

EMERGENCY RESPONSE – ACTPS ADVICE RELATING TO STAFF ENTITLEMENTS AND ACCESS TO LEAVE DURING THE COVID-19 OUTBREAK



The purpose of this document is to provide advice in managing workforce issues in the ACT Public Sector (ACTPS) in relation to the current response to the novel coronavirus ('COVID-19') outbreak. This advice summarises employee entitlements and leave provisions under the relevant enterprise agreements. This advice applies to employees and executives employed in the ACTPS under the Public Sector Management Act 1994.

The escalation of COVID-19 is fast moving and this policy advice is likely to change frequently. Updates will be provided as required.

This advice should be read in conjunction with the latest communications from the Head of Service and the ACT Chief Health Officer (or delegate), in particular about the circumstances in which individuals are required to follow isolation requirements. This advice is not designed to provide or replace medical advice.

Employee Entitlements - Principles

Generally, where an employee is:

- *ill due to COVID-19*; personal leave provisions apply as per the relevant enterprise agreements; or
- *not ill, but must look after an immediate family member who is ill due to COVID-19*; the employee should work from home where possible, or be granted absence using leave not provided for elsewhere; or
- *not ill, but is excluded from the workplace due to isolation requirements that either affect them personally or affect an immediate family member*; the employee should work from home where possible, or be granted absence using leave not provided for elsewhere; or
- *not ill but chooses to exclude themselves from the workplace*; the manager should work with the employee to provide opportunities to work from home and if this is not possible, personal or annual leave may be applicable.

Immediate Family

The employee may be directly affected themselves or through an immediate family member.

The enterprise agreements define 'Immediate Family' as a person who is:

- a domestic partner (including a former domestic partner); or
- a child or an adult child, parent, grandparent, grandchild or sibling of the employee or domestic partner of the employee; or
- a person related to the employee by Aboriginal and/or Torres Strait Islander kinship structures; or
- a child who is the subject of a permanent caring arrangement; or
- an adopted child.

'Immediate family' includes adopted, step-, fostered or ex-nuptial immediate family where these circumstances exist. Under the enterprise agreements for various leave purposes, immediate family can also include a household member.

Additionally, the head of service (or delegate) may consider that the definition of 'immediate family' be extended for a particular decision involving an employee where exceptional circumstances exist. This might include other close family members or an employee who lives alone and has no-one to nominate as 'immediate family', may nominate one person, in similar circumstances, for the purpose of caring responsibilities.

Working from Home

Where an employee is not ill, but is unable to attend the workplace, the first consideration should be that they work from home (where practicable).

Managers should make reasonable adjustments to the requirements of the employee's position, having regard to operational requirements and the suitability of the work. For example, an employee may undertake their e-learning requirements online, or undertake other tasks assigned by the directorate.

Further information about determining appropriate home-based work arrangements can be found in clause E7 of the relevant enterprise agreement and in the Flexible Workplace Policy. You may also access [The Work health and safety COVID-19 site](#) on Sharepoint which provides information and resources to support health, safety and wellbeing in our workplaces, and while working from home. Managers should also refer to their Directorate's home-based work policies as relevant.

Where the period of time worked from home is extended, managers should ensure workers are linked into the workplace and provided adequate support.

Flexible Deployment

During the COVID-19 crisis, it may become necessary to deploy workers, including casual workers, in roles outside their normal range of tasks. For example, an administrative worker who normally takes patient registrations in a medical clinic may be temporarily re-tasked to drive urgent courier runs for ACT Pathology.

Where this occurs, workers will not have their take home pay reduced and the deployment will be consistent with the skill set and training of the employee. No employee will be placed in an unsafe situation as a result.

Any temporary changes to an employee's role will be needs driven and done in consultation with the employee and where they choose, their representatives.

When Relevant Leave Is Exhausted?

Where personal leave credit under the relevant enterprise agreement is exhausted the Delegate may approve:

- the anticipation of personal leave for eligible employees;
- additional paid personal leave; or
- personal leave without pay.

Delegates should assess such need on a case-by-case basis and consistent with the terms of the relevant enterprise agreements. In addition, advice should be sought from the relevant directorate HR areas.

Flexibility around hours, duties and work location

There may be circumstances where an employee may be able to work some hours from home, but not complete full-time hours. This may be the case where an employee needs to stay at home to care for a

child as a result of changes to how education is delivered, or where there is insufficient work. There may also be circumstances, where a high degree of flexibility is required given the extraordinary circumstances.

Managers should work with employees to enable home based work around other responsibilities. This may include allowing the employee to work outside the bandwidth, or averaging their hours across more working days, or longer periods.

Where an employee works from home but does not have enough work or flexibility to complete their standard hours, they will not be required to take leave. Managers should discuss with their employees whether the accrual of flex time and/or ADOs should be paused in such circumstances.

Where an employee cannot work from home in a regular way, and is placed on leave 'where leave cannot be granted under any other provision', they can still be asked to do some work from home or can be asked to return to duty, where safe. Alternatively, If an employee is on 'leave where leave cannot be granted under any other provision' because there was no ability for them to work from home, they can subsequently be required to work from home if work becomes available. The employee can also be redeployed to other duties provided that the employee can reasonably be expected to perform the work. However, work outside of the home may not be possible where employees have additional caring responsibilities as a result of COVID-19 related changes to school and child care arrangements.

Where an employee is working remotely, but not on full time hours, it is a matter of judgement based on the circumstances whether or not they are on duty, or on leave 'where leave cannot be granted under any other provision'.

Interaction with Other Leave Types

Where an employee has applied for and been granted other types of paid leave, such as annual leave or long service leave and seeks to return to work and to have the leave cancelled, this should be facilitated where practicable.

Following the cancellation of leave, this guidance should subsequently be applied as appropriate. Where employees on extended periods of unpaid leave seek to return to the workplace when they otherwise would have remained on leave, consideration should be given on a case by case basis relevant to the circumstances.

Workplace Health and Safety Considerations

The ACT Government recognises the impact that events like these can have on the health and wellbeing of ACTPS employees. It is important for employees to prioritise wellbeing and practice good self-care during these times. Employees are encouraged to talk to their supervisor or HR area about supports that may be available during these times, such as flexible work arrangements where this is appropriate, and personal leave to manage well-being.

Employees should be reminded that the ACT Government Employment Portal provides links to [mental health and well-being supports](#) for ACTPS employees and their families, including access to the [Employee Assistance Program](#).

Possible Scenarios due to COVID-19

Possible scenarios that may arise during this outbreak, and the relevant leave arrangements, are listed below.

A. Employee is ill

Personal leave with pay under the relevant enterprise agreement for the period of the employee's illness, subject to documentary evidence would be applicable.

When an employee is ill, they are not fit to perform work and accessing their personal leave entitlements is appropriate in this circumstance.

B. Employee and their immediate family are not ill but have been home-isolated in line with advice from the Chief Health officer or the head of service

This includes circumstances where:

- *an employee or a member of the employee's immediate family has been in close contact or potentially exposed to a confirmed case of the disease through:*
 - their immediate family or a household member;
 - their workplace; or
 - visiting a country or region where there is a confirmed case of the disease; and
 - attending a location where there is a confirmed case of the disease, for example a restaurant or aircraft etc).

The employee should work from home if appropriate or take leave under the relevant enterprise agreement provision 'take leave where leave cannot be granted under any other provision'.

This leave will be granted with the same pay and entitlements as if the employee had been on annual leave, with no reduction of leave credits.

C. Workplace closure

Where an employee's workplace is closed due to COVID-19 related reasons the employee may be asked to work from a different location and may also be asked to perform other duties in accordance with the flexible deployment principle set out in this policy.

Where this is not possible, the employee should work from home if appropriate or take leave under the relevant enterprise agreement provision 'take leave where leave cannot be granted under any other provision'.

This leave will be granted with the same pay and entitlements as if the employee had been on annual leave, with no reduction of leave credits.

D. Employee is not ill but is required to care for an immediate family member who is ill

Where a member of an employee's immediate family is unwell with COVID-19 and requires the employee to care for them, they are unable to work because they are providing care and attention to the ill person.

In usual circumstances carer's leave would apply, but where the immediate family member's illness is COVID-19 related, the employee should 'take leave where leave cannot be granted under any other provision'.

NOTE: Persons caring for children should not bring them into the workplace.

E. Employee is not ill but is required to care for a child as a result of COVID-19 related school or child care changes and/or closure

The employee should work from home if appropriate or take leave under the provision 'take leave where leave cannot be granted under any other provision'.

This leave will be granted with the same pay and entitlements as if the employee had been on annual leave, with no reduction of leave credits.

NOTE: Persons caring for children should not bring them into the workplace.

F. Where a home isolated employee subsequently becomes ill

Personal leave with pay under the relevant enterprise agreement for the period of the employee's illness would be applicable.

Where paid personal leave has been exhausted and documentary evidence of continuing personal illness is produced, personal leave with or without pay or annual leave may be available.

Prior to returning to work, an employee with a confirmed case of the disease will require a medical certificate from their treating medical practitioner to certify that they are fit to return to work and no longer considered infectious.

G. Employee attends work and presents as ill

If an employee is exhibiting symptoms of the disease, the employee should be isolated and [Health Direct](#) contacted.

If the employee is assessed as being ill by a medical practitioner, the employee should access personal leave with pay for the period of the employee's illness. Where paid personal leave has been exhausted and documentary evidence of continuing personal illness is produced, further personal leave with pay, without pay or annual leave may be available.

H. Self home-isolated employee, where not in line with advice from the Chief Health officer or the head of service

The delegate should assess the situation and take appropriate action. In the first instance, managers should promote use of annual leave or personal leave for employees who, for reasons of anxiety, choose not to work despite appropriate work arrangements being in place. In some instances, the employee's mental health and wellbeing may mean that personal leave is more appropriate.

If there is a concern that the absence is unauthorised, the employee may be asked to provide documentary evidence of the requirement for home-isolation or asked to return to work. A continued unauthorised absence in these circumstances may be without pay and may invoke further action.

Entitlements for casual employees who do not have access to paid leave

Casual Employees who require home-isolation on the basis of a direction from the Chief health officer or the Head of Service

A casual employee must follow the direction to self home-isolate.

There are no provisions under the relevant enterprise agreements to provide casuals with paid leave entitlements. However, it is important to consider the employment relationship and avoid disadvantaging casual employees who have a regular pattern of employment.

Where possible, managers should in the first instance endeavour to make arrangements where the casual employee can continue to work from home. This does not apply where the employee is unwell.

ELIGIBLE CASUALS

Where an eligible casual, as defined in the relevant enterprise agreement, has been employed by the ACTPS on a regular and systematic basis and is anticipated to continue employment on a regular basis, standing down without payment should be considered only as a last resort. Note that while the enterprise agreements require a casual to have worked for a period of 12 months before being considered eligible, for the purposes of this situation, the 12-month qualifying period will not apply. Rather, managers should look to the regularity, frequency and anticipated work pattern.

Eligible Casuals who are required to isolate either because of exposure, or because of having contracted COVID-19, are to be paid for any shifts that they would otherwise have worked during the period of isolation.

The absence should be recorded as 'Leave where leave cannot be granted under any other provision' and the rate of pay should be what the eligible casual employee would have been paid had they worked the hours.

OTHER CASUALS

The Delegate should use their discretion in assessing whether or not to stand other casual employees down with pay on a case-by-case basis, taking into consideration the employee's regularity of work and the

impact on the person if they are not paid during this time. It may be appropriate, for example, to pay the casual employee for a shift that had been accepted, but it may not be reasonable to anticipate a shift where there is no regularity of attendance.

The absence should be recorded as 'Leave where leave cannot be granted under any other provision' and the rate of pay should be what the eligible casual employee would have been paid had they worked the hours.

Casual Employees affected by a Workplace Closure

A casual employee affected by a workplace closure may be asked to work their scheduled hours in another location. This may include performing other duties outside the normal range of duties. Any such deployment will be consistent with the skill set and training of the employee. No employee will be placed in an unsafe situation as a result.

Where a casual worker affected by a workplace closure is asked to work their scheduled hours in another location, including from home, and/or to perform other duties, but refuses, the casual will generally not be paid for those hours, provided that the request was reasonable.

If an eligible casual is affected by a workplace closure and is not able to be provided with alternative work, they are to be paid for any shifts that they would otherwise have been expected to have worked during the period of closure.

The absence should be recorded as 'Leave where leave cannot be granted under any other provision' and the rate of pay should be what the eligible casual employee would have been paid had they worked the hours.

Casual Employees affected by COVID-19 related school or child care changes and/or closure

An eligible casual employee who is required to care for their child/children due to COVID-19 related School closures is to be paid for any shifts that they would otherwise have been expected to have worked during that period.

The absence should be recorded as 'Leave where leave cannot be granted under any other provision' and the rate of pay should be what the eligible casual employee would have been paid had they worked the hours.

Non-Government Employees (Labour Hire and Contractors) who require home-isolation on the basis of a direction from the chief health officer or the Head of Service

The non-government employee must follow the direction to home isolate.

The ACTPS does not manage entitlements of non-government employees. Their leave entitlements are managed by the relevant employer of the non-government employee.

It is desirable that the non-government employee has wage continuity, and the Delegate should work with the Employer to apply the same arrangements to the contractor as if they were an ACTPS employee. This would be managed by the Delegate on a case-by-case basis.

Consultation

Directorates should ensure all stakeholders, including unions, are apprised of planning and developments within the directorate.

References

The key principles of this Policy are aligned with the following authorised sources:

- *Enterprise agreements at <https://www.jobs.act.gov.au/about-the-actps/agreements>*

- *Healthy Minds – Thriving Workplaces, An integrated mental health and wellbeing strategy 2019-2022* at https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0004/1428637/Healthy-Minds-Thriving-Workplaces-strategy.pdf
- *Employee Assistance Program* at <https://www.cmtedd.act.gov.au/employment-framework/resources-and-links/employee-assistance-program2>
- *Flexible Workplace Policy* at <https://www.cmtedd.act.gov.au/employment-framework/for-employees/a-z>

Further Information

HR areas that require further information can contact Public Sector Workplace Relations Group on eba@act.gov.au

Health specific advice is available from <http://www.health.act.gov.au>