

# Implementation Guideline – Directive 01/20

## Minister for Industrial Relations and Commission Chief Executive Directive: Employment Arrangements in the Event of a Health Pandemic

### Dated:

14 April 2020 – Version 2

### Purpose

The purpose of this document is to assist industrial relations and human resources practitioners in the Queensland Public Sector with the implementation of Directive 01/20: Employment Arrangements in the Event of a Health Pandemic (the 'Health Pandemic Directive') and specifically with respect to the emergence of the Novel Coronavirus (COVID-19) in early 2020. This document is provided as guidance material only.

**Queensland Health is the authoritative source for health-related information regarding COVID-19, including information regarding when employees may be required to self-isolate.** Up to date Queensland Health information is available at: [www.health.qld.gov.au/coronavirus](http://www.health.qld.gov.au/coronavirus) or by calling **13 HEALTH (13 43 25 84)**.

Frequently asked questions about the management of the Queensland public sector workforce in response to the COVID-19 health pandemic are being developed by the Public Service Commission and will be made available on the Public Service Commission website.

### Background – COVID-19

In January 2020, the Queensland Government activated the State Health Emergency Coordination Centre (SHECC) to coordinate the State's response to an outbreak of COVID-19. The SHECC operates in conjunction with Hospital and Health Services' Health Emergency Operations Centres, the Queensland Ambulance Service and the State Disaster Coordination Centre.

On 31 January 2020, the Minister for Health issued a section 319 declaration with respect to COVID-19, which (at the date of version 2 of this document being issued) has been extended to 19 May 2020:

<https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2020-0013#sec.2>

## Implementation guidelines

### 1. When the Health Pandemic Directive entitlements apply

The Health Pandemic Directive supersedes Directive 06/18 and is a joint Directive between the Minister for Industrial Relations and the Public Service Commission Chief Executive pursuant to sections 53 and 54 of the *Public Service Act 2008* (PS Act).

The Health Pandemic Directive was approved for release on 16 March 2020. The Directive comes into effect from that date **and** upon 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 (see sections 9 and 10 of the Directive).

For the COVID-19 health pandemic, the provisions of the Health Pandemic Directive take effect from the 16 March 2020 (i.e. the provisions are not backdated to the issue of the declaration under s319 of the *Public Health Act 2005* made on 31 January 2020).

### 2. Health Pandemic Directive application

Version 2 note: OIR is aware that since the publication of the revised Directive on 16 March 2020, entities identified in the 'not covered' column at section 17 have started to apply the terms of the Directive through administrative or other mechanisms.

The Health Pandemic Directive applies to 'public service employees' as defined in section 9 of the PS Act including long-term casuals (as defined in the Directive). However, only sections 13.2 and 14.2 of the Health Pandemic Directive about Special Pandemic Leave and Special Leave apply to casuals.

This means the Health Pandemic Directive applies to the majority of public servants in departments. There are some exceptions e.g. sworn police officers; firefighters; employees of Hospital and Health Services – however see version 2 note above.

The Health Pandemic Directive also applies to Public Service Offices (PSOs) prescribed in schedule 1 of the PS Act and those PSOs that specify application of the Directive in the *Public Service Regulation 2018*.

The Office of Industrial Relations (OIR) has prepared an indicative coverage table which is outlined at the end of this guideline. Entities should confirm their own coverage.

The Health Pandemic Directive does not apply to Government Owned Corporations.

Where the Health Pandemic Directive does not automatically apply, public sector entities and Government Owned Corporations are **strongly encouraged** to apply the Directive through administrative or other arrangements to provide consistent industrial entitlements for public sector employees affected by the COVID-19 where possible.

### 3. Senior Officers (SOs), Senior Executive Service (SES), Chief Executives (CEs) and s.122 contracts

The Health Pandemic Directive applies to SO, SES, CE and s.122 contract employees.

The SO (11/17) and SES (10/17) Directives already apply the Ministerial Directive about Special Leave (05/17). In addition, Directives 11/17 and 10/17 provide a broad recognition that the ordinary hours of duty are determined by their chief executive, having regard to the health, well-being and work-life balance of the employee.

### 4. Entitlements provided in the Health Pandemic Directive

A flow-chart has been developed to assist in determining key employee entitlements during a health pandemic. The flow-chart is attached at the end of this document.

#### Existing entitlements

The Health Pandemic Directive provides two principal entitlements when there is a declared health pandemic, which are in addition to existing industrial entitlements for employees. These two entitlements have not changed from the superseded Directive (06/18):

- A maximum of up to 20 days paid “Special Pandemic Leave” when an employee’s paid sick leave has been exhausted; and
- Early access to pro-rata long service leave, regardless of length of service, when all other paid leave accruals have been exhausted.

The specific details of how and when these entitlements are enlivened are detailed in the Health Pandemic Directive at section 13.

The Health Pandemic Directive provides that where an employee **is directed** by their employer not to attend their workplace (e.g. the workplace has closed) and the employee is unable to undertake a flexible work arrangement (e.g. work at a reasonable alternative location or work from home), such employee will be paid their regular remuneration without debit to any leave account.

#### New entitlements

The Health Pandemic Directive extends the Special Pandemic Leave entitlement and the application of the Ministerial Directive about Special Leave to all casual employees, at the discretion of the relevant Chief Executive (for more details about the entitlements for casuals – see the topic below).

While not a new entitlement – the Health Pandemic Directive now directs the reader to the Ministerial Directive about Special Leave for situations where an employee is not able to work because of a health pandemic and relevant leave arrangements are not provided for in the Directive or in a relevant industrial instrument.

An example is provided – where an employee is required 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 their Chief Executive (or delegate) in accordance with the Ministerial Directive about Special Leave.

## 5. Special Pandemic Leave

See section 13.1 of the Health Pandemic Directive:

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 (carer's 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 (carer's leave) accruals.

Special Pandemic Leave will be paid as regular remuneration which is defined in the Directive.

The maximum 20 days Special Pandemic Leave **is not** convertible to an hourly entitlement. This means an employee will use one day of their Special Pandemic Leave for each work engagement they would normally have worked, regardless of the length of their normal work/shift for that day. For example:

- if a part-time employee normally works four (4) hours, that constitutes one day of Special Pandemic Leave; or
- if an employee normally works a 12 hour shift, that constitutes one day of Special Pandemic Leave.

Special Pandemic Leave need not be taken consecutively.

Special Pandemic Leave is exclusive of public holidays.

## 6. Regular remuneration

“Regular remuneration” is defined in the Health Pandemic Directive as: ordinary salary including work related allowances and includes payments based on a projected roster where applicable but excluding overtime.

There has been no change to the remuneration entitlement for paid Special Pandemic Leave provided for in superseded Directive: 06/18.

## 7. Higher Duties

The Government made a commitment to allow for payment of any form of paid leave at the higher duties amount when it is taken during the employees' higher duties relieving period in settlement of negotiations to replace the State Government Entities Certified Agreement 2015 (the Core).

In recognition of this commitment, during this health pandemic, employees are to be paid the higher duties amount during any form of paid leave taken during the employees' higher duties relieving period. This will include paid Special Leave and paid Special Pandemic Leave.

## 8. Employee evidence – Special Pandemic Leave

While there is still a requirement for employees to provide supporting evidence (documentation or advice to the satisfaction of the Chief Executive or delegate) for all periods of absence on Special Pandemic Leave, where employees access 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. Employees may provide a copy of a record to confirm they (or their family member) have undergone a relevant assessment or such other documentation or other advice which satisfies agency requirements. There is no one type of mandated evidence prescribed by the Directive.

Example – where a school has closed and the employee needs to provide care for their child, an email/letter/other advice from the school or Department of Education about the school closure including relevant dates may be considered appropriate.

## 9. Entitlements for casuals

Long-term casuals are automatically entitled to the paid Special Pandemic Leave up to a maximum of 20 days.

A long-term casual, for the purposes of the Health Pandemic Directive (at section 8), 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.’* This definition is drawn from Section 15 of the *Industrial Relations Act 2016*.

Furthermore, the Health Pandemic Directive extends, at the discretion of the relevant Chief Executive, access to the paid Special Pandemic Leave (up to a maximum 20 days) to all other casuals; and access to Special Leave under the Ministerial Directive for Special Leave (05/17) to all casuals.

### Note:

While the discretion to grant leave to a casual employee rests with the relevant Chief Executive, agencies should consider the following when deciding an application for leave:

- Does the casual employee work on a regular and systematic basis such as on a roster?
- If not for the health pandemic impact, is the casual employee anticipated to continue to be employed?

Leave should generally be reflective of the likely work pattern for the employee concerned e.g. their roster. Where this is not possible, an averaging methodology may be used, for example – see Directive 17/18: Paid Parental Leave section 9.6.

## 10. Part-time and casual employees

Each employee is entitled to receive up to a maximum of 20 days paid Special Pandemic Leave. The paid Special Pandemic Leave is not pro-rata for a casual or part-time employee.

In cases of an employee being engaged by more than one public sector employer, the 20 days special pandemic leave is not multiplied by each engagement. For example, a casual employee who is engaged by more than one agency within the Queensland Government is entitled to receive up to a total

maximum of 20 days Special Pandemic Leave. That is, the part-time or casual employee receives Special Pandemic Leave for 20 rostered workdays of the hours the employee would have normally worked.

### **11. Industrial arrangements during self-isolation**

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.

This example is consistent with advice from the Public Service Commission.

### **12. Health Pandemic Scenarios**

A number of workplace scenarios are contained in Schedule A to the Directive. Agencies are encouraged to review these scenarios. Where further advice about this Directive is needed, please forward all requests for advice to OIR: [IR@oir.qld.gov.au](mailto:IR@oir.qld.gov.au)

### **13. Public transport not available to get to work**

The Health Pandemic Directive provides that the Ministerial Directive about Special Leave will apply where employees are unable to attend work because they are reliant on public transport and those services are suspended or cancelled due to the COVID-19 event and flexible work arrangements are not possible.

Public transport includes commuter trains or other light rail, buses and ferries.

Public transport does not include private ride sharing arrangements such as taxis, uber or carpooling. However, special consideration should be given to employees with a disability who are normally reliant on these forms of travel for work.

### **14. If an employee voluntarily undertakes personal travel to a country or a known risk area that will require self-isolation, are they entitled to Special Leave?**

As outlined above and in the Health Pandemic Directive, where an employee is required to self-isolate on 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.

Employers and employees should have discussions regarding personal overseas travel e.g. for annual leave, before an employee proceeds on such travel to explain and agree on expectations and entitlements for their return to the workplace.

## 15. Critical incident Directive

The Directive about Critical Incident Entitlements and Conditions (06/16) continues to apply when activated in the normal way. Employees involved in response and recovery programs of work led by the relevant agency will be advised if Directive 06/16 is applicable to their duties.

## 16. Employee assistance service (EAS)

It is appreciated that employees may need additional support during a health pandemic. Employees have access to confidential counselling and support services through their local EAS provider.

## 17. Health Pandemic Directive – Government Entities – Automatic Coverage Table

Covered	Not Covered
<b>Departments</b>	<b>Public Service Offices and Statutory Bodies</b>
Premier and Cabinet	Crime and Corruption Commission
Aboriginal and Torres Strait Islander Partnerships	Cross River Rail
Agriculture and Fisheries	Hospital and Health Services and Queensland Health (excludes employees employed under the <i>Public Service Act 2008</i> in Queensland Health and Queensland Ambulance Service)
Child Safety, Youth and Women	Legal Aid Queensland
Communities, Disability Services and Seniors	Racing Queensland
Queensland Corrective Services	Stadiums Queensland
Education – Including Teachers	Safe Food Production QLD
Employment, Small Business and Training	Southbank Corporation
Environment and Science – Including Arts Queensland and Corporate Administration Agency, and State Library, Queensland Art Gallery and Gallery of Modern Art and Queensland Museum - excluding employees of the Board	TAFE Queensland
Housing and Public Works	Queensland Institute of Medical Research
Innovation and Tourism Industry Development	Queensland Police Service – sworn officers (excludes employees employed under the <i>Public Service Act 2008</i> )
Justice and Attorney General	Queensland Ombudsman
Local Government, Racing and Multicultural Affairs	Queensland Competition Authority
Natural Resources, Mines and Energy	The Queensland Ambulance Service - Paramedics
Treasury	The Queensland Fire and Emergency Service – Firefighters including auxiliary Firefighters (excludes employees employed under the <i>Public Service Act 2008</i> )
State Development, Manufacturing, Infrastructure and Planning	The Queensland Rural and Industry Development Authority
Transport and Main Roads – including Maritime Safety Queensland	Tourism and Events Queensland
Youth Justice	Trade and Investment Queensland
Office for Veterans	WorkCover Queensland
	Office of the Governor

<b>Public Service Offices and Statutory Bodies</b>	<b>Government Owned Corporations</b>
Audit Office	Clean Co Queensland
Building and Construction Industry (Portable Long Service Leave) Authority (QLeave)	CS Energy
Building Queensland	Energy Queensland
Electoral Commission of Queensland	Gladstone Ports Corporation
Family Responsibilities Commission Registry	North Queensland Bulk Ports Corporation
Gold Coast Waterways Authority	Ports North
Health and Wellbeing Queensland	Powerlink
Industrial Registry	QCN Fibre
Land Tribunal	Queensland Rail
Mental Health Review Tribunal	SEQ Water
Office of the Director of Child Protection Litigation	Stanwell
Office of the Energy and Water Ombudsman	Sunwater
Office of the Health Ombudsman	Townsville Port
Office of the Independent Assessor	<b>Other Groups</b>
Office of the information commissioner	Ministerial staff
Office of the Inspector-General of Emergency Management	
Office of the Land Access Ombudsman	
Office of the Prostitution Licensing Authority	
office of the public guardian	
Office of the Queensland College of Teachers	
Office of the Queensland Parliamentary Counsel	
Office of the training ombudsman	
Public Safety Business Agency	
Public Service Commission	
Public Trust Office	
Queensland Curriculum and Assessment Authority	
Queensland Family and Child Commission	
Queensland Human Rights Commission	
Queensland Mental Health Commission	
Queensland Racing Integrity Commission	
Queensland Reconstruction Authority	
The Gasfields Commission - Applied ruling	
The Queensland Building and Construction Commission and the Queensland Building and Construction Employing Office - Applied ruling	
The Residential Tenancies Authority and the Residential Tenancies Employing Office - Applied ruling	
<b>Chief Executives, Senior Executive Service, Senior Officers and s.122</b>	
CE, SES, SO and CE employees are covered by the Directive.	

## **New in version 2:**

### **18. Viral infection**

The reference in section 13.1 of the Health Pandemic Directive to viral infection is not limited to the virus which is the subject of the health pandemic (i.e. COVID-19). The reason for this is twofold:

- 1) during the health pandemic, it may not always be possible for an employee to obtain a positive diagnosis that they (or the person they are caring for) are infected with COVID-19 and/or the diagnosis may take some time after the employee/individual has become sick; and
- 2) during the health pandemic, it is important that employees with viral infections other than COVID-19 (e.g. influenza) also remain away from the workplace.

### **19. Hours of work arrangements**

The Health Pandemic Directive states at 12.1:

*“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.”*

The intention of this section is to highlight that employees’ existing employment arrangements should continue to be observed during the health pandemic as far as possible. For example – if an employee is working from home, their existing hours of work arrangements would not automatically change as a result.

If an agency proposes a change to existing employment arrangements under a relevant industrial instrument, the agency should raise this with the employee/s and the relevant union/s, in the normal way.

Arrangements, such as the accrual of flexitime, will continue to remain subject to organisational requirements that work is available to be done outside of employees’ standard daily or weekly hours and the employees can perform that work. Agencies are reminded that the existing requirement at clause 15.6 and Schedule 3 of the *Queensland Public Service Officers and Other Employees Award – State 2015* (QPSOOE Award) for agencies or departments to arrange work such that all eligible employees can have access to an accrued day or part-day off per work cycle continue to apply.

Some entities have unique and specific hours of work arrangements such as Accrued Days Off (ADO) for school holiday periods, including those in the Department of Education, who rely on those arrangements for continuity of income and these should remain honoured during the health pandemic to mitigate adverse effects on the employee. Existing ADO accruals should continue to be honoured.

By way of example, if an employee’s working hours arrangement under the QPSOOE Award is to work additional hours across four days per week to accrue the fifth day off, this arrangement continues notwithstanding the employee performing the work from home during the COVID-19 Health

Pandemic. Likewise, if rosters have been implemented in line with clause 6.2 (procedures to implement facilitative award provisions) of the QPSOOE Award, those rosters remain in place until such time they are varied in accordance with the award. If the manager proposes a change to such arrangements it should be raised and managed with the employee/s and the relevant union/s, in the normal way.

## **20. Remuneration entitlements for sick leave, special leave and special pandemic leave**

The Health Pandemic Directive does not change the remuneration employees are normally entitled to receive when granted:

- Special Leave as provided in the Ministerial Directive about Special Leave (05/17);
- Paid Special Pandemic Leave as provided in the Health Pandemic Directive. Note: the remuneration payable is the same as that provided in superseded Ministerial Directive: 06/18, which was originally introduced in 2009 via Directive 04/09; and
- Sick leave (including carer's leave) as provided in industrial instruments.

Employees on higher duties will continue to receive the higher duties rate when on leave as outlined in section 7 (above).

## **21. Special Pandemic Leave not able to be taken at half pay**

The Special Pandemic Leave entitlement is for a maximum of 20 days paid at the employee's regular remuneration. There is no provision to apply the entitlement at half pay.

## **22. Special Pandemic Leave not able to be taken for part days**

There is no provision to take the Special Pandemic Leave as a 'part-day' absence.

Where an employee's sick leave balance is insufficient to cover their next entire work engagement prior to them taking Special Pandemic Leave – there are a number of options available:

- The employee may commence taking Special Pandemic Leave when the employee's sick leave balance becomes insufficient to cover their next work engagement;
- The employee may take Special Pandemic Leave on the same day as the employee takes the remainder of their sick leave balance. Note: a full day of Special Pandemic Leave will be debited where this occurs; or
- The employee may take unpaid sick leave for the remainder of the work engagement that is not covered by paid sick leave. The employee can then commence Special Pandemic Leave on the next work engagement.

Example: An employee normally works 7.6 hours per day. The employee is currently on sick leave. The employee will be eligible to receive Special Pandemic Leave. The employee's remaining sick leave balance is 4.0 hours, so it is insufficient to cover their next absence of 7.6 hours in its entirety. The employer and employee may choose how to resolve this issue based on the points outlined above.

### **23. Temporary engagements which expire during health pandemic**

The PSC have provided advice on temporary engagements which can be located here: <https://www.forgov.qld.gov.au/covid-19-frequently-asked-questions-public-service-hr-practitioner-and-managers#employment-conditions>

This information is regularly updated by the PSC.

### **24. Vulnerable workers**

A number of situations have arisen concerning vulnerable workers. The PSC have provided information on vulnerable worker categories (<https://www.forgov.qld.gov.au/support-employees-during-health-pandemic-covid-19>). Additional categories of workers who have vulnerabilities may also be identified by the employee providing the employer with medical advice.

The Australian Health Protection Principal Committee (AHPPC) recommends that where vulnerable workers undertake essential work, a risk assessment must be undertaken. Risk needs to be assessed and mitigated with consideration of the characteristics of the worker, the workplace and the work. This includes ensuring vulnerable people are redeployed to non-customer-based roles where possible. Where risk cannot be appropriately mitigated, employers and employees should consider alternate arrangements to accommodate a workplace absence (<https://www.health.gov.au/news/australian-health-protection-principal-committee-ahppc-advice-to-national-cabinet-on-30-march-2020>).

- Vulnerable workers who are not ill and are required to self-isolate should work flexibly wherever possible;
- If flexible work is not possible, the employee (including a casual) may apply for special leave at CE discretion;
- The granting of special leave should include a review period that the agency considers appropriate (for example: an initial 14-day review period of special leave may be suitable as this aligns with the current self-isolation requirements for people who have come into contact with COVID-19 or are returning to Australian from overseas or interstate);
- The employee should also be informed that they should remain available as they may be required to return to the workplace if safe to do so, or undertake flexible work at a point where appropriate work can be identified;
- The employee should also be informed that they are obliged to promptly inform their employer if their circumstances change (for example, if they become sick and should be placed on the correct form of leave);
- Agencies are reminded to keep in regular contact with vulnerable workers.

### **25. Employee Mobilisation Service**

The PSC is leading the employee mobilisation service. Questions regarding this should be directed to the PSC via the online enquiry or via phone: <https://www.forgov.qld.gov.au/request-advice-about-directives-policies-and-guidelines>.

## 26. Entitlements where the Health Pandemic Directive does not deal with a specific scenario

If an agency encounters a situation which it believes it cannot address after first reading the Health Pandemic Directive and Implementation Guidelines, please contact OIR for further advice using the following email address: [IR@oir.qld.gov.au](mailto:IR@oir.qld.gov.au)

Please limit any questions to **actual scenarios** (not hypothetical situations) to ensure resources can continue to be used as efficiently as possible during this time.

## Version Control

Version	Date	Comments
1.0	16 March 2020	Issued with released if the Directive 01/20
2.0	14 April 2020	Released with additional scenarios from section 18 and other minor updates

# Employment arrangements in the event of a health pandemic – March 2020



**\*1** Long term casual employees are entitled to Special Pandemic Leave. All other casual employees may be entitled to Special Pandemic Leave at the discretion of the Chief Executive or delegate. All casual employees may be entitled to Special Leave at the discretion of the Chief Executive or delegate.

**\*2** Flexible work arrangements (work from home) may be an option where care circumstances are appropriate.

