

Sick Leave, Special Leave & Workers' Compensation for COVID-19

**Know
YOUR
Rights!**



This guide is a partial summary of the NSW Health COVID-19 Workforce Advice for nurses and midwives.

For complex cases or for further information, please view the latest Workforce Advice, available on the Association's dedicated COVID-19 page at [The Lamp Online nswnma.info/PHSCovid](https://www.nswnma.info/PHSCovid).

As information changes regularly, please visit this page for the most updated advice.

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The COVID-19 pandemic is impacting all nurses and midwives with many working incredibly short-staffed or having to access significant amounts of leave due to exposure to the virus. These are your rights if you work in the public health system and are unable to work due to COVID-19.



Special Paid Leave

If you are isolating as a close contact or caring for family with COVID-19:

If you are unable to work because you are isolating as a close contact or caring for family with COVID-19 you are entitled to **Special Paid Leave**.

This will NOT apply:

- if your employer provides you with meaningful work that can be completed at home
- if you are recalled to work under the isolation exemptions announced by the NSW government on 31 December 2021.

Special Leave is paid at the **ordinary rate** and doesn't include penalties or allowances.

The Ministry of Health has assured the Association that **Special Leave for nurses and midwives during the pandemic will not be capped at 20 days, as has been previously reported.**

Special Leave may be accessible to **casual staff in rare circumstances**. Your manager will consider how long you have been employed as a casual and whether you have a regular pattern of shifts. You have a strong case for Special Leave as a casual if you are already on the roster and require Special Leave for those shifts.

Special Leave is not available if you are required to isolate because you are returning from overseas.

You are ineligible for Special Leave from the moment you are unwell or return a positive test for COVID-19.

From this point you are required to transfer onto Sick Leave. If you are symptomatic sick leave is also payable until you are tested and return a negative test result.

More information about Special Leave can be found in the NSW Health COVID-19 Workforce Advice for NSW Health on page 4.



Sick Leave

If you have COVID-19 symptoms, or have returned a positive COVID-19 test, or are otherwise unwell:

From the moment you are unwell, or symptomatic for COVID-19 or return a positive COVID-19 test you are eligible for **Sick Leave**. Sick Leave is available to permanent employees and is paid at the **ordinary rate** – it doesn't include penalties or allowances – and should be made available to you even if you are within your first three months of employment.

You remain on Sick Leave for a minimum of 7 days and until you are asymptomatic and otherwise well. The minimum 7 days may be extended to a minimum of 10 days if you work in a high-risk setting or are significantly immunocompromised.

This is the standard Sick Leave entitlement provided by the *Public Health System Nurses' and Midwives' (State) Award 2021* and used for other illnesses.

If you have exhausted your Sick Leave for reasons related to COVID-19 you can request additional paid Sick Leave from your employer. In the unusual case that such a request is not granted by your manager you should escalate this request to their manager. If still unsuccessful contact the Association.



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If it's possible that you may have become infected with COVID-19 at work, and you make a successful Workers' Compensation claim then your Sick Leave used for COVID-19 will be recredited.

More information about COVID-19 Sick Leave can be found in the NSW Health COVID-19 Workforce Advice for NSW Health on page 9.



Workers' Compensation

If you might have caught COVID-19 at work:

If it is likely you caught COVID-19 at work then you can have your **Sick Leave recredited** by making a Workers' Compensation claim.

Workers' Compensation for COVID-19 is easier than other Workers' Compensation claims as it is **presumed that nurses and midwives working in healthcare contracted COVID-19 at work** unless there is evidence to prove that it was more likely caught outside of work.

To make a claim you will need to attain a Certificate of Capacity from your doctor to confirm your diagnosis and that work was the likely source of transmission. This certificate should be provided to your employer and then your employer should notify their insurer within 48 hours.

Example – A Claim Highly Likely To Be Accepted

A nurse has been caring for COVID-19 positive patients on a red ward. At the conclusion of a shift on the ward, the nurse experiences an accident while doffing and is exposed to the contaminated PPE. In this situation there is a direct connection between caring for positive patients and the nurse contracting the virus.

Example – A Claim Likely To Be Accepted

A nurse has been working in the ED with patients who are displaying symptoms of COVID-19. They have had no known community exposure and later test positive. It is likely that the nurse contracted the virus at work. Without any other evidence it is likely that a Workers' Compensation claim will be accepted.

Examples – Claims Unlikely To Be Accepted

A midwife has been on annual leave for two weeks and then tests positive for COVID-19. It is very unlikely that the midwife contracted the virus at work.

A midwife has been isolating while caring for a positive family member and has not been in the workplace for 7 days. They then test positive. It is unlikely that the midwife contracted the virus at work.

Further information may be required from you, your employer and nominated treating doctor. Liability for confirmed COVID-19 claims will be assessed on a case-by-case basis. If your claim is denied or if you need assistance with the claims process members of the Association can contact us for assistance

If your Workers' Compensation claim is denied then contact us and provide the letter from your insurer that states they are declining liability.

NSW Nurses and Midwives' Association officers are here to support members with their COVID-19 leave issues. If you have a question that doesn't fit into the above then please contact us.

If you have read the above information and think you are eligible for Special Leave or Sick Leave but have been told by your manager that you aren't, the first step is to put your request to your manager in writing, attach Workforce Advice, and ask for confirmation of their decision in writing.

If you believe there has been a mistake with your manager's decision and they have declined your request in writing then you can escalate your claim to the next manager above them. If you're still unable to resolve the matter then please contact the Association for assistance.

If you're not a member you can join now at www.nswnma.asn.au

The NSWNMA has a dedicated COVID-19 page on The Lamp Online. There members can find more detailed information pertaining to leave, redeployment, isolation exemptions and other COVID-19 issues. It is available at: nswnma.info/PHSCovid

NOT A MEMBER OF THE NSWNMA?

www.nswnma.asn.au

Being part of the Association means we have more collective power to deliver positive change on pay and conditions at your work.

Join us today and together, we can make our future stronger.

Authorised by S. Candish, General Secretary, NSWNMA | August 2022 | 1.2

