

Implementation Guideline – Directive 01/20

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

Dated:

16 March 2020 – Version 1

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 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 1 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

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 Health and Hospital Services.

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.

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.

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.

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

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 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
Departments	Public Service Offices and Statutory Bodies
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 – includes e-Health (excludes employees employed under the <i>Public Service Act 2008</i> in QHealth and Ambulance)
Child Safety, Youth and Women	Legal Aid Queensland
Communities, Disability Services and Seniors	Racing Queensland
Corrective Services – Including Corrective Service Officers and Probation and Parole	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
Public Service Offices and Statutory Bodies	Government Owned Corporations
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	Other Groups
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	
Chief Executives, Senior Executive Service, Senior Officers and s.122	
CE, SES, SO and CE employees are covered by the Directive.	

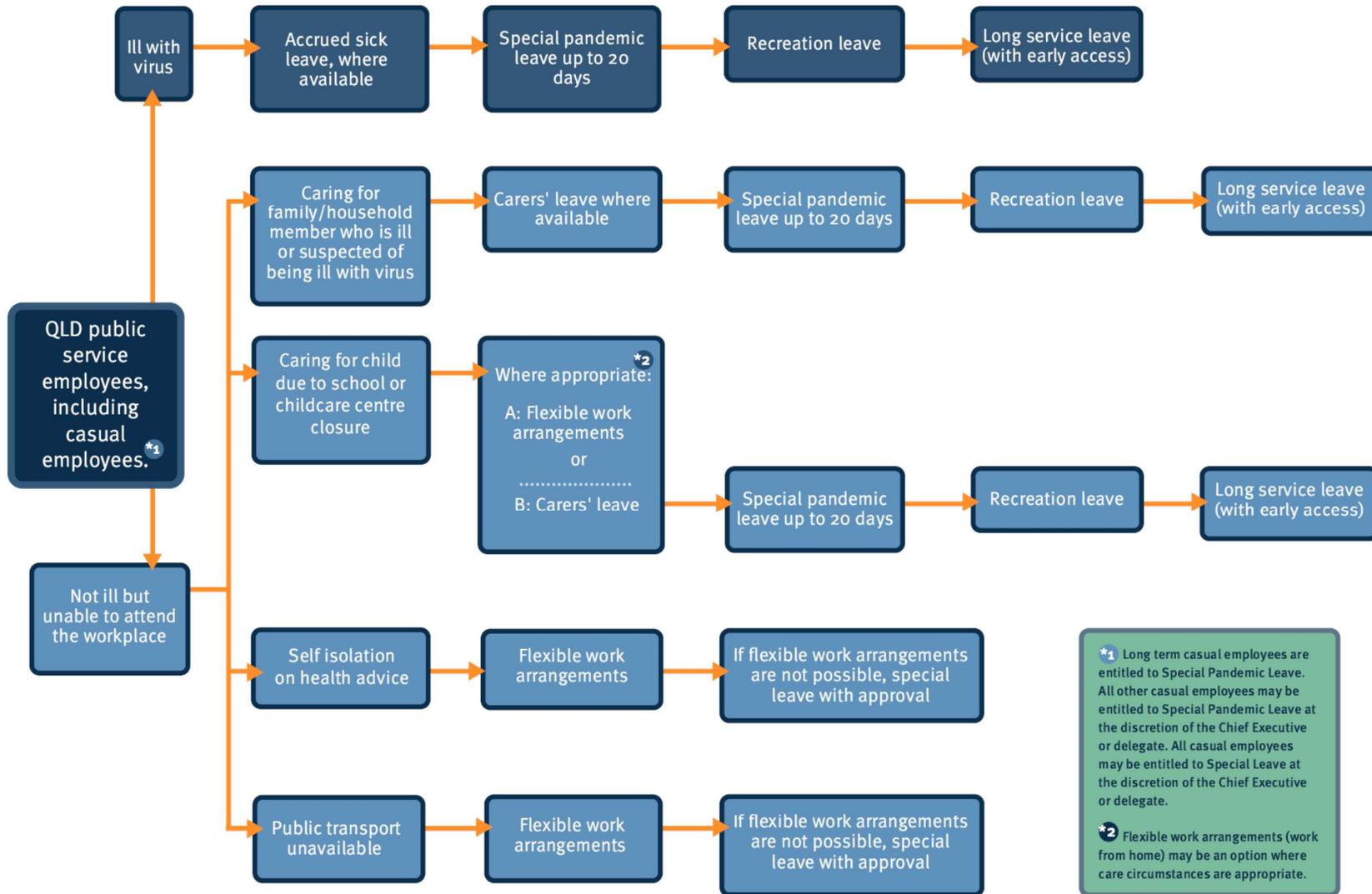
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Employment arrangements in the event of a health pandemic – March 2020



*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.

