

EMERGENCY RESPONSE – ACTPS EMPLOYEE ENTITLEMENTS AND ACCESS TO LEAVE DURING THE COVID-19 PANDEMIC



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Purpose

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 COVID-19 pandemic. 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 purpose of this advice is to provide for proportionate responses appropriate in the current environment. Further changes to this advice will be made as required as the COVID-19 pandemic continues to develop.

The ACTPS remains committed to supporting our employees to continue working from home where possible. This is consistent with current health advice and assists with ensuring social distancing can be better maintained for employees that need to attend a workplace.

The ACTPS continues to ensure that employees who need to quarantine or self-isolate to keep themselves and the community safe can do so without suffering undue detriment in their employment.

This advice should be read in conjunction with the latest communications from the ACT Chief Health Officer (or delegate), in particular regarding the circumstances in which individuals are required to follow *public health directions* in relation to isolation requirements. This advice is not designed to provide or replace medical advice.

Employee Entitlements – General Principles

The general principles in accessing leave in COVID19 related circumstances are provided below:

Ill or Not Ill	Circumstance	Options/Leave
Ill	due to COVID-19	<ul style="list-style-type: none">Up to one week (7 consecutive calendar days) of COVID-19 leave, followed by personal leave if still unfit for duty
Not Ill	but required to look after or support an immediate family member who is ill due to COVID-19	<ul style="list-style-type: none">work from home if possibleflexible deployment to other dutiescarer's or other leave such as annual or long service leaveCOVID-19 leave in extenuating circumstances case-by-case
Not Ill	but required to quarantine or self-isolate in line with public health directions	<ul style="list-style-type: none">work from home if possibleotherwise COVID-19 leave
Not Ill	but a vulnerable employee where reasonable adjustment to the workplace or work location is insufficient to mitigate risk	<ul style="list-style-type: none">work from home if possibleflexible deployment to other dutiesotherwise COVID-19 leave

Not Ill	but unable to attend the workplace due to COVID-19 related workplace closure	<ul style="list-style-type: none"> • relocation to another workplace • flexible deployment to other duties • work from home if possible • otherwise COVID-19 leave
Not Ill	and chooses to exclude themselves from the workplace	<ul style="list-style-type: none"> • work from home if possible • otherwise annual leave or personal leave

Working from Home

In circumstances where an employee is not already working from home and they are not ill, but they unable to attend the workplace:

- due to a requirement to quarantine or self-isolate; or
- as a result of COVID-19 workplace closures,

the first consideration should be that they are given the opportunity work from home (where possible).

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 [Mobility and Flexibility 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 employees remain connected to the workplace and provided adequate support.

Where an employee is working from home due to a workplace closure, quarantine or self-isolation and does not undertake/perform duties that would attract an allowance including higher duties allowance, the allowance is not required to be paid. However, delegates may approve the payment of an allowance in special circumstances where it is warranted.

Shift penalty payments will continue to be payable where an employee is working from home due to a workplace closure, quarantine or self-isolation, unless a variation to the roster has been agreed in accordance with B.6 of the Enterprise Agreement that no longer attracts the relevant shift penalties.

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. 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.

During the COVID-19 pandemic, where an employee is able to work 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 (COVID-19 leave)', they can still be asked to do some work from

home or can be asked to return to duty in the workplace, where safe. Alternatively, if an employee is on COVID-19 leave 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.

Principles of COVID-19 leave

COVID-19 leave is not a regular leave type. It has been introduced by the ACT Government to address circumstances that arise through the ongoing and unique situation of this pandemic.

When an employee accesses COVID19 leave in accordance with this policy, payment of penalties and allowances should be treated the same as if the employee was on a period of annual leave.

More information on managing COVID-19 leave is available in the [Emergency Response - Guide to managing ACTPS employees on COVID-19 leave](#).

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.

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.

Managing personal health and wellbeing

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 should be 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 pandemic, and the relevant leave arrangements, are listed below.

A. Employee is ill (has COVID-19 symptoms or is diagnosed with COVID-19)

When an employee has COVID-19 symptoms or is diagnosed with COVID-19, they have an infectious medical condition and should not attend the workplace.

An employee who has COVID-19 symptoms and is unwell should access personal leave under the relevant enterprise agreement for the period of the employee's illness, subject to the paragraph below.

Effective from 20 January 2022 and until further notice, if an employee receives a positive COVID-19 diagnosis, they will be entitled to access COVID-19 leave for their ordinary hours that fall within a period of one week (7 consecutive calendar days). At the end of this period the manager and employee should reassess the employee's situation on a case-by-case basis. If the employee is still symptomatic following the 7 day period, generally they will be required to utilise personal leave.

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 in accordance with the relevant enterprise agreement.

The Enterprise Agreements provide that an employee may be asked to provide documentary evidence as proof of personal illness. Managers are encouraged to use their discretion and sound judgement where they believe evidence is required. Evidence of a positive COVID-19 test may be confirmed through a recognised diagnostic tool, such as a PCR test or Rapid Antigen Test (RAT), or any other relevant diagnostic tool as advised by ACT Health. The employee must register their RAT with the relevant health authority. Proof of a positive RAT may be confirmed through evidence of registration with ACT Health or other relevant interstate health authority. It is noted that while employees may be asked to provide documentary evidence from a medical practitioner, it may not be practicable for employees to seek this evidence during heightened times of COVID-19 transmission in the community. Therefore this form of evidence should only be sought where it is reasonable in the circumstances, such as an extended period of absence or a subsequent COVID-19 diagnosis.

B. Employee and their immediate family are not ill but have been quarantined or 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 COVID-19.

The employee should work from home if possible. If the employee cannot be provided with suitable duties to perform from home, they should access COVID-19 leave.

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.

Where this is not possible, the employee should work from home if possible or be placed on COVID-19 leave.

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 or requires care or support due to COVID-19 and requires the employee to care for them, the employee should access carers leave in accordance with the relevant enterprise agreement.

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 for COVID-19 related reasons

Where schools or childcare services are closed, or the employee is unwilling to send their child to school or childcare, including where the child has significant health issues, the employee should discuss their situation with their manager to find a suitable solution. In the first instance the employee should work from home if possible or be flexibly redeployed to perform other duties remotely. If no other suitable arrangements can be found, the employee should take carer's leave or other leave as appropriate in the circumstances. In circumstances where the employee exhausts their leave provisions, 'COVID-19 leave' may be considered by the appropriate delegate on compassionate grounds on a case-by-case basis.

Where a particular school or childcare centre has been forced to close due to the identification of a COVID-19 case, the employee may be required to care for a child whilst the facility is being deep cleaned. If the employee is unable to make alternative care arrangements or perform suitable duties from home, the employee should receive delegate approval to take COVID-19 leave until the facility reopens.

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

F. Where a home isolated employee subsequently becomes ill

If an employee has received a positive COVID-19 diagnosis, they will be entitled to a period of up to 7 days of COVID-19 leave. If the employee is still symptomatic following the 7 day period, generally they will be required to utilise personal leave.

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.

G. Employee attends work and presents as ill

An employee who has COVID-19 related symptoms should not attend any ACT Government workplace under any circumstances.

If an employee is exhibiting COVID-19-related symptoms, the employee should be isolated and supported to leave the workplace according to workplace procedures.

The employee should then be managed in accordance with 'Part A Employee is Ill', as above.

H. Employee is not ill, but is vulnerable and at higher risk

Additional work health and safety measures are in place for ACTPS employees who are deemed to be vulnerable workers and the whole of government guidance and resources to support vulnerable workers in the workplace, can be found at [Measures for vulnerable employees](#).

Where an employee has been identified as a vulnerable employee, working from home arrangements or flexible redeployment to a role which allows for home-based work should be put in place where possible. For critical frontline workers, or other workers who cannot work from home, adjustments should be made to the work location and/or workplace if possible, to mitigate the risks. In the event that this is not possible, COVID-19 leave is available.

I. Self-isolated employee, where not in line with advice from the Chief Health Officer or the Head of Service

In the first instance, managers should promote use of annual leave or personal leave for employees who, for personal reasons, choose not to work despite appropriate work arrangements being in place. In some instances, the employee's 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 quarantine or self-isolation on the basis of a direction from the Chief Health Officer or the Head of Service

There are no provisions under the relevant Enterprise Agreements to provide casuals with paid leave entitlements. Managers should endeavour to make arrangements where the casual employee can continue to work from home in the first instance. The delegate should use their discretion in assessing whether to stand the casual employee 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. In determining the relevant payments to be made for a casual employee, the following may be appropriate:

- Where an eligible casual employee has scheduled or agreed shifts during a period of quarantine or self isolation – they are to be paid for those shifts
- Where an eligible casual employee has worked regular hours in the past month before a period of quarantine or self-isolation with no scheduled or agreed shifts during the quarantine or self-isolation period - they are to be paid for any shifts based on their previous pattern of work.
- Where the casual employee has worked irregular hours in the past month before a period of quarantine or self-isolation with no scheduled or agreed shifts – they may be paid an average of the hours worked in the past month for the period of the quarantine or self-isolation.
- Where a casual employee has not worked within the month prior to the quarantine or self-isolation period – they will not be paid for the period of the quarantine or self-isolation.

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 during a COVID-19 workplace closure, period of quarantine or self isolation. 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 quarantine or self-isolate due to COVID-19, are to be paid for any shifts that they would otherwise have worked during a period of isolation. Provided that the eligible casual is not ill, they can be asked to perform work from home where this is possible.

If there are no suitable duties that the employee can perform from home, the absence should be recorded as COVID-19 leave 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 COVID-19 leave 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 due to the COVID-19 pandemic 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 the workplace reopens and the casual is asked to return to work, but refuses, the casual will generally not continue to be paid.

If a casual employee is affected by a workplace closure and is not able to be provided with alternative work, the following options may be appropriate in determining the relevant payments to be made:

- Where an eligible casual employee has scheduled or agreed shifts during a period of workplace closure – they are to be paid for those shifts during the closure
- Where a casual employee has worked regular hours in the past month before a period of workplace closure with no scheduled or agreed shifts during the closure - they are to be paid for any shifts based on their previous pattern of work
- Where the casual employee has worked irregular hours in the past month before a period of workplace closure with no scheduled or agreed shifts – they may be paid an average of the hours worked in the past month as determined by the delegate for the period of the closure.
- Where a casual employee has not worked within the month prior to the workplace closure – they will not be paid for the period of the closure.

The absence should be recorded as COVID-19 leave and the rate of pay should be what the eligible casual employee would have been paid had they worked the hours.

Commonwealth Government payments

Employees, particularly casual employees, may be eligible for Commonwealth Government payments, including the COVID-19 Disaster payment. For more information please visit the Services Australia website here: <https://www.servicesaustralia.gov.au/> and the [COVID-19 Disaster Payment - Services Australia](#) page

Where a casual employee chooses not to accept an ACTPS payment in accordance with this policy, the casual employee must put that decision to the delegate in writing.

Non-Government Employees (Labour Hire and Contractors) who require self-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 self-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 appraised of planning and developments within the directorate.

References

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

- [ACTPS Enterprise Agreements](#)
- [ACTPS Employee Assistance Program](#)
- [ACTPS Flexible Workplace Policy](#)
- [Healthy Minds – Thriving Workplaces, An Integrated Mental Health and Wellbeing Strategy 2019-2022](#)

More Information on COVID-19

All staff should visit the ACT Health website to stay up-to-date on COVID-19 and how to minimise the spread from person to person.

All employees have a duty to take reasonable care for their own and others' health and safety pursuant to work health and safety legislation.

Guidance and Resources

For the most up to date advice and guidance on COVID-19, please visit:

- ACT Health's information on [COVID-19 in the ACT](#)
- [Smart traveller](#)
- Home Affairs, [COVID-19 travel restrictions](#)
- The Commonwealth, Department of Health's [daily alert on medical advice](#)
- [ACT Government travel advice](#)

Further Information

If you have further questions about the application of this advice please contact the Whole of Government Industrial Relations and Public Sector Employment team, Workforce Capability and Governance, Chief Ministers Treasury and Economic Development Directorate on EBA@act.gov.au

Review

This advice is due for review 1 year from the last reviewed date, or earlier where there are changes that affect the operation of this advice.

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