

Determination of the Commissioner For Public Sector Employment

3.1: Employment Conditions –
Hours of Work, Overtime and Leave:
Supplementary Provisions for COVID-19

Effective from 14 December 2020



COVID-19 RESPONSE



**Government
of South Australia**

Office of the Commissioner
for Public Sector Employment

Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave: Supplementary Provisions for COVID-19

Date of Operation: 14 December 2020

Review Date: This document will be subject to revision as circumstances develop.

This determination is issued in accordance with Commissioner for Public Sector Employment powers under section 14(1)(b) of the *Public Sector Act 2009*. It has immediate effect and will remain in place until such time as it is revoked. This determination has been issued in response to the situation presented by the COVID-19 virus. It supports continued efforts to minimise and prevent the spread of COVID-19 while still delivering essential services to the community.

For the purposes of managing and minimising the impact of COVID-19, this determination over-rides existing leave and travel provisions contained within any current Commissioner’s Determinations.

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Summary of additional/revised supplementary provisions

Provision	Existing	Supplementary Provisions
Special Leave With Pay for COVID-19	Not Applicable	<p>New provision added for COVID-19 of 15 days per service year.</p> <p>This is in addition to current provisions within the existing CD3.1.</p> <p>Note: provision reset by Commissioner as of 17 November 2020.</p>
Special Leave With Pay for Border Restrictions	Not Applicable	<p>New provision in addition to current provisions within the existing CD3.1.</p>
'Absent on Duty' while quarantining or isolating <u>as a direct consequence of employment</u>	Previously regarded as SLWP for COVID-19	<p>Payable if quarantine / isolation is required as a direct consequence of employment.</p> <p>Treated as absent on duty for the duration of the required quarantine/isolation period.</p> <p>Paid in line with employee's applicable rostered arrangements (including penalties)</p>
Special leave With Pay while awaiting test results	Payable at CE's discretion	<p>Up to three (3) days' payable while awaiting COVID-19 test results.</p> <p>Evidence of testing and results required.</p>
Sick/Carer's Leave	Up to 10 days of sick/carer's leave entitlement per service year	<p>No cap on accessing carer's leave through sick leave entitlements per service year.</p>
Direction to take annual/recreation leave	At least two (2) weeks' notice to staff with more than 24 months of accrual	<p>At least three (3) days' notice to staff.</p> <p>Ability to direct staff with more than 12 months of accrual.</p>
Access to annual/recreation leave at half pay	Not Applicable	<p>New provision to access annual/recreation leave entitlements at half pay.</p> <p>Will be treated as per Long Service Leave at half pay.</p>

NEW CATEGORIES OF SPECIAL LEAVE WITH PAY

Creation of new special leave with pay category for COVID-19 absences

In recognition of the continued public health situation relating to COVID-19, special leave with pay of up to 15 days will be available to support absences from the workplace for COVID-19 situations. This special leave with pay is not considered to be part of the current 15 days special leave with pay, as currently detailed in the *Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave* (CD3.1).

Unless explicitly stated, any reference to special leave with pay within this Determination is Special Leave with Pay for COVID-19.

Special leave with pay for COVID-19 may be accessed more than once, but the aggregate should be limited to 15 days per service year.

On 17 November 2020, the Commissioner determined that the 15 days per service year should be “reset”, with the full provision again made available to support absences from the workplace for COVID-19 situations.

Special leave with pay is applied for, taken and recorded in hours. Special leave with pay applies to part time employees on a pro rata basis in that the amount of days available would be proportionate to the full-time equivalent (FTE) of that employee.

Special leave with pay is only paid at an employee's ordinary rate of pay for the relevant day.

Creation of new special leave with pay category for border restrictions

In recognition of the continued public health situation relating to COVID-19 and the current cross border restrictions in place, special leave with pay will be available to support absences from the workplace for employees, other than casuals, who reside interstate and apply for but do not receive approval to cross the border to attend their place of work.

The special leave with pay for border restrictions only applies in specific situations where an employee is prevented from commuting from their interstate primary residence to their workplace.

This special leave with pay is not considered to be part of the current 15 days special leave with pay, as currently detailed in the *Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave* (CD3.1), and is in addition to the Special Leave with Pay for COVID-19 absences.

Employees directly impacted by border restrictions

All employees must comply with any direction from an official relating to the crossing of interstate borders.

Public sector employees who work in South Australia but reside interstate must review current border restrictions applicable for their place of residence, and ensure they abide by all requirements. Travellers wishing to enter the State must seek approval to do so, whether this is via a “Cross Border Travel Registration”, or physically at an approved South Australian entry point.

Employees who apply for but are not approved to cross the border must be considered as a priority for suitable alternative duties that can be undertaken remotely from home.

While alternative duties are being considered, employees, other than casual employees, who reside interstate and do not have approval to cross the border into South Australia will be paid special leave with pay for border restrictions while they are unable to enter the State.

Alternative duties must regularly be revisited and considered for the duration of the employee's absence from the workplace due to their inability to enter South Australia.

PREVENTION AND MINIMISATION

Managing absences while quarantining or isolating as a direct consequence of employment

An employee other than a casual who is required to quarantine or isolate as a direct consequence of their employment will be provided with access to flexible working arrangements wherever possible. Where not practicable or appropriate to offer flexible working arrangements, the employee will be considered 'absent on duty' for the required period of quarantine or isolation.

Employees considered 'absent on duty' under this provision will receive their normal remuneration, including any applicable penalties, as though they were rostered for duty during the period of isolation.

Note: this provision does not apply to quarantine or isolation required as a consequence of the employee's personal circumstances.

Managing absences while quarantining or isolating as a consequence of personal activities

An employee other than a casual who is required to quarantine or isolate as a result of their personal activities, will be provided with access to flexible working arrangements wherever possible. Where not practicable or appropriate to offer flexible working arrangements, special leave with pay will be approved for the required period of self-isolation or quarantine.

If the employee subsequently tests positive for COVID-19, the absence will be managed in accordance with the agency's sick leave processes.

Requirement to remain at home

In the event that a large-scale Direction is implemented requiring parts or all of the community to remain at home, employees not deemed essential will be provided with access to flexible working arrangements wherever possible. Where not practicable or appropriate to offer flexible working arrangements, access will be provided to existing own leave entitlements such as annual, long service, or retention leave. If the employee exhausts all their own leave entitlements and is unable to undertake alternative duties at home, they will be provided with special leave with pay for COVID-19 absence for up to 15 days.

The Chief Executive may exercise their discretion and authorise the payment of special leave with pay for COVID-19 absences before leave entitlements are exhausted.

Temporary cessation of service (full or partial), or physical workplace closure for COVID-19 purposes (this provision does not apply for deep-cleaning purposes)

In the event the Government or Chief Executive determines that an individual or small group of workplaces/services should temporarily cease or physically close (full or partial), where practicable and appropriate, the employee will be given access to flexible working arrangements or transferred to alternative duties.

Where the above is not practicable and appropriate, the employee will be provided with special leave with pay for COVID-19.

If special leave with pay for COVID-19 is exhausted, the employee should access their own leave entitlements.

Requirement on employee to self-report

An employee must self-report as soon as possible to their agency if they:

- Are unwell and exhibiting symptoms that may be associated with COVID-19;
- Have had close contact with a confirmed or probable case of COVID-19;
- Have had casual contact with a confirmed case of COVID-19;
- Have been advised or directed to self-isolate, self-quarantine or be tested for COVID-19;
- Have been tested for COVID-19 and are awaiting test results;
- Have tested positive for COVID-19;
- Have tested negative for COVID-19; or
- Are being treated for COVID-19.

Employees must understand and have access to the processes required by the agency to enable them to comply with self-reporting obligations.

Employees who report any of the above must not be permitted to attend the workplace, or if already in the workplace must leave immediately. Working from home may be permitted if the employee otherwise remains well and alternative duties are available.

Absence while awaiting COVID-19 test results

An employee other than a casual who has been tested for COVID-19 and is awaiting test results should, where practicable and appropriate, be permitted to work from home until test results are confirmed. If work from home cannot be provided or if the employee is unfit for duties, the employee will be provided special leave with pay for up to 72 hours following the testing.

Evidence of testing and of the results once received should be provided by the employee to ensure the period of special leave with pay aligns with the isolation period.

Absence following return of negative COVID-19 test results

Employees who have been tested for COVID-19 and receive a negative test result but are still displaying symptoms that may be linked to COVID-19 should remain absent from the workplace until symptoms subside. If reasonably well and fit for duties, work from home may be provided if practicable and appropriate. If work from home is not practicable or appropriate, or the employee is unfit for duties, personal leave entitlements or leave without pay should be accessed.

Workplace shutdown for deep-cleaning

In the event that emergency management officials direct a workplace to shut down for a short period of time, for example 48 hours to undertake deep-cleaning, and where it is not practicable and appropriate to work from home or from another work location, the employee will be deemed 'absent on duty'.

OVERSEAS AND INTERSTATE TRAVEL

All agencies and employees must adhere to the latest travel advice and/or restrictions, and must abide by requirements stipulated for self-quarantining periods.

Travellers required to quarantine without notice

An employee who commenced interstate travel prior to being required by that State's authorities to self-quarantine or isolate with little or no notice may work remotely where practicable and appropriate. If the employee cannot work remotely they should be provided with special leave with pay for the duration of the self-quarantine or isolation period.

Returning from travelling overseas or interstate for business reasons

If interstate or overseas travel is to be undertaken for business purposes it must be signed off prior to commencement by the Chief Executive or delegate whilst various restrictions are in place. Should the travel attract requirements to self-quarantine on return to South Australia, the employee should work from home for the duration of the self-quarantine period. If work from home is not practicable or appropriate, access to special leave with pay will be provided.

If the employee becomes unwell while self-quarantining, the absence will be managed in accordance with the agency's existing sick leave processes.

Returning from travelling overseas or interstate for personal reasons

If interstate or overseas travel is undertaken for personal reasons, and the travel attracts requirements to self-quarantine upon return to South Australia, the employee should work from home for the duration of the self-quarantine period. If working from home is not practicable or appropriate, the employee will access their personal leave entitlements (i.e. recreation/annual, retention or long service leave) for the duration of the self-quarantine period.

If the travel commenced prior to any requirement to self-quarantine upon arrival in South Australia, the employee may be provided with special leave with pay for the duration of the self-quarantine period.

If the employee becomes unwell during the self-isolation period, the absence will be managed in accordance with the agency's existing sick leave processes.

OTHER LEAVE ARRANGEMENTS

Absence due to illness (including COVID-19 illness)

If an employee is absent from work due to illness, current sick leave entitlements and conditions apply. Chief Executives or their delegate may grant special leave with pay on a case-by-case basis if sick leave is exhausted and/or the employee has tested positive for COVID-19 and is unable to work.

Provision of Medical Certificates

The temporary waiving of the requirement to furnish a medical certificate for absences of more than three days is no longer in effect. Agencies should revert to their existing policies and procedures related to illness, allowing for updated medical practices i.e. e-certificates from an online virtual appointment.

Vulnerable employees

Health advice on vulnerable members of the community has been revised for South Australia.

Those at higher risk continue to be:

- People aged over 70; or
- People with one or more specific pre-existing medical conditions.

Agencies should refer to the Australian Department of Health website for the most current list of pre-existing medical conditions which may increase risk.

Aboriginal and Torres Strait Islander peoples may also be at increased risk of severe disease in any public health emergency and should be considered a priority population when assessing potential risk related to COVID-19.

In areas of sustained low cases of COVID-19, the health advice is that all employees, even those at higher risk of more severe disease, can return to the workplace with appropriate controls in place.

Anyone considered a 'vulnerable person' should seek the advice of their medical practitioner on their proposed return to the workplace. Agencies should develop individual workplace COVID-19 management plans for those staff returning to the workplace who may bear higher risk of more severe illness.

If a vulnerable employee has been cleared to return to the workplace but wishes to remain at home, and flexible working arrangements are not practicable or appropriate, the employee will access their personal leave entitlements, or leave without pay. The Chief Executive may provide access to special leave with pay for COVID-19 on a case-by-case basis if they deem it appropriate in the individual circumstances.

Living with a vulnerable family member

If an employee is living with a vulnerable family member and wishes to remain away from the workplace, agencies may offer access to flexible working arrangements where practicable and appropriate. Where it is not practicable and appropriate, the employee will access their personal leave entitlements, or leave without pay.

The Chief Executive may provide access to special leave with pay for COVID-19 on a case-by-case basis if they deem it appropriate in the individual circumstances

Carer's Leave

Chief Executives will approve applications to access accrued sick/carer's leave for the purpose of caring for a family member for the full duration of any required period of isolation, or for the full duration of the dependent or household member's illness relating to COVID-19. This is an uncapped entitlement to access accrued sick/carer's, rather than being restricted to taking a period of up to 10 days' sick/carer's leave per year.

Additional options for caring purposes

For the purposes of leave for caring purposes, the following are to be regarded as members of a person's family:

- spouse (including a de facto spouse or a former spouse or de facto spouse);
- child or stepchild;
- parent or parent in-law;
- any other member of the person's household;
- grandparent or grandchild; or
- any other person who is dependent on the person's care.

Employees who request to work from home whilst providing caring responsibilities should be supported to do so where practicable and appropriate. If it is not practicable and appropriate to work from home, access to sick/carer's leave is to be provided.

If the employee has exhausted all their sick/carer's leave entitlements, the employee will be provided with special leave with pay for COVID-19.

Employees impacted by child-care or school closures

Employees who have care arrangements impacted by a school or child-care closure will be provided with access to flexible working arrangements wherever possible. Where not practicable or appropriate to offer flexible working arrangements, access will be provided to existing own leave entitlements, including accrued sick/carer's leave, to take an uncapped number of carer's leave days. Carer's leave will be provided to care for dependents who are well, in recognition of the limited alternative care options that are available.

Note: Ordinary school holidays corresponding with the published school term dates (<https://www.education.sa.gov.au/teaching/south-australian-state-schools-term-dates>), and pupil free days should be managed as per existing agency processes, with employees to use existing leave entitlements if they cannot attend work and it is not practicable to use flexible working arrangements.

Directing employees to take annual/recreation leave

In accordance with Schedule 1, Part 4, clause 5(3) of the *Public Sector Act 2009* (PS Act) and regulation 21(4) of the *Public Sector Regulations 2010*, employees with annual/recreation leave entitlements in excess of 12 month's accrual may be directed to reduce their leave balances with three business days' notice.

Payment of annual/recreation leave entitlements at half salary

In accordance with Schedule 1, Part 4, clause 5(3) of the PS Act, employees may elect to take annual/recreation leave on half salary, and in that event, the period of leave is to be twice the period to which the employee would otherwise have been entitled.

Payment in lieu of annual/recreation or long service leave

A Public Sector employee with a family member who has lost their job and is experiencing financial hardship, may apply to receive a lump sum payment in lieu of their accrued annual/recreation or long service leave.

Applications must retain at least two weeks of recreation leave. Long service leave may be paid out to a zero balance.

Eligibility criteria and evidence requirements

To access payment in lieu of recreation and/or long service leave, the applicant must provide justification detailing:

- current leave balances;
- leave type and number of hours for which they are seeking payment in lieu;
- brief detail of the personal situation necessitating the request, including the relation of the employee to the family member who has lost their job and is experiencing financial hardship.

To approve the request, the delegate must be satisfied that financial hardship exists, and may set their own evidentiary requirements in order to satisfy this requirement.

Employees accessing this provision must recognise that the request for payment in lieu may result in insufficient leave balances being available to them when they seek to apply for leave in the future.

Definition of family member for the purpose of receiving payment in lieu of annual/recreation and/or long service leave

For the purpose of this provision only, 'family member' is defined as:

- all family members living at the employee's residence, including siblings, parents, etc.; and
- immediate family members (i.e. parents or children (including step and adopted)) of the employee, regardless of where they live.

Alternate working arrangements

Each agency, in accordance with its business continuity plan, is to ensure it continues to deliver essential services during the COVID-19 pandemic, taking into account any protection measures recommended by SA Health and/or the SA/Australian Government.

Agencies should consider previously approved leave and may revoke the approval if the employee is critical to ongoing service delivery.

Employees who remain well should continue to undertake duties either at their usual workplace, by utilising flexible working arrangements at home, or at an alternate location unless they are on an approved period of leave.

Flexible working arrangements

Flexible working arrangements have proven an effective platform for the public sector to manage the potential spread of COVID-19 whilst maintaining effective operations and essential services.

Wherever possible, agencies should capitalise on opportunities to embed more flexible ways of working and continue to allow employees access to flexible working arrangements, particularly while COVID-19 remains a very real threat within the community.

Where practicable and appropriate, agencies are encouraged to be flexible with employees who commute to and from work using public transport and consider adopting measures such as staggered start and finish times where possible.

Agencies must continue to monitor and apply guidance from SA Health in relation to personal hygiene, density requirements and physical distancing.