

COVID-19 & leave entitlements

**Know
YOUR
Rights!**



COVID-19 continues to impact nurses and midwives, many of whom will need to access leave to protect their colleagues and patients. This resource sets out your rights if you work in the public health system and are unable to work due to COVID-19. Many of these rights are established in the NSW Ministry of Health's [COVID-19 Workforce Advice for NSW Health](#), which is updated occasionally.

For the current risk management procedures for COVID-19 infection and exposure, including testing and return to work requirements, please refer to the [Clinical Excellence Commission's \(CEC\) guidelines](#). You should always refer to the CEC's website to ensure you are accessing the most up-to-date information.



Paid Special Leave

If you are restricted from entering the workplace due to an exposure risk, caring for a family member who has COVID-19 or for COVID-19 vaccination.

If you are instructed not to attend the workplace due to a COVID-19 exposure risk, your employer should consider whether it is possible for you to work remotely. If your duties are such that they cannot be performed remotely, then your employer should consider assigning you other meaningful work that could be performed remotely, such as telehealth, project work or completion of mandatory training. However, if no such work is available then you should receive paid special leave for any rostered time during the period of exclusion.

If you are unable to work because you are caring for a family member who has COVID-19, or providing care due to a school or care facility closure due to COVID-19, you are entitled to paid special leave.

Where possible, employees should be supported to be vaccinated for COVID-19 whilst on duty. However, where this is not possible, two hours' paid special leave will be granted per vaccination.

Paid special leave is at the ordinary rate and doesn't include penalties or allowances. Up to 20 days paid special leave can be accessed each year and further paid special leave can be granted on a case by case basis.

Paid special leave may be accessed by casual staff only in certain circumstances. If you have been excluded from the workplace due to a COVID-19 exposure risk, you should receive paid special leave for any casual shifts already on the roster. If you cannot attend work due to caring for a family member who has COVID-19 or providing care due to a school or care facility closure due to COVID-19, 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 stronger case for paid special leave if you are already on the roster but unable to attend those shifts.

You are ineligible for paid special leave from the moment you are unwell, are symptomatic or return a positive test for COVID-19. From that point you are required to transfer onto sick leave, if you have a sick leave entitlement.



Sick Leave

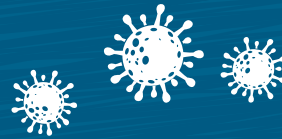
If you have COVID-19 symptoms, or have returned a positive COVID-19 test, or are otherwise unwell.

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 which doesn't include penalties or allowances. Sick leave should be made available to you for COVID-19 even if you are within your first three months' of employment, which is not the case for other illnesses.

Sick leave is the standard entitlement provided by the *Public Health System Nurses' and Midwives' (State) Award* for all illnesses. You will remain on sick leave until you are able to return to work under the Clinical Excellence Commission's guidelines referenced above.



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If you have exhausted your sick leave for reasons related to COVID-19, you can request additional paid sick leave from your employer. If your request is not granted by your manager, you should escalate this request to their manager. If still unsuccessful, please contact the Association for assistance.

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.



Workers' Compensation

If you may have caught COVID-19 at work.

If you have contracted COVID-19 and transmission may have occurred in the workplace, you are entitled to make a claim for workers' compensation. There is currently a law in place that health workers in NSW are presumed to have contracted the virus at work or while working, unless there is evidence to the contrary. This means you do not need to prove the source of a COVID-19 infection when making a workers' compensation claim.

This law also covers casual workers, although compensation will depend on your earnings as a casual in the weeks prior to falling ill.

No employer should place any barrier to a worker making a workers' compensation claim, regardless of whether they believe the claim will be successful or not. The onus is on the employer's insurer to establish that COVID-19 was not contracted at work. If there is no evidence that transmission occurred outside of work, then generally the claim should be accepted by the employer's insurance company. Your employer does not decide your claim.

To make a claim you will need evidence of your positive test result and to obtain a *SIRA Certificate of Capacity* from your treating doctor.

Once a claim has been accepted by the insurer, any sick leave you have taken for COVID-19 should be recredited to you and paid as workers' compensation benefits. If your claim is denied by the insurer, you should contact the Association for assistance.

For more detailed information about the claims process and your rights, please refer to our resource, *Know Your Rights COVID-19 and workers' compensation*.

Need our support?

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,

attaching the Ministry's [*COVID-19 Workforce Advice for NSW Health*](#), 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.

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OF THE NSWNMA?**

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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.

December 2023 | 2

