c) workers who perform work for a particular constitutionally-covered business.
- (4) A COVID-19 leave order must not apply to a worker unless the FWC is satisfied that the worker's terms and conditions as affected by the order will, considered on an overall basis, be no less favourable than the worker's terms and conditions before the order is made.
- (5) A COVID-19 leave order must not apply to a worker who carries out work as:
 - (a) a student gaining work experience; or
 - (b) a volunteer (within the meaning of the *Work Health and Safety Act 2011*).

Order must specify businesses required to comply with order

- (6) A COVID-19 leave order must specify, for each worker to whom the order applies:
 - (a) the constitutionally-covered business or businesses; or
 - (b) the class of constitutionally-covered businesses;required to comply with the order in relation to any work performed for the constitutionally-covered business by the worker.

Schedule 1 Amendments

Part 2 Amendments relating to workers generally

- (7) Without limiting subsection (6) a class of constitutionally-covered businesses may be described by reference to either or both of the following:
- (a) a particular industry or part of an industry;
 - (b) a particular kind of work.

789FBB When does a worker perform work for a constitutionally-covered business?

- (1) A worker performs work for a constitutionally-covered business for the purposes of a COVID-19 leave order, if:
- (a) the worker performs work directly or indirectly for the constitutionally-covered business; or
 - (b) the worker performs work directly for another entity, and the constitutionally-covered business carries on a business of arranging for workers, including the worker, to perform work for that other entity.
- (2) Without limiting paragraph (1)(a), a worker indirectly performs work for a constitutionally-covered business if the work benefits the constitutionally-covered business, irrespective of the legal relationship (contractual or otherwise) between the worker and the constitutionally-covered business.
- (3) If, because of the operation of subsection (1), a worker performs the same work for 2 or more constitutionally-covered businesses, the FWC may specify any or all of those constitutionally-covered businesses for the worker in a COVID-19 leave order that applies to the worker.

789FBC Effect of a COVID-19 leave order

- (1) If the FWC makes a COVID-19 leave order, the provisions specified in the order apply to work performed by a worker to whom the order applies for a constitutionally-covered business required to comply with the order in relation to that work, as if:
- (a) any reference to an employee (within the ordinary meaning of that expression), or a national system employee, also included a reference to the worker; and

- (b) any reference to an employer (within the ordinary meaning of that expression), or a national system employer, also included a reference to the constitutionally-covered business.
- (2) The provisions specified in the order apply as referred to in subsection (1):
 - (a) from the time or times specified in the order (which must not be earlier than the time the order is made); and
 - (b) with such other modifications (if any) as are specified in the order.

789FBD Application for a COVID-19 leave order

- (1) The FWC may make a COVID-19 leave order only on application by:
 - (a) a worker to whom the order will apply; or
 - (b) an organisation that is entitled to represent the industrial interests of the worker, workers or class of workers to whom the order will apply; or
 - (c) an organisation that would, if a worker to whom the order will apply were instead an employee, be entitled to represent the industrial interests of the worker.
- (2) As far as practicable, the FWC must determine an application for an order under subsection (1) within 2 days after the application is made.
- (3) Subject to subsection (1) and subsection 789FBA(4), the FWC must make the order (unless there are compelling reasons not to do so).

789FBE Matters for FWC to consider

In deciding whether, or the terms on which, to make a COVID-19 leave order, the FWC must as far as practicable give effect to the principle that all workers should be entitled to COVID-19 leave that is no less favourable than that of employees performing the same work.