

## DIRECTIVE 01/20

Supersedes: 06/18

### Minister for Industrial Relations and Commission Chief Executive Directive:

## Employment Arrangements in the Event of a Health Pandemic

**This text box does not form part of the directive**

Under the *Human Rights Act 2019* decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this directive, to give proper consideration to human rights.

**1. Purpose:**

To prescribe the specific employment conditions to apply in case of disruption caused by the occurrence of a health pandemic as defined at Section 8 of this directive.

**2. Effective date:** 16 March 2020

**3. Legislative authority:**

Section 53 and 54(1) of the *Public Service Act 2008*.

Sections 51 and 52 of the *Public Service Act 2008* apply if there is a conflict with an Act, subordinate legislation or an industrial instrument.

**4. Application:**

This directive applies to public service employees as defined in section 9 of the *Public Service Act 2008*, including long-term casuals (as defined) and including chief executives, senior executives and senior officers. However, only sections 13.2 and 14.2 about Special Pandemic Leave and Special Leave apply to casuals.

**5. Previous references:**

Directives 4/09, 12/16 and 06/18.

**6. Related information:**

- Directives relating to sick leave; recreation leave; long service leave; special leave; hours and overtime; critical incident entitlements and conditions; and relevant industrial instruments.

## DIRECTIVE

**7. Objective of this Directive**

- 7.1 This directive aims to support the effective management of the Queensland public sector workforce during a health pandemic which will likely have significant impact on the public sector workforce, workplaces and delivery of services.
- 7.2 This directive has been specifically designed to balance the requirements of Government to continue to deliver essential services, with the well-being and legitimate personal, family and community responsibilities of their employees during a health pandemic.

7.3 In addition to access to Special Pandemic Leave under this directive and existing industrial entitlements, employees may also access Special Leave in accordance with the Ministerial directive about Special Leave where, because of a health pandemic, employees are not able to work e.g. self-isolation on health advice.

## 8. Definitions

**A health pandemic** for the purpose of this directive means a critical health issue, as identified by a declaration of a public health emergency made under Section 319 of the *Public Health Act 2005* with respect to an actual or potential health pandemic.

**Regular remuneration** for the purposes of this directive means ordinary salary including work related allowances and includes payments based on a projected roster where applicable but excluding overtime.

**Long-term casual** for the purposes of this directive means a casual employee, engaged by a particular employer, on a regular and systematic basis, for 1 or more periods of employment, during the 1 year immediately before the employee seeks to access an entitlement under this directive.

## 9. When provisions under this Directive apply

The provisions of this directive are activated when there is a health pandemic as defined in this directive.

## 10. Implications of a health pandemic

10.1 A health pandemic is a critical health issue which will likely have significant impact on the public sector workforce, workplaces and delivery of services. It will directly affect many people's health and well-being, and potentially all the roles performed in the ordinary course of employment.

10.2 A health pandemic will arise rapidly, spread quickly and likely come in waves of eight to twelve weeks. It will cause significant disruption to normal business conditions. Likely impacts on workplaces include:

- increased illness and death;
- increased absence due to illness;
- increased absence to provide care and support to family members who are ill;
- increased absence due to social distancing/quarantine measures;
- increased absence due to the closure of schools, childcare or public transport facilities;
- possible disruption to supply of goods and materials; and
- possible disruption to essential service delivery.

10.3 In Queensland, the response to a health pandemic will be managed through:

- The State Health Emergency Coordination Centre (SHECC) with:
  - (i) Queensland Health having lead agency responsibility; and
  - (ii) The State Disaster Coordination Centre having responsibility for consequence management involving local and district disaster management groups.
- Advice on changes to the national alert level through the Chief Health Officer to the Premier via the Director General, Department of the Premier and Cabinet.

## 11. Assumptions underpinning the Directive

11.1 This directive is underpinned by the following assumptions regarding agency preparedness:

- Agencies have local plans that include action plans for staff deployment during a health pandemic and specific instructions to staff about workplace health and safety precautions required during a health pandemic.
- Agencies have business continuity plans in place for maintaining essential services and critical human resource services such as payroll and employee support.
- Existing conditions of employment will be applied to employment arrangements during a health pandemic wherever possible including specific hours of work arrangements.

11.2 The following assumptions are critical to assessing impact on workplaces.

- A health pandemic will last for a period of up to twelve months with cases occurring in waves across the community. Two or more waves of infection are expected, and these may be separated by three to nine-month periods. The duration of each wave of illness may be about 8 weeks with the second wave possibly having a more serious impact than the first.
- A significant percentage of the workforce will be absent for approximately 8 weeks of the pandemic wave because closure of school or childcare facilities oblige working parents to stay home and look after children. This percentage would vary according to the particular workforce.
- A significant percentage of those remaining at work will become ill at some time during the 8 weeks of a health pandemic wave.
- Every person who becomes ill during a health pandemic wave will have at least 7 shifts/work periods off work.
- There is a 100% additional absence rate. That is, for every person in the remaining workforce who gets ill, another is absent from work because they need to look after a family or household member, or because public transport is not available for them to travel to work.

## 12. Policy

12.1 Government will make every effort to ensure that the employment conditions of its employees are not adversely affected during a health pandemic. Existing conditions of employment as provided for under relevant industrial instruments will continue to apply to employment arrangements during a health pandemic, including specific hours of work arrangements.

12.2 Agencies need to balance the requirement to continue their essential services with the well-being and legitimate personal, family and community responsibilities of their employees.

12.3 Industrial health and safety arrangements need to support the key health pandemic response aims of containing the spread of the virus and minimising economic and social disruption. Agencies will follow the advice of Queensland Health.

12.4 Where workplace arrangements need to be varied to accommodate business continuity planning for a health pandemic, these arrangements will be, wherever possible;

- made in advance and in consultation with employees, employee representatives and/or relevant unions where required;
- within the relevant legislative framework; and
- applied fairly and equitably at the workplace.

## 13. Conditions and entitlements

13.1 Upon application, an employee will be entitled to a maximum 20 days paid "Special Pandemic Leave" for use when the employee is unable to attend work and unable to perform work under flexible working arrangements because they:

- have an actual viral infection and have exhausted their sick leave accruals; and/or
  - are required to care for immediate family or household member/s who have an actual or suspected viral infection and have exhausted their sick leave accruals; and/or
  - are required to care for children as a result of school or childcare centres closures and have exhausted their sick leave accruals.
- 13.2 A chief executive at their discretion may grant up to a maximum 20 days paid Special Pandemic Leave to a casual employee.
- 13.3 Special Pandemic Leave will be paid as regular remuneration.
- 13.4 Sick leave means the entitlement to paid sick leave, inclusive of carers' leave, in accordance with the *Industrial Relations Act 2016*.
- 13.5 Once Special Pandemic Leave is exhausted, employees will be expected to access their existing recreation leave then their long service leave entitlements. Where an employee seeks to access accrued long service leave in accordance with this directive, the minimum continuous service period of seven years and minimum period of leave to be taken at any one time prescribed in the Ministerial Directive on Long Service Leave shall not apply.
- 13.6 Employees will be paid their regular remuneration if they are willing and able to attend work but are directed by the employer not to attend work, subject to sections 14.6, 14.7 and 14.8 (below).
- 13.7 Employees who:
- (a) are directed to attend their usual place of work will be required to attend as directed unless their employer has determined that the workplace poses risk to that employee;
  - (b) refuse a lawful direction to attend work for reasons other than those provided in this directive or another reasonable explanation may be disciplined and/or suspended as appropriate;
  - (c) advise they are exhibiting symptoms of a viral infection should be directed to remain away from the workplace for the recommended self-isolation time determined by health authorities or until they are cleared to return to work;
  - (d) exhibit symptoms of a viral infection while at work should be directed to leave the workplace;
  - (e) have had the virus or who have been exposed to the virus should be advised not to return to work until after the minimum prescribed time, as determined by health authorities, has elapsed;
  - (f) are absent from work as a result of the health pandemic may not be required to submit a medical certificate. In the alternative, they may be required to provide a copy of a record to confirm they have undergone a relevant assessment or such other document or advice that satisfies agency requirements.

#### **14. Interaction with Ministerial Directive about Special Leave and Other Conditions**

- 14.1 Where an employee is not able to work because of a health pandemic and relevant leave arrangements are not provided for in this directive or in a relevant industrial instrument, the Ministerial Directive about special leave may apply.

Example – where a health pandemic requires an employee to self-isolate in accordance with health advice and the employee is not sick, and they are not able to undertake flexible work arrangements, the employee may apply for special leave which is granted at the discretion of chief executives in accordance with the Ministerial Directive about special leave.

- 14.2 In a health pandemic, a chief executive may exercise their discretion to grant special leave to a casual employee as if the Ministerial Directive relating to Special Leave applies to casual employees.
- 14.3 Absence due to unavailability of public transport to attend the workplace

Where employees are unable to attend work because they are reliant on public transport and services are suspended or cancelled the Ministerial Directive about special leave will apply.

#### 14.4 Undertaking volunteer roles in the community

Where employees are absent from work because they are fulfilling volunteer roles in the community related to the health pandemic (e.g. assisting in a hospital or an aged care facility), and that absence is authorised by the employer, such absence is deemed to be included under the leave type “attendance at emergencies” prescribed at Schedule Two or “Declared emergency situation or state disaster” as prescribed in Schedule One of the Ministerial Directive on Special Leave.

#### 14.5 Requirement for supporting documentation

Supporting documentation will be required for all periods of absence on paid Special Pandemic Leave. Where employees access paid Special Pandemic Leave as a result of illness, or need to care for ill family or household members, they may not be required to provide a medical certificate; they may instead provide a copy of a record to confirm they (or their family member) have undergone a relevant assessment or such other documentation or advice which satisfies agency requirements.

#### 14.6 Employees not required at work

Where employees are directed by the agency not to attend their workplace and are unable to undertake flexible work arrangements or work at a reasonable alternative location, such employees are to be paid regular remuneration without debit to any leave account.

#### 14.7 Closedown of a workplace

- (a) Where an agency closes down a workplace due to health and safety issues and/or unavailability of sufficient staff, any employees who normally attend work at that workplace shall either be directed to attend work at a reasonable alternative workplace, undertake flexible work arrangements or be directed not to attend any workplace due to not being required.
- (b) Where directed by the agency not to attend work such employees are to be paid regular remuneration without debit to any leave account.

#### 14.8 Refusal by employee to attend work

Where an employee refuses to attend work for fear of contracting the virus and such refusal is deemed as not reasonable, the chief executive may consider disciplinary action and/or suspension as appropriate.

## SCHEDULE A – HEALTH PANDEMIC SCENARIOS

This Schedule describes some possible industrial relations scenarios that could occur during a health pandemic and the available responses under legislative and administrative frameworks existing at the time of publication of this directive. In due course, other directives referred to may be superseded by replacement directives.

No	Scenario	Current Arrangements	Variation for Health Pandemic	Legislative or other Reference
1	Personal illness – full time or part time	<p>Directive relating to Sick Leave</p> <p>Up to 10 days for each completed year of service or part thereof.</p> <p>Additional sick leave available for meritorious service, war service and if illness is contracted because of performing official duties.</p> <p>Employees who use up all their sick leave and paid Special Pandemic Leave may access any available recreation leave balances and then long service leave (LSL) if they have an entitlement.</p>	<p>Access to paid Special Pandemic Leave (SPL) for full time and part time employees – 20 days maximum once sick leave accruals are exhausted.</p> <p>Where paid SPL exhausted, employees may access recreation and then early access to long service leave.</p> <p>Access to LSL with no 7 year qualifying period required.</p>	<p>Directive relating to Sick Leave</p> <p>Directive relating to Long Service Leave</p> <p>Directive relating to Recreation Leave</p>
2	<p>A casual employee is unable to attend work because of:</p> <ul style="list-style-type: none"> <li>• actual illness; and/or</li> <li>• requirement to care for family or household member/s with actual or suspected illness; and/or</li> <li>• need to care for children as a result of the closure of school or childcare centres; and/or</li> <li>• are unable to attend work because they are reliant on public transport and services are suspended or cancelled.</li> </ul>	<p>Directive relating to Sick Leave</p> <p>The Sick Leave directive <b>does not apply</b> to employees engaged on a casual basis under sections 147 (2) (b) or 148 (2) (b) of the <i>Public Service Act 2008</i>.</p>	<p><u>Long Term Casuals</u> Access to paid SPL – 20 days for long term casuals as defined by the <i>Industrial Relations Act 2016</i> and employed under sections 147(2)(b) and 148(2)(b) of the <i>Public Service Act 2008</i>.</p> <p>That is, a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access paid special pandemic leave.</p> <p><u>All Casuals</u> A chief executive at their discretion may grant up to a maximum 20 days paid SPL to a casual employee who is not a long-term casual.</p>	<p><i>Public Service Act 2008</i> 147(2)(b) (Employment of General Employees)</p> <p><i>Public Service Act 2008</i> 148(2)(b) (Employment of Temporary Employees)</p> <p>Directive relating to Sick Leave</p>
3	Requirement to self-isolate in accordance with Health advice and the employee (including a casual) is not sick and is not able to work flexibly.	<p>Flexible work arrangements</p> <p>Directive relating to Special Leave</p> <p>Chief executive may grant special leave to the employee, excluding casuals.</p>	<p><u>All Casuals</u> In a Health Pandemic, a chief executive may exercise their discretion to grant special leave to all casual employees as if the Ministerial Directive relating to Special Leave applies to them.</p>	<p><i>Public Service Act 2008</i> 147(2)(b) (Employment of General Employees)</p> <p><i>Public Service Act 2008</i> 148(2)(b) (Employment of Temporary Employees)</p> <p>Directive relating to Special Leave</p>

No	Scenario	Current Arrangements	Variation for Health Pandemic	Legislative or other Reference
4	Employee caring for sick family or household member/s.	Carers' leave debited against accrued sick leave.	Access paid SPL - 20 days maximum once sick leave accruals are exhausted.	Directive relating to Sick Leave Directive relating to Long Service Leave Directive relating to Recreation Leave
5	Employee caring for children due to closure of school and/or childcare centres.	Carers' leave debited against accrued sick leave.  Discretionary emergent/compassionate leave under the directive relating to Special Leave for all employees excluding casuals and general employees.	Access paid SPL - 20 days once sick leave accruals are exhausted.  Other leave types (i.e. recreation and/or long service leave) may be accessed if required once paid SPL exhausted.	Directive relating to Sick Leave Directive relating to Special Leave Directive relating to Long Service Leave Directive relating to Recreation Leave
6	Staff reliant on public transport unable to travel to work because public transport is suspended.	Telecommuting available on request subject to operational convenience.	Departments can enter additional telecommuting arrangements by agreement until public transport becomes available.  Where this is not possible and employees are not able to attend work by their own means, employees can access paid special leave in accordance with a directive relating to Special Leave.	Directive relating to Special Leave  Agency telecommuting arrangements
7	Employee absent due to pandemic related death of one or more close family member/s.	Directive relating to Special Leave – bereavement leave  Two days leave on full pay on each occasion.	No variation required.	Directive relating to Special leave
8	Employee refuses to attend work for fear of contracting the virus.	<i>Public Service Act 2008 – s187: officers may be disciplined if absent without leave and without reasonable excuse.</i>	No variation required as CEOs will require attendance at work unless a risk to workplace safety and health is identified or other direction not to attend is made.	<i>Public Service Act 2008 – s187 (Grounds for Discipline)</i>
9	Employee refuses to attend work after being directed to do so by the employer.	<i>Public Service Act 2008 – s187: officers may be disciplined if absent without leave and without reasonable excuse.</i>	No variation required.	<i>Public Service Act 2008 – s187 (Grounds for Discipline)</i>
10	Employee is absent from work while fulfilling volunteer roles in the community (e.g. State Emergency Service, local hospital, aged care facility, etc).	Directive relating to Special Leave.  Leave on full pay as required at departmental convenience.	Chief Executive has the discretion to grant special leave with pay to fulfil additional and relevant volunteer roles in keeping with the intent of the "attendance at emergencies" as prescribed in Schedule 2 or "Declared emergency situation or state disaster" as prescribed in Schedule 1 of the Ministerial Directive on Special Leave.	Directive relating to Special Leave

No	Scenario	Current Arrangements	Variation for Health Pandemic	Legislative or other Reference
11	Employees not required at work.	Where an employee is willing and able to attend work, and is directed by the employer not to attend work, the employee may be directed to attend an alternative work location, undertake flexible work arrangements or if unable to otherwise work will be paid regular remuneration	No variation required.	Regular remuneration as defined in this directive
12	Employee shows symptoms of illness while at work.	Employee can be directed to leave the workplace.  Entitlements will be subject to flexible work arrangements and appropriate leave types.	This rule to be strictly enforced to stem spread of the virus.  Employee may be asked to undertake a medical assessment.	<i>Public Service Act 2008 – s25 (Principles of Public Service Employment)</i>
13	Employee returns to work after a period of illness caused by the pandemic virus.	No special arrangements.	Employees should be advised not to return to work until after the relevant minimum period of time prescribed by health authorities.	<i>Public Service Act 2008 – s25 (Principles of Public Service Employment)</i>
14	Employee returns to work after a period of caring for family members who have contracted the pandemic virus.	No special arrangements.	It may be necessary for employees to confirm medical clearance before they enter the workplace.  <i>Note: further advice will be sought from Qld Health.</i>	
15	Staff present for work but the work location is not available because of reasons such as quarantine.	Staff could be directed to attend work at alternative locations or undertake flexible work arrangements. Paid Special Leave.	No variation required.	Flexible work arrangements  <i>Public Service Act 2008 – s120 (Secondment of Officers) and s133 (Transfer of Officers)</i>
16	Staff not observing health and safety protocols.	Employees can be directed to leave the workplace.  Employer can implement discipline procedures and/or suspension as appropriate.	No variation required	<i>Public Service Act 2008 – s187 (Grounds for Discipline), s25 (Principles of Public Service Employment)</i>
17	Employer decides to close down a workplace because insufficient staff are available.	Where employee is not on approved leave and is ready to attend work and is directed by the agency not to attend work, the employee could be directed to attend work at alternative locations or undertake flexible work arrangements or if unable to otherwise work regular remuneration is payable.	No variation required  Refer Item 10 above	Regular remuneration as defined in this directive
18	Employer staggers working hours to minimise chance of spread of illness by increasing physical distance between staff members.	Generally, this can be done in accordance with existing award/EB hours provisions with consultation and by agreement, including public servants under accrued hours arrangements.	No variation required	Relevant award or agreement

No	Scenario	Current Arrangements	Variation for Health Pandemic	Legislative or other Reference
19	Employee is required to work in other locations or doing different work.	Employees can be directed to attend work at different locations.	<p>Employer needs to ensure</p> <ul style="list-style-type: none"> <li>employees are able to perform the alternative work; and</li> <li>the workplace health and safety status of the alternative workplace.</li> </ul> <p>Agreement is required from non-officers to perform different roles at same or different levels.</p>	<p><i>Public Service Act 2008</i> – s133 (Transfer of Officers)</p> <p>Regular remuneration as defined in this directive</p>
20	Employees working from home.	Flexible work arrangements including telecommuting available on request subject to operational convenience.	Chief Executives may extend telecommuting arrangements, temporarily remove some requirements (e.g. WHS inspections) and encourage certain employees to work from home.	Agency flexible work arrangements
21	Available staff work additional hours during the pandemic to cover for others who are ill or absent from the workplace.	<p>If staff are subject to the directive relating to Critical Incident Entitlements and Conditions for overtime remuneration during a declared pandemic.</p> <p>For those staff not subject to the directive, overtime, TOIL, accrued time would be payable as per the existing award entitlements.</p>	No variation required	<p>Directive relating to Critical Incident Entitlements and Conditions</p> <p>Directive relating to overtime</p> <p>Relevant award or agreement</p>
22	Some staff are required to work in lower level positions because of high levels of absenteeism.	Agreement should be sought from employees to temporarily perform lower level duties. Appointments to lower level should not occur and employee maintains normal substantive salary.	No variation required	<p><i>Public Service Act 2008</i> s133 (Transfer of Officers)</p> <p>Directive relating to Transfer Within and Between Classification Levels and Systems</p>
23	Some staff are required to work in higher level positions because of absenteeism.	Directive relating to Higher Duties applies	No variation required	Directive relating to Higher Duties
24	Staff are required to evidence that absence from work is a result of the declared health pandemic situation – personal illness or carer’s responsibilities or unavailability of public transport.	<p>Directive relating to Sick Leave or this directive.</p> <p>An application for sick leave or carer’s leave of more than three days is to be supported by a medical certificate or any other evidence of the illness that is acceptable to the chief executive.</p>	<p>Supporting documentation will be required. A medical certificate may not be required. Instead, Staff may be required to provide a copy of a record to confirm they have undergone a relevant assessment or such other document which satisfies agency requirements – for self or another with actual or suspected illness.</p> <p>Employees are required to provide evidence of closure of relevant school of childcare centre and unavailability of public transport to travel to work.</p>	<p>This directive.</p> <p>Directive relating to sick leave</p>
25	<p>Employee seeks special leave because of:</p> <ul style="list-style-type: none"> <li>real or suspected illness; and/or</li> <li>requirement to care for family member/s who have an illness related to the virus; and/or</li> <li>requirement to care for children as a result of the closure of school or day care facilities; and/or</li> <li>inability to access public transport to travel to work.</li> </ul>	<p>Directive relating to Special Leave</p> <p>CEOs may grant special leave in a range of circumstances which include but are not limited to:</p> <ul style="list-style-type: none"> <li>emergency or compassionate grounds</li> <li>floods, cyclones, bushfires etc</li> <li>other exceptional circumstances.</li> </ul>	In order to ensure equity across the sector, special leave provisions utilised with reference to a health pandemic will be applied as consistently as possible across the sector under guidance from central agencies.	Directive relating to Special Leave