



# An Emergency for Essential Workers

A report by the Australian Manufacturing Workers' Union  
NSW & ACT Branch on the impact of the COVID-19  
outbreak and health restrictions on NSW workers

**August 2021**

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# An emergency for **essential workers**

A report by the  
AMWU NSW & ACT branch  
**August 5, 2021**

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## Survey methodology

This report compiles the results of a survey of AMWU NSW Branch members. The survey was distributed to all NSW members via email and text message, and was carried out on Survey Monkey from July 27 until August 2, 2021. There were 849 respondents. Not all respondents answered every question. The percentages arrived at for each particular question exclude those who did not respond to that question.

The survey asked 30 questions about the impact of the COVID-19 health restrictions in NSW, including workplace health and safety, leave entitlements, stand-downs and loss of hours, and financial hardship. Many questions included a “not applicable” option. For those questions, those who have selected “not applicable” are not included in the resulting percentage; this is noted each time in the ‘Survey results in detail’ section of the report. Members were invited to provide specific comments in many questions, and to make final comments at the end of the survey. Several of these comments are included in this report as direct quotes.

The full, anonymised data-set is available to media and researchers upon request. Contact the AMWU NSW & ACT Branch for access.

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# About the AMWU

This report has been published by the New South Wales and Australian Capital Territory branch of the Australian Manufacturing Workers' Union (AMWU). The AMWU is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union".

The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture.

Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction.

The AMWU's purpose is to improve members' entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards.

In its history the union has campaigned for many entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

Visit our website: **[amwu.org.au](https://amwu.org.au)**

Helpdesk for AMWU members: **1300 732 698**

Care Line for AMWU members: **1800 206 316**

Join the AMWU: **[amwu.org.au/join\\_us](https://amwu.org.au/join_us)**

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# Foreword

By Robyn Fortescue, Acting State Secretary

THE NSW Government and NSW Health have repeatedly stated that workplaces are a critical transmission point, where essential workers are becoming infected with the highly contagious Delta variant of COVID-19 and then spreading it to members of their households.

The AMWU represents many of these essential workers in industries that are critical to keep the NSW and Australian economies functioning – from food processing to packaging, from medical manufacturing to rail maintenance. Many of our members live and work in the hotspot local government areas (LGAs).

Throughout the lockdown, the union has been providing daily assistance to our members in NSW, advising them on health and safety issues, leave entitlements and accessing financial assistance. We carried out a survey to measure the extent of these problems across NSW.

Almost half of essential workers surveyed believe they have been put at risk of contracting COVID-19 at work. This is an appalling statistic. The results highlight serious failures to communicate and act by employers, NSW Health and the NSW Government when it comes to minimising the risks of contracting or spreading COVID-19 at work.

When COVID-19 exposures have happened in the workplace, we've seen a lack of communication with workers by employers and NSW Health. In some cases, NSW Health appears to be leaving the identification and contacting of close and casual contacts in the hands of the employer. This is an astonishing failure that urgently needs to be addressed.

Workers across the state, especially those in hotspot areas, are feeling unsafe and anxious at work because employers are putting profits before human health. Our members worry about bringing home the virus to their families and what will happen if they're unable to go into work.

It's clear we must do more to keep people safe at work. We urge the NSW Government to vigorously enforce compliance with work health and safety legislation. The NSW Government urgently needs to bring in a test-and-isolate payment to ensure workers with any symptoms are not forced to choose between public health and keeping food on the table.

The AMWU will be contacting NSW Health, the NSW Government and the Fair Work Ombudsman to outline the grave threats to workers' safety and rights that this survey has uncovered.

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# Key findings and recommendations

## Survey at a glance

- 849 AMWU members completed this survey from July 27 – August 2, 2021.
- The vast majority of respondents are permanent workers (94%).
- 67% of respondents said they have been defined as an authorised worker under the NSW Health order; 11.4% are not; and 21% don't know if they have been defined as an authorised worker or not.
- 81% of our members are still working under lockdown.

## A health and safety crisis for essential workers

- 48% of essential workers surveyed believe they have been put at risk of contracting COVID-19 in their workplace.
- Only 39% said social distancing is applied at all times in their workplace.
- 82% said wearing face masks indoors is enforced in their workplace.
- A small group of bosses (5%) are not providing workers with PPE.
- Only 55% said their employer has put in place regular extra cleaning.
- 65% of our members said their employer is consulting well with workers on health and safety issues during the lockdown.

## Lack of paid leave for health measures

- Where a mandatory COVID-19 testing regime has been introduced, only one-third of employers are paying workers for time spent getting tested.
- In workplaces where vaccination is required, only 38% of employers are providing paid leave for workers to be inoculated.

## Stood-down workers left out in the cold

- 50.4% of stood-down workers have not received any paid leave.
- 59% of stood-down workers were not informed by their employer that they are eligible for the COVID-19 Disaster Payment.
- 21% of stood-down workers (or those who had their hours reduced) have been forced by their employer to take their annual or other accrued leave.

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## Redundancies are happening without transparency

- Workers have been made redundant in at least 7% of respondents' workplaces since the lockdown began.
- One-third of workers don't know whether their employer has terminated workers since the lockdown or not.
- 10% of workers said their employer has received government assistance for lost income during the lockdown, but more than three-quarters don't know whether their employer has received financial assistance or not.

## Key policy recommendations

### NSW Health

- Include workers and health and safety representatives in the process of identifying close and casual contacts in workplace exposure cases.
- Convene a Workplace Transmission Committee that includes trade union representatives to identify and respond to specific WHS emergencies.
- Establish a Workers' COVID-19 Emergency Hotline for cases on-site.
- Publish each workplace where a positive case has been identified.
- Report the number of workplace-transmitted cases as a percentage of the overall positive cases in the Weekly Surveillance Report.

### NSW Government

- Pay NSW residents to test and isolate, to ensure they can miss work and stay at home without being financially penalised.
- Instruct employers to pay workers for time spent on surveillance testing.
- Provide additional financial assistance to households on utilities, rent and mortgage payments; extend eviction ban and prohibit utility cut-offs.
- Provide paid vaccination leave for all NSW workers who do not receive it from their employer.

### Federal Government

- Establish a second JobKeeper wage subsidy to secure the employment relationship, with increased monitoring to prevent abuse by companies.
- Establish paid vaccination leave under the National Employment Standards.
- Immediately raise all welfare benefits to at least \$600 a week.

### Fair Work Ombudsman

- Open an investigation into employers illegally forcing workers to draw down their accrued annual and long-service leave during stand-downs.

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# Essential workers are bearing brunt of lockdown

The AMWU NSW and ACT Branch surveyed NSW union members about their experiences of working under the COVID-19 restrictions during the 2021 NSW lockdown. The NSW Government stay-at-home order began on 26 June, 2021, for Sydney, the Blue Mountains, the Central Coast, Wollongong and Shellharbour.

The union has consistently advised our members to follow the health advice in the interests of protecting the health of workers, their families, and communities. We are providing assistance on a daily basis to members who have encountered industrial, safety and financial difficulties as a result of the public health situation.

This survey reached out to AMWU members, and asked 30 questions about their experiences of work during this difficult period. Questions covered issues such as company stand-downs, workplace health and safety measures, and financial hardship.

Almost 850 AMWU members from across NSW responded to these questions, and provided us with many additional comments outlining the specific challenges they are facing in their workplaces.

Our report compiles the data collected to highlight the issues NSW essential workers are dealing with in this pandemic. As well as the statistics, it also includes direct quotes from our members who have told us their stories in their own words. We urge employers, the media and government agencies to listen to these voices.

Around one-fifth of our members have had their hours reduced or been stood-down as a result of the lockdown. The majority of our members – around 80% – have continued to work during this period in industries and workplaces covered by the NSW Government's official list of authorised workers.



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The results show that essential workers are feeling anxious and stressed about the risk of catching COVID-19 at work, and employers are not doing enough to lower the risk of exposure in the workplace. At the same time, workers are not getting enough support from their employers or the NSW Government if they are stood down or lose hours.

The AMWU is alarmed by the results of this survey. It is unacceptable that almost half of the essential workers we surveyed believe they have been put at risk of COVID-19 transmission in their workplace since the outbreak began in June.

The survey also revealed significant failures by employers, NSW Health, and the State and Federal Governments when it comes to minimising workplace transmission risks and providing support to stood-down or vulnerable workers and unemployed people.

Our hope is that this report can shed some light on the specific problems that are endangering essential workers in NSW and contributing to the ongoing spread of the COVID-19 virus across NSW communities. We provide constructive suggestions to government agencies and employers as to how some of these problems can be solved.

## **A recipe for disaster**

New South Wales is now in a situation where the low-paid, often minimum-waged, workers carrying out the essential work that keeps the rest of the Australian economy functioning are risking their health due to the failures of employers and government agencies. The resulting fear and anxiety is also putting a huge amount of strain on essential workers' mental health.

These workers are instructed every day by politicians and health officials to get tested and vaccinated, but they are not provided with any financial support by their employer or the State or Federal Government to take the time off work to do so. Individuals need to play their part, but protecting public health in a pandemic must be viewed primarily as a collective, social and state responsibility.

Our members and organisers in South-West and Western Sydney have informed us of the intimidating, militarised police presence and activity in those areas. Instead of relying on policing, the NSW Government needs to

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step up on community engagement by public health officials, the widespread and daily translation and communication of health information, and the free distribution of personal protective equipment (PPE).

To top it all off, these same low-paid workers and their communities are bearing the brunt of economic hardship caused by the callous and reckless indifference of the Federal Government.

The refusal by the Federal Government to lift millions of Australians out of poverty by increasing welfare payments, and its refusal to protect jobs through a new JobKeeper program, causes hardship today and contributes to mass unemployment and another economic downturn tomorrow. Banks are forecasting the loss of 300,000 jobs in Sydney alone arising from this lockdown.

The economic, trade and industrial policies enacted by both the Federal Government and the NSW Government over the past decades have directly led to increasingly precarious working conditions, and left millions of workers without the security of paid leave and other entitlements.

It is deeply unfair that the “assistance” package announced by these governments now leaves these same workers behind. Likewise, privatisation policies implemented at the State and Federal levels have left public services strained and unequipped to respond effectively in a crisis.

Working people, the unemployed and under-employed, people with disabilities and those who rely on access to welfare are not only worried and stressed – they are angry. This anger was reflected clearly through the responses to our survey.

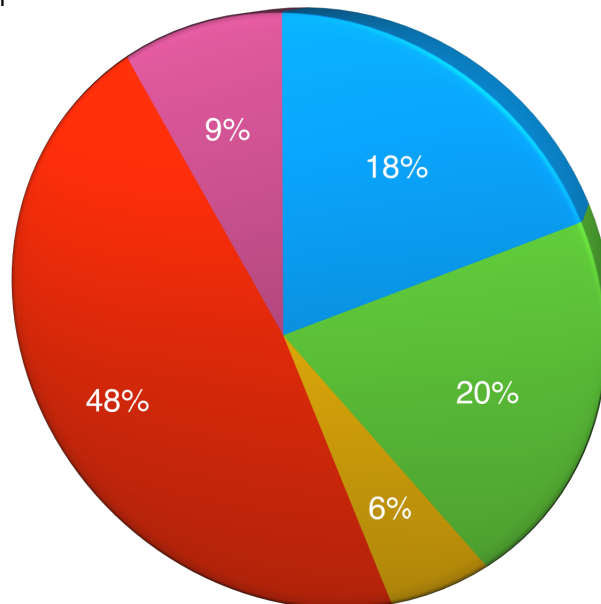
The pandemic and 2020 lockdowns revealed to many the injustice underpinning our economies and societies. Governments showed that they could practically eliminate poverty and insecurity overnight through public spending programs.

To refuse to enact, at the very least, effective policies that guarantee incomes, reduce workplace transmission, protect jobs and reduce hardship again in 2021 – as the Delta variant of COVID-19 spreads through communities and a new economic downturn unfolds – is a recipe for disaster.

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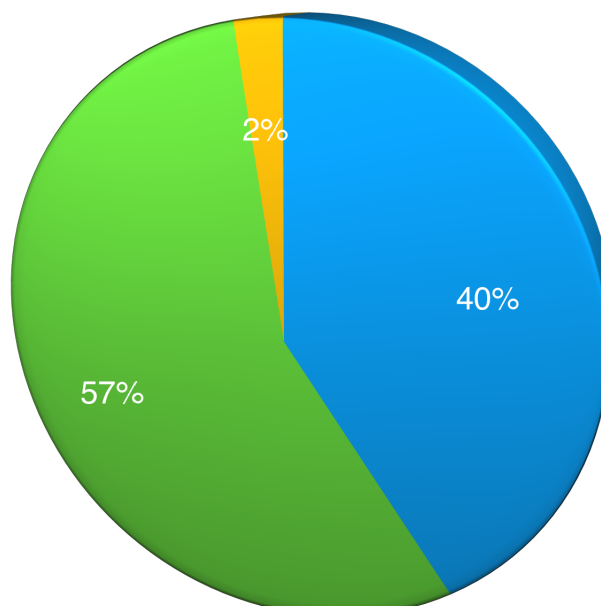
## If you have been stood down or had your hours cut, have you received paid leave?

- Yes, special paid pandemic leave applies in my workplace
- Yes, directed to take accrued annual leave or other accrued leave
- Yes, I have chosen to take my accrued leave
- No
- Other



## If you have been stood down or lost hours a result of the lockdown, has your employer informed you that you are eligible to receive federal government assistance?

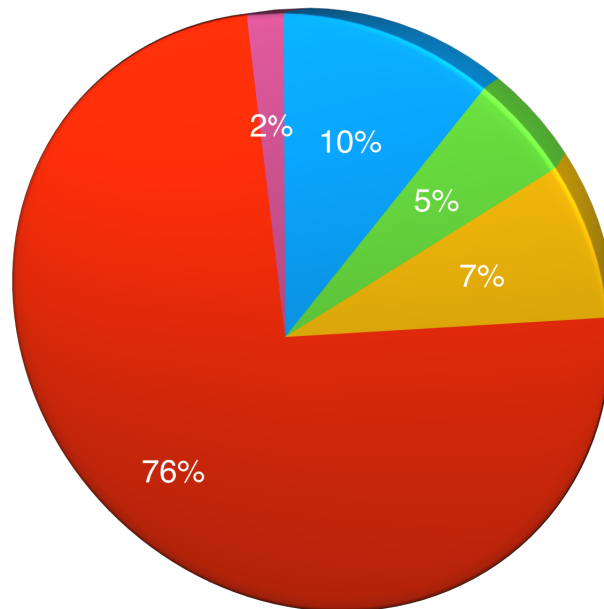
- Yes
- No
- Other (please specify):



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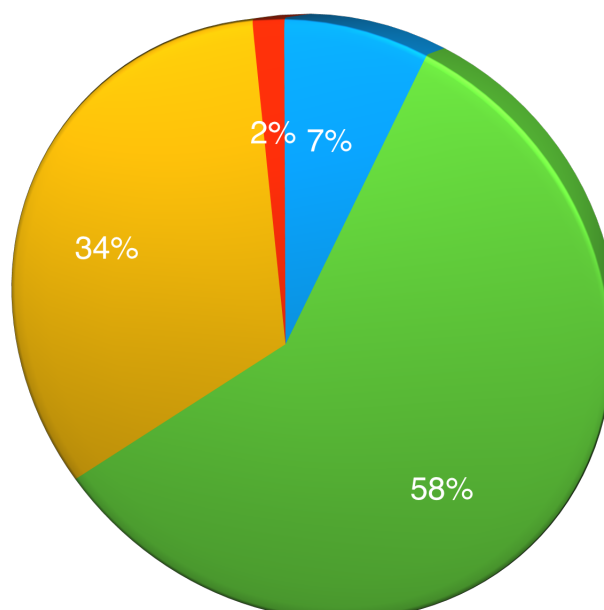
## Has your employer received financial assistance from the government due to the impact of COVID-19?

- Yes, it has received assistance
- No, it has not received assistance
- No, it is not financially impacted
- Don't know
- Other (please specify):



## Has your employer terminated any workers in your workplace since the lockdown began?

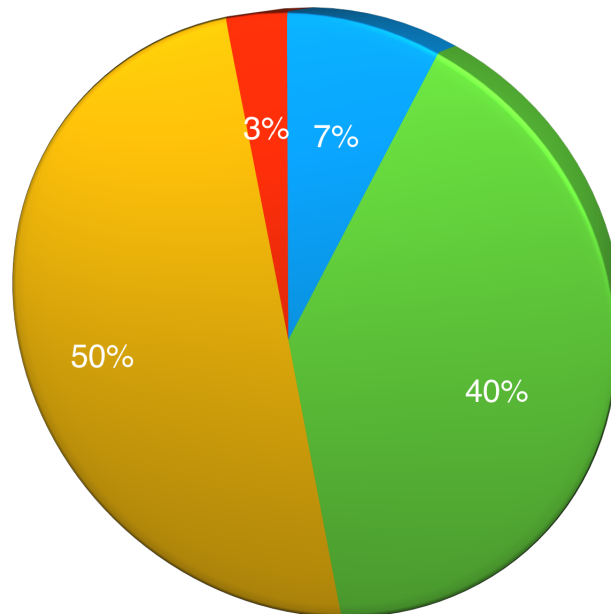
- Yes
- No
- Don't know
- Other (please specify):



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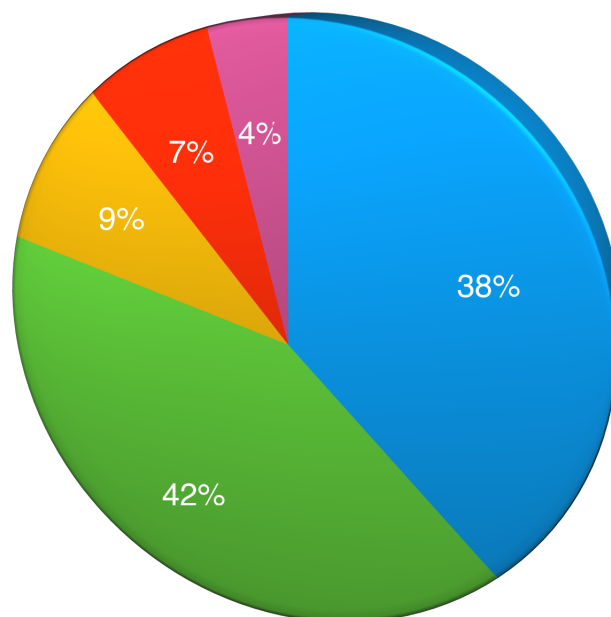
## Do you believe you have been put at risk of COVID-19 transmission in your workplace?

- To a great extent
- To some extent
- Not at all
- Other (please specify):



## Is social distancing applied in your workplace?

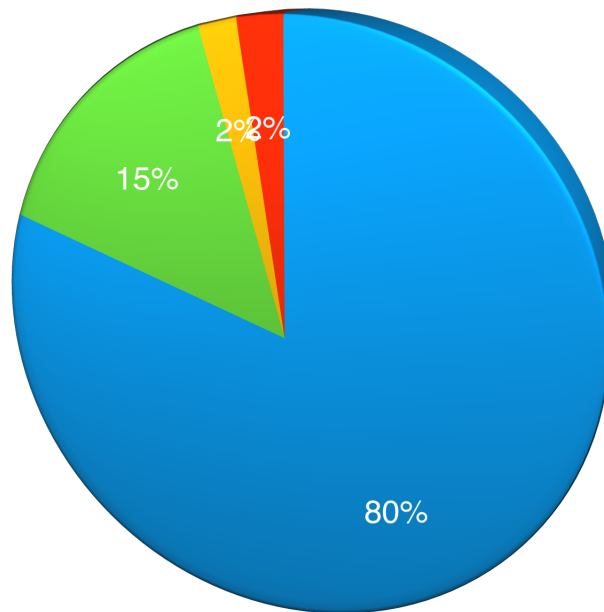
- Yes, at all times
- Yes, most of the time
- Yes, in indoor areas
- Not at all
- Other (please specify):



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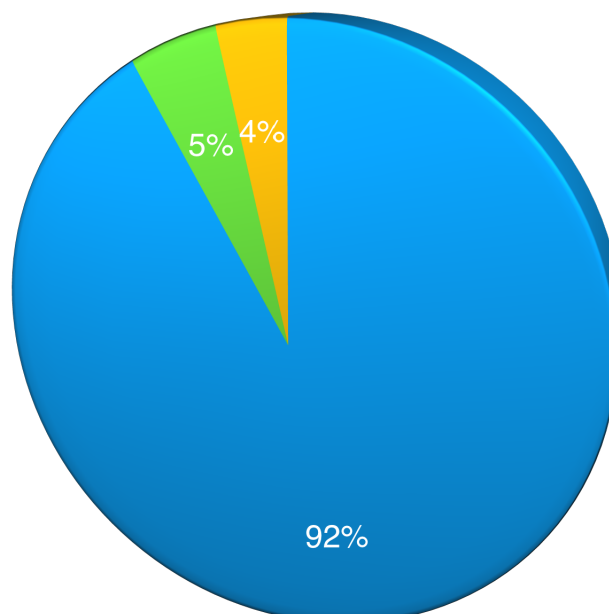
## Does your employer require workers to wear masks in all indoor settings, in accordance with the Public Health Order?

- Yes, it is mandatory and enforced
- Yes, it is encouraged, but not enforced
- No
- Other (please specify):



## Has your employer provided all workers with adequate PPE (personal protective equipment)?

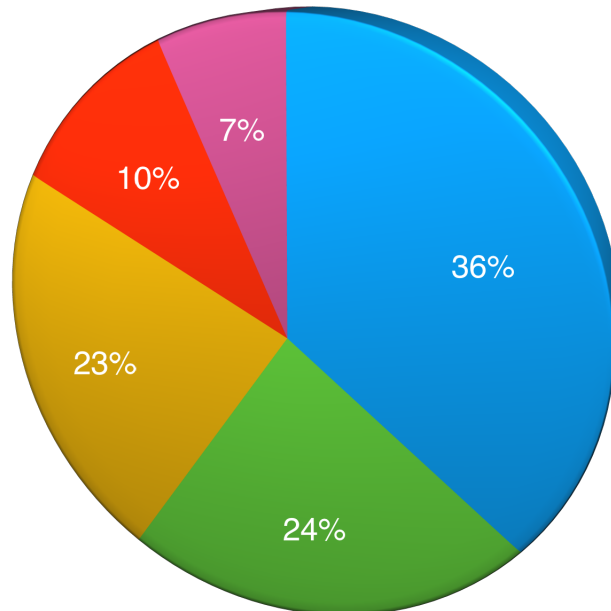
- Yes, at the employer's expense
- No, workers must provide it themselves
- Other (please specify):



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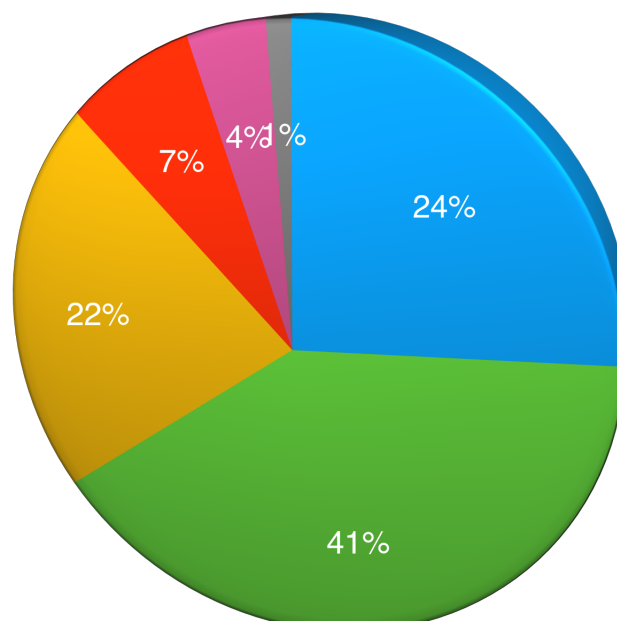
## Has your employer enacted additional measures to reduce transmission risk in your workplace? (Select all that apply)

- Regular extra cleaning or decontamination
- Changes to rosters to aid social distancing
- Staggered lunch breaks
- None
- Other (please specify):



## Do you agree your employer's consultation with workers on WHS issues during this lockdown period has been "good"?

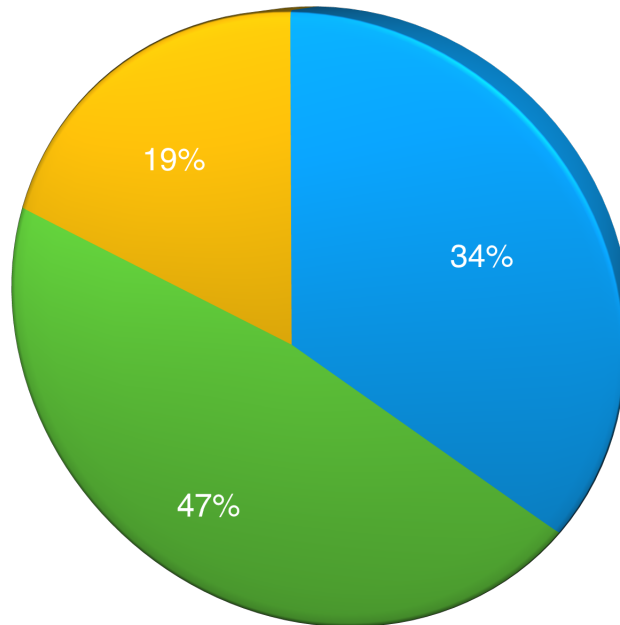
- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Other (please specify):



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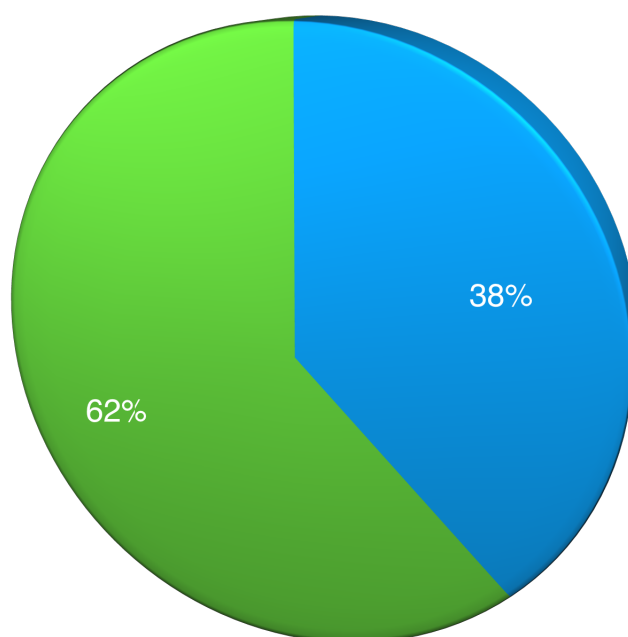
## Is your employer providing paid leave for workers for surveillance testing time?

● Yes      ● No      ● Other (please specify):



## Is your employer providing paid leave for workers to be vaccinated?

● Yes      ● No





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# Survey results in detail

## **Number of respondents**

- 849 AMWU NSW branch members responded to this survey between July 27 and August 2, 2021.

## **Most respondents are permanent workers**

- The vast majority of respondents are permanent workers (94%).

## **The majority are authorised workers**

- 67% of respondents said they have been defined as an authorised worker under the NSW Health order.
- 11.4% are not defined as an authorised worker.
- 21% don't know if they have been defined as an authorised worker.

## **81% are still working under lockdown**

- 81% of respondents have not been stood down.
- 10% have been stood down entirely.
- The remainder have mainly had their hours reduced or are working from home.

## **Workers with reduced hours have mainly lost 20+ hours a week**

- 77% of respondents said their working hours have remained the same.

Of those whose hours have not remained the same under lockdown:

- 11% had their hours reduced by less than 5 hours a week.
- 9% had their hours reduced by 5-8 hours.
- 4% had their hours reduced by 10-15 hours.
- 43% had their hours reduced by 20 hours or more.
- 37% of those whose hours have changed selected "other".

**"Since I only worked one day a week, less than 8h, I've not been eligible for any income support"**

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### **Exposure risk of COVID-19 in the workplace**

- 48% of workers believe they have been put at risk of COVID-19 transmission in the workplace, with 40.2% replying “to some extent” and 7.4% replying “to a great extent”.
- 51% of respondents do not believe they have been put at risk of workplace transmission (this includes workers who have been stood down or are working from home).

“We do critical healthcare manufacturing, and we are worried about what will happen to our work and our patients if we have a COVID positive case on site. There has been no plan shared to us on this”

“I do not feel safe going to work at the moment. [Now] all the workers are required to come back... making the chance of an outbreak even greater than before. It seems the safety of workers and their families is not important”

### **Social distancing not applied uniformly**

Of those respondents to whom social distancing is relevant:

- 39% said social distancing is applied at all times in their workplace.
- 43% said it is applied most of the time.
- 10% said it is applied only in indoor areas.
- 4% answered “other”.
- 7% said social distancing is not applied at all in their workplace.

### **Gaps in enforcement of wearing of face masks**

Of those to whom the requirement to wear a face mask indoors is relevant:

- 82% said wearing face masks indoors is mandatory and enforced in their workplace.
- 15% said it is encouraged but not enforced.
- 2% said their employer does not require workers to wear a face mask indoors.
- 2% selected “other”.

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### **Not all workers are receiving adequate PPE from employer**

- 92% of respondents in workplaces where PPE is relevant said their employer has provided and paid for adequate PPE.
- 5% said their employer has not provided adequate PPE and workers must provide it themselves.
- 4% selected “other”.

### **Most but not all employers are enforcing use of QR codes for visitors**

- 84% of respondents said their employer is enforcing the use of QR codes for visitors.
- 6% said their employer is not enforcing this.
- 7% said they do not know whether their employer is enforcing this or not.

### **Additional safety measures enacted by employers**

In sites where measures to reduce COVID-19 transmission are relevant:

- 55% of respondents said their employer has enacted regular extra cleaning or decontamination of the workplace.
- 36% said their employer has made changes to rosters to aid social distancing.
- 36% said their employer has introduced staggered lunch breaks.
- 16% of respondents said their employer has not enacted any additional measures to reduce transmission risk.
- 10% of respondents said their employer has enacted another measure to reduce risk, with many of those specifying temperature checks.

“Our work allows me to work from home for 3 days a week, but I MUST go to work on a Tuesday and Thursday to be a ‘presence’ in the office. In other words, they don’t trust us. There is no social distancing... We often have 4 people in a kitchen of 5m<sup>2</sup>. Our business only cares about the work not the workers. It’s infuriating. If you raise the issue, you’re a troublemaker and you’ll be the first one gone in the next lot of redundancies”

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### **Consultation on WHS during lockdown is not always adequate**

- 24% of respondents said they “strongly agree” that their employer’s consultation with workers on WHS issues during the pandemic lockdown has been good.
- 41% said they “agree” that it has been good.
- 23% neither agree nor disagree that consultation has been good.
- 7% “disagree”.
- 4% “strongly disagree”.

**“I feel the management just want the machines running and don't really care about the safety. Some employees have been made to come to work sick. Or with COVID symptoms”**

### **Testing regimes are diverse**

- 32% of respondents said their employer has introduced a mandatory testing regime for workers who live in the LGAs identified by the NSW Health order.
- 8% said their employer has introduced a mandatory testing regime for all workers regardless of where they live.
- 58% said their employer has not introduced a mandatory testing regime.
- 5% selected “other”.

### **Only 1/3 of employers paying workers for time spent being tested**

- Of those respondents whose employer has introduced a mandatory surveillance testing regime of any kind, only 34% said the employer is paying workers for the time spent being tested.
- 49% said their employer is not providing pay to workers for the time spent being tested.
- 19% selected “other”.

### **Most employers not paying for vaccination leave**

- 38% said their employer is providing paid vaccination leave for workers.
- 62% said their employer is not paying workers vaccination leave.

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“I have no sick leave left and lose pay when I get tested and self-isolate until the result. I feel pressured not to take the time off work even if I have any symptoms. I get questioned as if I'm lying”

**More than half of stood-down workers have not received any paid leave**

- Paid leave for stand-downs or reduced hours does not apply to 68% of respondents.

Of those whose hours have been affected:

- 19% have received some form of special paid pandemic leave from their employer.
- 50.4% have not received any paid leave from their employer.
- 6% have voluntarily taken their accrued leave.
- 21% have been directed by their employer to take their annual or other accrued leave.
- 9% selected “other”, with several of these respondents commenting that they have taken sick leave.

“I believe they should do the testing at work during work hours. It impacts our personal time going out of our way to get tested”

**Majority of employers failing to inform workers about government financial assistance available**

- The majority of respondents (71%) are not affected by the question of Federal Government financial assistance.

Of those who the issue is relevant to:

- 41% said their employer has informed them that they are eligible to receive Federal Government assistance.
- 59% said their employer has not informed them that they are eligible for this assistance.

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### **Most workers don't know if their employer has received government assistance**

- 7% of respondents said their employer is not financially impacted by the lockdown and has not sought government financial aid.
- 10% said their employer has received government assistance.
- 5% said their employer has not received assistance.
- 76% don't know whether their employer has received financial assistance or not.

### **Many lack knowledge about whether workers have been terminated**

- 59% of respondents said that their employer has not terminated workers since the beginning of the lockdown.
- 7% said their employer has terminated workers.
- 34% don't know if their employer has terminated workers or not.
- 2% have selected "other", with several of these specifying which group of workers have been terminated.

“My main issue and everyone I work with is that we get sent to work in all the hotspots [then have to] get tested in our own time and quarantine unpaid. We can't use sick leave and have to either be unpaid or use annual leave. It doesn't seem right they can send us to hotspots and then we are on our own if something goes wrong”

“Sunday train timetable is starting to duck me up. They want me to go to work then cut my transport”

### **Commute to work affected for some**

- The vast majority of respondents (92%) do not use public transport to get to work.
- 15% said their commute (whether by public or private transport) has been impacted to some extent or to a great extent.

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**Some stood-down workers have had difficulties accessing  
COVID-19 Disaster Payment**

- Accessing Federal Government disaster assistance was not relevant for 77% of respondents.

Of those who have sought access to the COVID-19 Disaster Payment:

- 82% have not experienced any problems.
- 10% have had a problem with Services Australia.
- 2% have had a problem with their employer.
- 11% have experienced another problem accessing the payment.

Of those who engaged with Services Australia:

- 69% found it fairly easy or very easy.
- 21% found it difficult or very difficult.

“Just want to be back at work like normal and earning a proper wage again”

“My employer is requiring me to attend work but I am not an authorised worker and live in Blacktown”

“Anyone that is deemed an Authorised worker should be able to access the Pfizer Vaccine if they choose to do so. We are still going to work and are put at risk from interacting with others, we should be able to have access to the vaccine”

“A lot of jobs and tasks should not go ahead due to sharing of tools, closeness of workings and not being able to ensure hygiene”

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# Action recommendations

The survey shows that there is no consistency when it comes to ensuring safe workplaces for essential workers. While many employers seem to be doing the right thing, there appears to be a minority of companies that are completely failing in their legal duty to keep their workers safe.

## Recommendations to NSW Health

Both NSW Health and Safework NSW have focused their attention regarding workplace transmission on businesses, with very little engagement with workers and unions. Workers need a voice at the table when it comes to the public health response, and particularly when it comes to identifying and responding to specific workplace exposure incidents.

Our survey has identified major gaps in communication and coordination of the health response in workplaces where a COVID-19 positive case or close contact has been identified. While SafeWork NSW may have legal authority for ensuring workplace safety, NSW Health has assumed primary responsibility for rapidly responding to all outbreaks, including in workplaces.

NSW Health – not the employer – must be responsible for identifying and contacting the close and casual contacts of a positive case identified in a workplace. This identification and contact tracing *cannot be left solely to the employer* as it was in a recent case we are aware of in Greater Sydney in July.

### **We are calling on NSW Health to:**

- Include workers, site health and safety representatives (HSRs), and union delegates in the process of identifying the close and casual contacts.
- Ensure that close and casual contacts identified in workplace exposure incidents are contacted by NSW Health, and not only by the employer.
- Convene a special Workplace Transmission Committee that includes NSW Health, trade union representatives, employers and SafeWork NSW. The committee should meet regularly to identify and respond to specific WHS problems that arise in workplaces, and act as a dialogue channel for emergencies when workplace exposure has taken place.



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- Establish and advertise a Workers' COVID-19 Emergency Hotline that workers can call in urgent situations; eg, when a positive case or close contact has been identified in their workplace and they believe the employer has failed to respond appropriately. This hotline must be staffed with operators fluent in languages other than English.
  - Publish each workplace where a positive COVID-19 has been identified on the NSW Health website's list of identified transmission sites.
  - Report the number of workplace transmission incidents as a percentage of the overall positive cases in the Weekly Surveillance Report.
  - Publish multi-lingual resources for workers on the NSW Health website providing specific instructions on the exact steps workers and employers need to take to respond to a workplace exposure incident.

## **Recommendations to the NSW Government**

As well as ensuring the effective functioning and resourcing of NSW Health, the NSW Government has a responsibility to take every action possible to relieve financial hardship and reduce the threat of workplace transmission. It can do far more than it has to date.

### **We are calling on the NSW Government to:**

#### **MAKE OUR WORKPLACES SAFE**

- Pay NSW residents to test and isolate to ensure they can miss work and stay at home without being financially penalised.
- Instruct employers that under WHS law they are required to pay for WHS monitoring measures, which includes surveillance testing of workers.
- Provide paid vaccination leave for workers who do not receive it from their employer.

#### **SUPPORT RENTERS & MORTGAGE-HOLDERS**

- Extend the 60-day ban on rental evictions for the full duration and aftermath of the lockdown.
- Provide additional financial support directly to the renter after the \$1,500 grant/land tax offset has been used by the landlord.
- Actively enforce the requirement for landlords that use the scheme to reduce rent by allowing renters to report non-compliance.
- Prohibit banks from repossessing primary residences, and order banks to negotiate mortgage payment deferrals and/or write-downs.

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## **PROVIDE COST-OF-LIVING SUPPORT TO NSW RESIDENTS**

- Ban utility providers from cutting off services to households for the full duration and aftermath of the lockdown.
- Provide a regular supplement payment to households for essential utilities including energy, water, telephone and internet.
- Provide a significant funding boost to food banks, which are now under severe pressure to meet demand.

## **Recommendations to the Federal Government**

By failing to reinstate JobKeeper, the Federal Government has weakened the link between affected workers and their employers. While there is a requirement for businesses that receive assistance to maintain their full time, part time and long-term casual staffing level as of July 13, there has been no announcement of how this requirement will be enforced. Casuals without the required length of service can be laid off en masse without consequence.

In the absence of JobKeeper, there must be a monitoring and enforcement mechanism introduced to ensure that businesses in receipt of state aid cannot pocket the money while laying off workers. We support the ACTU's request to the Fair Work Commission to vary Modern Awards to include this provision in order to ensure it is enforceable.

### **We are calling on the Federal Government to:**

- Establish a second JobKeeper wage subsidy program to secure the link between employers and employee, with increased monitoring to prevent abuse of the scheme by companies.
- Include all workers, including all casuals and labour-hire workers, in the July 13 staffing level commitment.
- Establish paid vaccination leave under the National Employment Standards.
- Immediately raise all welfare benefits to at least \$600 a week.

## **Recommendation to the Fair Work Ombudsman**

### **We are calling on the Fair Work Ombudsman to:**

- Open an inquiry into potential breaches of the *Fair Work Act's* stand-down provisions by employers illegally forcing workers to draw down their accrued annual and long-service leave during stand-downs.

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# Conclusion

Stopping the transmission of COVID-19 in NSW workplaces is in everybody's interest – workers, their families, the broader community, and the entire country. But the results of this survey are clear: essential workers are not safe at work. The stress caused by potential exposure, and the financial hardship caused by the restrictions, are contributing to rising community anger.

The NSW Government and its agencies – NSW Health and SafeWork NSW – have built their strategy of reducing workplace virus transmission on engagement with companies only. But managers and supervisors are often working from home during the lockdown. The workers at these sites are the ones on the frontline – who best understand the movements and interactions between staff, and the potential risks arising from them.

Employers have a vested interest in minimising disruption and maintaining business as usual. The AMWU and other NSW unions have direct knowledge of cases where employers have failed to act quickly to end shifts and send workers home after a positive case has been identified on site; where NSW Health has delegated the identification and contacting of close contacts in a workplace to the employer following an infection; where employers have failed to inform NSW Health of all potential close and casual contacts; and where an employer has called the police on a union organiser who was attempting to advise workers on WHS following an infection on site.

NSW Health needs to open and institutionalise direct and rapid channels of communication with unions, and give workers and HSRs the opportunity to provide their deep workplace knowledge to health officials trying to manage an infection. We need a Workers' COVID-19 Hotline to call in emergencies, and NSW authorities need to vigorously enforce WHS standards.

Workers need to be supported instead of penalised for both surveillance testing and testing with symptoms that requires isolation. NSW needs a COVID-19 test-and-isolate payment now. We need paid vaccination leave in NSW and around the country.

All NSW residents affected by the lockdown urgently need sufficient financial support from the NSW Government and the Federal Government.

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## APPENDIX

# AMWU information for employers on COVID-19 lockdown industrial and health settings

The information below was sent to the management of companies where AMWU members are represented in NSW, accompanied by an introductory letter from AMWU NSW & ACT State Secretary Cory Wright, in July 2021.

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This is the AMWU's interpretation of the NSW Public Health Orders, industrial settings under lockdown, and financial assistance available to workers. We are regularly advising our members on the latest health and industrial policies in place during the NSW lockdown. We are seeking employers' confirmation in writing that they understand these settings, and are advising their employees accordingly.

### 1) COVID-19 and safe workplaces

Employers are legally required to provide a safe and healthy workplace for their staff, and to eliminate or control risks and hazards to workers. An employer is obliged to consult continuously with workers who may be affected by a matter, ie COVID-19 arrangements.

Under the Public Health Orders and WHS law, employers must ensure social distancing is maintained where possible, and provide workers with safe and appropriate personal protective equipment (PPE). The face masks provided by an employer must be appropriate for the task or work the worker is expected to carry out.

Other arrangements put in place for COVID-19 should include hygiene, cleaning or housekeeping. Methods of entering and exiting the workplace must be healthy and safe. Arrangements affecting access to and use of lunchrooms and other welfare facilities like toilets, locker rooms etc must be healthy and safe.

An employer must:

- identify hazards (and risks) arising from the work they carry out or influence;
- eliminate hazards and risks.

If it is not reasonably practicable to eliminate hazards and risks, they must control hazards and risks arising from work.

Control measures may include:

- any combination of substitution, engineering or isolation that most effectively controls the risks arising from the work;

- 
- if there are remaining risks the employer may apply administrative controls ie training, supervision, work instructions etc;
  - remaining risk may then be dealt with utilising PPE appropriate for the task, work etc.

Having implemented elimination and/or control measures the employer must ensure that these arrangements are maintained.

This requires:

that the measures are fit for purpose;

that the equipment, techniques, skills etc. are available at the time the task/work commences.

### **1.1 Personal Protective Equipment (PPE)**

Under the NSW *WHS Regulation* (Division 5):

- Employers must provide workers with PPE, unless it has been provided by a labour hire company.
- The ultimate responsibility to provide PPE lies with the employer.
- The PPE provided must be suitable for the work being carried out; a suitable size and fit and reasonably comfortable; maintained/repaired/replace when necessary to minimise risk (including by making sure it is clean, working and used or worn by the worker).
- The employer must provide the worker with information and training on the proper use and maintenance of the PPE.
- The worker must, so far as the worker is reasonably able, use or wear the PPE.
- The worker must not intentionally misuse or damage the PPE and must inform the employer of any damage or defect to the PPE.

Workers (and others) have obligations to take reasonable care of themselves, and by their acts or omissions take reasonable care of others at work.

Workers are expected to comply with policy reasonably notified to the worker, in this case COVID-19.

For policies to be “reasonably notified” means an employer should provide information in a form that can be understood, is relevant and appropriate for a matter such as COVID-19.

### **1.2 Employer required to consult workers on WHS**

An employer (and their officers/senior decision makers) must consult continuously with workers at workplaces the workers may attend on all matters that may effect or a likely to affect those workers. This includes arrangements for COVID-19 compliance.

An employer must review control measures including elimination if the control measure is absent, ineffective, or fails.

Health and safety representatives (HSRs) have rights to seek reviews, as do individual workers.

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## 2) Stand-downs under the *Fair Work Act* provisions

Employers affected by the Public Health Orders may be able to stand employees down during a sudden workplace closure that is outside the employer's control, including when the business has closed because of an enforceable government direction (which means the employee can't be usefully employed, even from another location).

From 29 March 2021, the JobKeeper *Fair Work Act* provisions no longer apply. Employers can not rely on JobKeeper enabling stand-down provisions under the *Fair Work Act*. Instead, they may be able to use the usual stand down provisions as set out in the *Fair Work Act*.

To stand down an employee using these provisions, an employer needs to be able to show that: there is a stoppage of work;

- the employee to be stood down can't usefully be employed because of the stoppage (this isn't limited to the work an employee usually performs);
- the cause of the stoppage must be one that the employer can't reasonably be held responsible for.

Employers generally can't stand down employees under the *Fair Work Act* stand-down provisions simply because of a deterioration of business conditions or because an employee has coronavirus; however, they may be able to rely on a stoppage of work because a supplier or customer has been closed because of a Government health order.

The stoppage of work does not need to affect the whole of the business before an employer can lawfully stand down any employees.

Employers should first discuss and communicate with employees about a stand down. They should also discuss other workplace options available to employees. These can include:

- working from home;
- changes to duties, hours of work or rosters
- taking paid or unpaid leave.

Whether or not the enforceable government direction prevents an employee from working will depend on the facts in each case.

## 3) Employees' rights under stand-down

Employees who have been stood down have the right to take paid leave but cannot be forced to take accrued leave unless specific provisions allowing this are included in the relevant award or agreement.

Employees who are stood down without pay are still employed for the period of the stand-down.

Employees in these situations may also be eligible for government payments and should seek info from Services Australia. Employers should inform each stood-down employee that they are likely to be eligible for the COVID-19 Disaster Payment.

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If an enterprise agreement or employment contract applies to the employees and allows the employer to stand down employees because of a stoppage of work, the employer must use the provisions in the agreement or contract. They cannot use the general *Fair Work Act* provisions. These provisions may still allow for employees to be stood down without pay, however, the employer may be required to consult or consider other options before standing any employees down without pay.

If an employer unlawfully stands down employees without pay, their employees may be able to recover unpaid wages.

#### **4) Recipients of state aid must maintain staff level**

Businesses that receive COVID-19 assistance must maintain their permanent (full-time and part-time) staff, and casuals with more than 12 months service, at the same level as on July 13. The AMWU urges employers to include all staff in this commitment. We are supporting the ACTU's effort to have this staffing level provision included in awards.

#### **5) Workplace restrictions that fall beyond the scope of Public Health Orders**

If employers implement workplace health and safety measures that are beyond the scope of the Public Health Orders, these must be enacted at the employer's expense. (For example, employers telling workers to limit travel, or be tested more frequently than is required under the Public Health Orders). These are risk management decisions that the employer is required to fund.

#### **6) Leave during a stand-down**

Many workplaces are covered by awards that provide for 2 weeks unpaid pandemic leave and allow employees to take twice as much annual leave at half their normal pay if their employer agrees.

Employers should discuss with employees what leave options are available if their workplace must close at sudden notice. Options may include:

- annual leave;
- other paid leave (for example, long service leave);
- unpaid leave.

Options for accessing paid or unpaid leave include:

- taking accrued annual leave (including at half pay);
- taking any other paid leave (such as long service leave or paid leave available under an award, enterprise agreement or employment contract);
- directing employees to take accrued annual leave in certain circumstances;
- taking any other paid leave by agreement between the employee and the employer.

Workers who are covered by the *Long Service Leave Act* (NSW) may also be eligible to get access to up to 4 weeks long service leave in advance, in negotiation with the employer.

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In some circumstances, employees won't have access to paid leave. For example, if they are permanent but have already used all their accrued leave entitlements. In these situations, employers and employees can agree for an employee to take unpaid leave.

### **7) Accrual of leave and continual service during stand-down**

Leave entitlements, such as sick and carer's leave and annual leave, still accrue while an employee is stood down without pay.

Time away from work due to a stand down counts towards an employee's service. This means that time stood down is included when calculating an employee's entitlements under the National Employment Standards, such as notice, redundancy and leave.

Employees keep accumulating annual leave as usual if they:

- have been stood down;
- have requested or been directed to take annual leave
- are on a type of unpaid leave that counts towards annual leave accrual, such as unpaid pandemic leave, or
- are on annual leave at half pay.

Some awards or agreements require that annual leave loading is also paid for annual leave.

Award variations haven't changed annual leave loading entitlements. If an employee normally receives annual leave loading, this still needs to be paid.

### **8) Long Service Leave (*Long Service Leave Act* (NSW) only)**

If an employee has been stood down directly or indirectly because of the pandemic, then:

- the stand down will be recognised as continuous service; and
- long service leave continues to accumulate during the stand down.

### **9) Directing an employee to take annual leave**

The rules about if and when an employer can direct an employee to take annual leave are set out in awards and enterprise agreements.

### **10) Public holidays during a stand-down**

Employees who are stood down without pay by their employer under the *Fair Work Act* are still entitled to be paid for public holidays that fall during the stand down period.

This applies if the employee would normally have ordinary hours of work falling on the day of the public holiday.





# GET IN TOUCH

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