

# Can my employer make me take a pay cut?

We're living and working in uncertain times, and this can bring up questions about what employers can and can't ask of their employees.

Here Jaenine Badenhorst, Senior Solicitor with [Rainey Collins](#) answers some common questions about what employers are allowed to do when it comes to leave and entitlements during COVID-19.

## Can my employer make me take annual leave?

With business operating restrictions in place due to COVID-19, some employees have been told they must take their annual leave.

"This practice is likely to be illegal because the forced leave is not for the purpose of rest and recreation intended under the Holidays Act," Badenhorst says. "If, however, you ask to take annual leave, or agree to take leave without undue pressure over this period of time, then there's unlikely to be an issue."

Badenhorst notes that employees are also allowed to "cash up", up to one week's annual leave entitlement by making a request in writing to their employer. "Your employer may refuse, but must do so in writing (although they do not need to provide a reason for the refusal)," she says.

It's important to know, Badenhorst says, that your employer must not put pressure on you to cash up your annual leave to supplement your wages during restricted business operations due to COVID-19.

"If your employer does not pay you correctly for your annual leave," Badenhorst says, "they may be liable to reinstate the annual leave entitlement used, in addition to what has already been paid for annual leave taken."

## Can my employer make me take a pay cut?

"The short answer is no," Badenhorst says.

"The [Wages Protection Act](#) requires employers to pay their employees their full agreed rate (as recorded in their employment agreement), every pay period and without deduction. There are very limited situations when your employer can deduct from your pay."

However, Badenhorst points out that employees and employers can agree to modify remuneration. "Any such negotiations must be conducted in good faith," she says. "Employers can find

themselves paying significant penalties if they are found to be forcing employees to agree to pay cuts under duress.”

During COVID-19, you may have agreed to take a voluntary pay cut, but any change to your pay must only happen if a fair process has been followed.

“Your employer must provide you with sufficient information about the reasons for the variation, and also a fair opportunity to provide your input before anything is made final,” Badenhorst says. “Your employer would be wise to demonstrate to you that they have considered other alternatives (such as applying for government assistance under the Wage Subsidy Scheme, the Business Finance Guarantee Scheme or the Mortgage Holiday Scheme).”

Badenhorst emphasises that you are under no obligation to accept a variation to your pay. “But you must carefully consider whether the business will then be forced to look at redundancy or a restructure at a lower pay rate for the job,” she says.

## **Can my employer reduce my hours?**

“Like with any other terms on an employment agreement, your employer can’t make a unilateral change to the terms of employment,” Badenhorst says. “That means, a change can only be made by agreement between both your employer and you.”

This is still the case during COVID-19.

“If your employer wants or needs to reduce the hours you work, they must follow a fair process in obtaining your agreement,” Badenhorst says. “This means you cannot be coerced into reducing your hours – you must willingly agree.”

If you have discussed the issue with your employer and have agreed to reduce your hours, Badenhorst says it’s important to note that unless the agreement for reduced hours is for a set period of time or has an expiry, the change is permanent.

“You may be wise to put in place temporary measures to begin with if it’s not clear how long the changes need to be kept in place,” she advises.

## **Can my boss make me work from home?**

“Your place of work is normally recorded in your employment agreement,” Badenhorst says. “This means your employer can’t decide to change your place of work without your agreement. Changes in working location may be agreed upon by both parties and should be recorded in writing.”

However Badenhorst notes that the situation is different when the government requires businesses to operate remotely.

“When the government requires businesses to operate remotely, those that are capable of working from home must do so,” she says. “A refusal to work from home, if you are able, could lead to disciplinary action and termination after a fair investigation. If you refuse to work then your employer can mark you as absent and not pay you for the days you didn’t work.”

## **What can I do if I think something is wrong?**

If you think your employer has breached the rules, then seek help. You can contact your union (if you’re a member) or request legal advice from specialist employment lawyers.

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