



**Australian
Nursing &
Midwifery
Federation**
VICTORIAN BRANCH

Newsflash

COVID-19 information for private and not-for-profit aged care members

WEDNESDAY 26 AUGUST 2020

CORONAVIRUS (COVID-19)

Update on single site employment

Following further discussions between ANMF, the peak aged care provider bodies, Leading Age Services Australia, Aged and Community Services Australia and the Aged Care Guild, and the Federal Government, a final version of the *Guiding principles for residential aged care* was published on 7 August 2020.

ANMF provided members with advice about the changes, along with some frequently asked questions, in late July.

The *Guiding principles for residential care* were developed to support the 'cohorting' of aged care workers, where aged care workers in COVID-19 hotspots are expected to work in one aged care facility only, to reduce the risk of COVID infection for aged care workers and residents.

The principles aim to minimise the potential risk of workers unintentionally transmitting COVID-19 by working across multiple sites by:

- supporting aged care workers in the Melbourne metropolitan area and Mitchell Shire to work with a single residential aged care facility during this high-risk pandemic period
- ensuring workers are supported, paid their usual income, not disadvantaged and have choice over their place of employment.

The principles, and associated Federal Government funding, currently apply to the Melbourne metropolitan area and Mitchell Shire, but may be adopted across the rest of Victoria as needed.

The changes will initially be in place for a fixed term of eight weeks, from Monday 27 July until 25 September 2020, but may be extended if required.

In public aged care the guiding principles are to be progressively introduced state-wide by 24 August 2020 with funding support from the Victorian Government.

Authorised by Lisa Fitzpatrick ANMF (Vic Branch) Secretary

These FAQs apply to members in metropolitan Melbourne and Mitchell Shire:

As an aged care employee, do I get to choose which facility I work at, even one where I work fewer hours?

Under the guiding principles it is expected that aged employees will work at the site where they can **work the most hours for the duration of the activity period**. Once an employee begins working at a single site, they should continue to work at that site for the duration of the activity period.

The principles say that an employee must take eight weeks single site leave. What if I want to cancel the leave and return to work early?

Aged care employers should make clear to you, prior to the commencement of the single site leave, that leave can only be ended early by agreement between the employee and their employer. This can be addressed through an employer policy and/or through written communication with you. If employees have already commenced this leave and this matter has not been already addressed, the employer can make contact with all employees who are on this leave to communicate this to them.

What if I want to change my mind about which site I elect to work?

Under the funding arrangement, is expected that employees will work at the site where they can work the most hours for the duration of the activity period. Once an employee begins working at a single site, they should continue to work at that site for the duration of the activity period.

There may be extenuating circumstances in which you cannot stay at the site you originally elected to work at. In these instances, the guiding principles recommend the primary employer put in place a variation to the contract of employment or another type of written agreement that details the conditions of your employment over the period covered by the guiding principles. If you want to change the terms of the employment during that period, changes can only be made by mutual agreement between you and the employer. If you take action to end the election, this may be seen as you taking action to end the employment.

Your secondary employer should make it clear to you, prior to the commencement of the leave, that leave can only be ended early by agreement between you and the employer. This can be addressed through a policy and/or through written communication with you. If you have already commenced this leave and this matter has not been already addressed with you, the secondary employer can make contact with all employees who are on this leave to communicate this to them.

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What if I work for a residential aged care facility and a hospital or similar health care service?

The guiding principles only apply to the employment of employees at residential aged care facilities, not hospitals or similar health care services. Therefore, employees can continue working at a residential aged care facility and other workplaces but should comply with all relevant infection control protocols at their workplace.

If I'm told I have to self-isolate, do I have to use my sick leave?

If you are unwell and/or showing symptoms of COVID-19 and have been directed to self-isolate, you are eligible to take personal (sick) leave and you must use this entitlement. If you run out of personal (sick) leave, your employer can apply for funding under the Support for Aged Care Workers in COVID-19 (SACWIC) grant to maintain your pay.

If you are well and are not showing symptoms but have been directed to self-isolate, it is up to your employer whether any leave provisions are available to you. If you do not have any personal (sick) leave entitlements, your employer can apply for funding under SACWIC to fund this paid leave for you in the first instance.

If your employer is ineligible for the SACWIC grant you may be eligible for a Pandemic Leave Disaster Payment via <https://bit.ly/3iHuEuH>

I'm a permanent personal care worker at a residential aged care facility and I have three weeks annual leave. Do I have to use all my personal (sick) leave and my annual leave if I am not to work due to testing, isolation or quarantine requirements, or experiencing COVID-19 symptoms/positive diagnosis, before I am eligible for paid leave under the grant?

No. You will need to use any sick leave that can be used, but not your annual leave. If you run out of personal (sick) leave, your employer can apply for funding to maintain your pay.

Both my wife and I work in residential aged care facilities but at different sites. Can we do that and still live together?

Yes, but if either of you have symptoms or test positive to COVID-19 you will both need to self-isolate and you must not go to work if you are unwell. When you get tested you should advise the person taking your test that you are an aged care employee, to ensure the results are given priority.

You may be eligible for emergency accommodation if you are unable to quarantine or self-isolate in your home. You should contact your human resources department to find out if you qualify.

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Am I eligible for paid pandemic leave?

Under the funding arrangement, aged care employers can access funding to pay pandemic leave to residential aged care employees if the employee is:

1. eligible under the Fair Work Commission's decision, e.g. covered by an award but not an enterprise agreement
2. does not have access to or sufficient personal (sick) leave to cover the entire period of absence.

Employees with access to personal (sick) leave entitlements are not eligible to be supported until the personal (sick) leave balance has been used.

Is funding able to be used to provide pandemic leave to employees who are employed under enterprise bargaining agreements and not awards?

Yes, funding can be used to provide pandemic leave to employees who are employed under enterprise bargaining agreements if they do not have access to, or sufficient, personal (sick) leave to cover the entire period of absence. Employees with access to personal (sick) leave entitlements are not eligible until the personal (sick) leave balance has been used.

Please note: if you are not sick, you may not be eligible for personal leave, so paid pandemic leave becomes available. Casual employees who do not have personal leave can also access paid pandemic leave.

What checks and balances are in place to ensure the SACWIC grant funding is passed on from providers to employees who miss out on earnings from other facilities?

The Australian Government may conduct audits to ensure the grant funding is paid to employees correctly. A financial acquittal must be submitted at the conclusion of the grant to account for the use of funds.

How long will the grant period run for?

The SACWIC grant is scheduled to end on 31 May 2021. Providers will only be able to apply for assistance for the time they are operating within a designated COVID-19 hotspot.

How are employees paid and how long will this take?

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Employees should continue to receive their wages from their primary employer for the duration of the period (currently until 25 September 2020), as set out in the guiding principles. Employees do not need to apply for funding.

Are providers eligible to apply for funding for a facility which is located outside the designated COVID-19 hotspots?

Approved residential aged care providers or approved National Aboriginal and Torres Strait Islander Flexible Aged Care Program providers who provide services in a facility located outside a hotspot are eligible to apply for the grant if they incur additional costs as a result of eligible employees who work inside a hotspot:

- who normally work at multiple residential aged care facilities, one of which is in a hotspot; and
- who will be working solely within the facility being applied for.

If I elect to work at a primary provider that does not have a salary packaging arrangement, but my secondary provider does, does my primary employer need to compensate me for the tax benefit?

No. It is possible that you may be able to make up for this period of no deductions by increasing your salary deduction when you return to the secondary provider for the balance of the fringe benefits tax (FBT) year.

What kind of evidence can a primary employer request from employees to determine their usual income and hours of work?

They can ask for the following evidence:

- The last three payslips;
- Up to date employment contracts; and
- Contact details of the secondary provider/s and permission from the employee to contact them.

Can the primary employer ask me to work shifts if I am not a shift worker? What if I refuse?

The primary employer can offer any available shifts to make up the additional hours that you would normally work for your secondary provider/s. However, you may refuse to work offered shifts for valid reasons, such as childcare or other caring arrangements. If you refuse, an employer may ask why, if you have not already provided a reason.

Is there a maximum number of hours that an employee can be paid for? For example, can an employer ask an employee to work 100 hours a fortnight?

When determining the maximum number of hours employers can safely employ an employee to work, employers must consider:

- The health and safety of the employee in accordance with employers' obligation to manage fatigue in the workplace. (see <https://www.safeworkaustralia.gov.au/fatigue-for-more-information>), and
- The provisions of the applicable industrial instruments which provide breaks to the employee from being on duty, and comply with these provisions.

Employers are not required to offer additional hours that would put the health and safety of employees at risk.

Do employers have to authorise leave to work at a primary employer?

When an employee proposes, requests, or elects to take a period of unpaid authorised leave for the purpose of working at a single site during this period they are to be recognised to be exercising or proposing to exercise their workplace rights under the guiding principles in accordance with their duties under section 25 of the *Occupational Health and Safety Act 2004* (VIC). Therefore, if an employee elects to work at another facility for another provider as their single site, an employer cannot legally make an employee stay with them only. Employers are being advised to have a discussion with employees about electing them as their primary provider, if employees have not yet elected a primary provider.

How will casual employees' hours of work be calculated?

The average hours of work and averaged weekly rate of pay for a casual employee can be calculated on the weekly pay received by the employee in the previous six weeks – or where the employee has been employed for less than six weeks – for the duration of their employment with the secondary provider/s.

NONCOMPLIANCE WITH THE *GUIDING PRINCIPLES FOR RESIDENTIAL AGED CARE*

What can employers do if employees do not comply with the principles?

It depends on how the employee is not complying with the principles. If the employee claims that they have elected a particular provider as their primary provider, but continue to work for other residential aged care providers, they are not complying with their obligations under the principles. As a result, they are not entitled to be offered additional hours that would be, or are being worked, for other providers and are not entitled to payment to maintain any claimed level of take-home pay from multiple providers.

RETURNING TO WORK AFTER THE ACTIVITY PERIOD

Authorised by Lisa Fitzpatrick ANMF (Vic Branch) Secretary

How do we return to the usual arrangement? Do we agree to a set sector-wide notice to return to substantive arrangements?

The guiding principles are in place until 25 September 2020 and may be extended if required as a result of the pandemic and advice from the Commonwealth and Victorian governments. When the guiding principles are no longer in place, employees can return to their usual working patterns with providers.

To ensure you have sufficient direction on how and when you can return to your usual arrangements, it is recommended employers outline this via:

- a written agreement between the primary or secondary provider and the employee; and/or
- putting in place a policy and communicating this to their employees.

What if I need further advice or support from ANMF (Vic Branch)?

In the first instance, contact Member Assistance via our online form:

<https://www.anmfvic.asn.au/memberassistance>

Do you believe you are being disadvantaged and require assistance?

If you require individual assistance because you believe you are being disadvantaged by the new requirements restricting you to working at a single workplace, please contact ANMF via

<https://www.anmfvic.asn.au/dualemployment>

ANMF encourages members to raise any concerns they have with management in the first instance as quickly as possible in addition to seeking assistance from ANMF.

Got a colleague not receiving ANMF emails?

If you have an ANMF colleague who is not receiving these newsflash emails, please pass this on and let them know they can re-subscribe via [anmfvic.asn.au/resubscribe](https://www.anmfvic.asn.au/resubscribe)

Encourage your colleagues to join ANMF

Please invite your aged care nursing and personal care worker colleagues to join their union so they have access to support, advice and information about their employment. Let them know they can join via

<https://www.anmfvic.asn.au/join>

These case studies have been developed for aged care providers and employees to provide a better understanding of the how the *Guiding principles for residential aged* should be implemented. <https://bit.ly/3j8qEUj>

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