

## Circular No. 337/2020

30 December 2020

# *COVID-19 Update—Paid pandemic leave—Health sector awards—Decision by the Fair Work Commission (24 December 2020)*

## **Background**

From AFEI's previous Circular ([136/2020](#)), members would be aware that the Fair Work Commission (**the Commission**) issued a decision on 8 July 2020 declining to award (up to) 2 weeks paid pandemic leave entitlements in several health sector awards including the **Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)** but noted it would consider further claims if necessary. Due to the influx of COVID-19 cases in Victoria, the Commission in a later decision on 27 July 2020 (see AFEI Circular [141/2020](#)) (**27 July decision**) determined that paid pandemic leave entitlements would be extended to employees covered by the **Aged Care Award 2010** and employees '**engaged in aged care**' but covered by the **Nurses Award 2010** and the **Health Professionals and Support Services Award 2020**.

Since then, the unions filed submissions in late July and August 2020 seeking an extension of the paid pandemic leave entitlement to other categories of employees including all Social and Community Services, Crisis Accommodation and Home Care employees covered by the SCHADS Award and employees covered by the Ambulance and Patient Transport Industry Award 2020 (**Ambulance Award**).

## **FWC Decision**

On 24 December 2020 the Commission issued its decision, which declined to vary the SCHADS Award and Ambulance Award to provide for paid pandemic leave. The Commission's reasons, at the time of its decision, for rejecting the unions' claims are as follows:

- The "overriding factor" was that Australia's success in controlling the COVID-19 pandemic indicated no evidence "*in actuality*" of an increased risk of actual or suspected exposure to infection amongst health and care workers and consequently no elevated risk of a requirement to self-isolate;
- There are no active COVID-19 cases amongst residents in aged care facilities nor amongst people receiving subsidised in-home care;
- It also emphasised the importance of context in distinguishing the present case from its 27 July decision. At the time of the 27 July decision, Victoria was in the midst of its second wave, which accounted for the majority of total infections and over 80% of all fatalities in Australia, where 75% of those fatalities occurred in residential aged care facilities; and
- The above statistics are not replicated in the current circumstances where the situation in Australia since the second-wave is now controlled and remains stable.

Despite its decision, the Commission has stood the matter over acknowledging the “rapidly changing” COVID-19 circumstances, in particular, the Sydney community outbreak which may warrant further consideration and review of the situation in the future.

## If you need further information or assistance

If you have any questions, please contact **AFEI** on **02 9264 2000** and one of our advisors can assist you.

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