

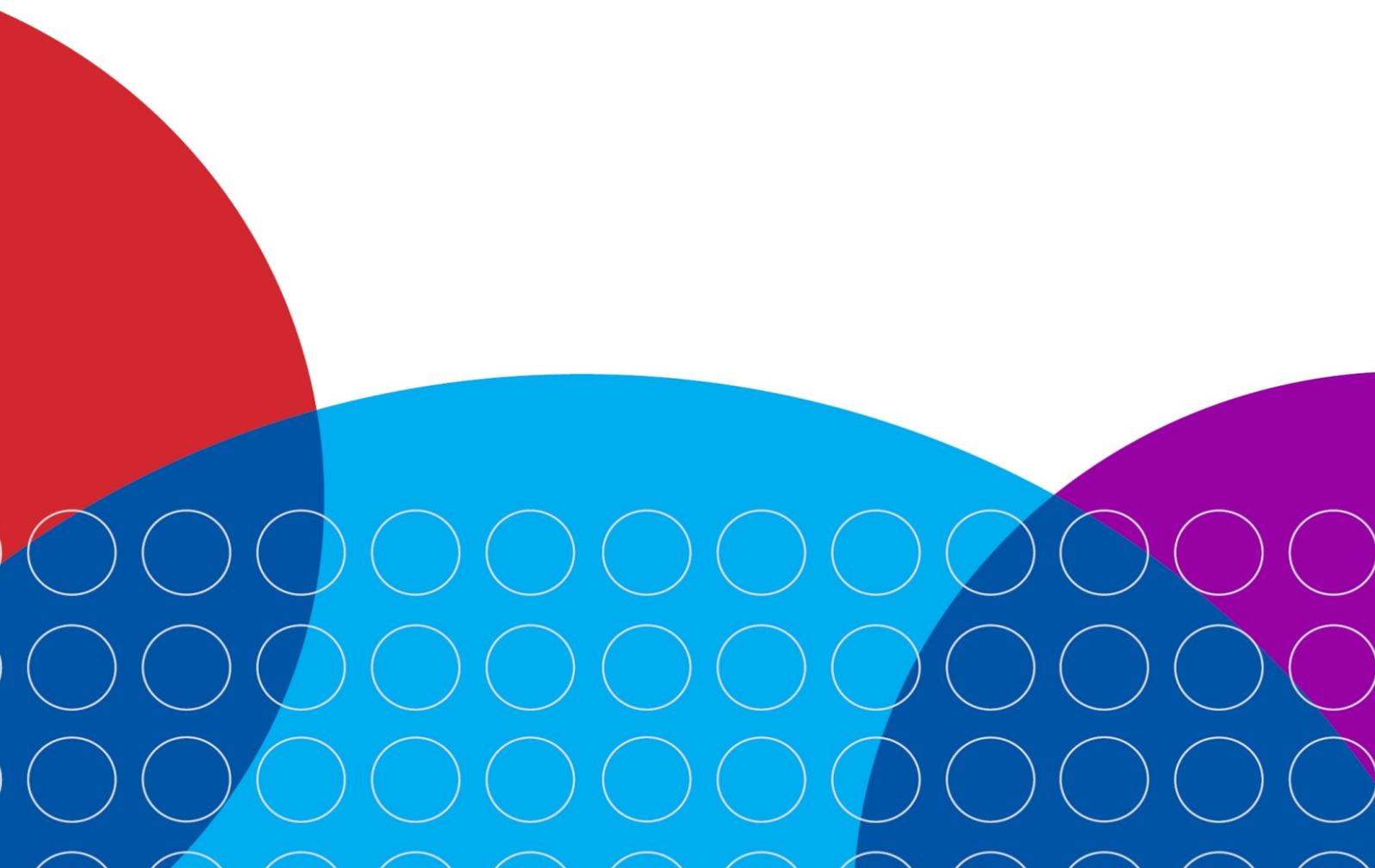


**Government
of South Australia**

Office of the Commissioner
for Public Sector Employment

DETERMINATION OF THE COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT

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



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

Date of Operation: 6 April 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 as a result of the declaration of a Public Health Emergency on 16 March 2020, and a subsequent declaration of a Major Emergency on 22 March 2020 and supports 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.

Summary of additional/revised supplementary provisions

Provision	Existing	Supplementary Provisions
Special Leave With Pay for COVID-19	Not Applicable	New provision added for COVID-19 of 15 days per service year. This is in addition to current provisions within the existing CD3.1.
Medical Certificates for COVID-19 absences	Required after continuous three (3) day absence	Not required while Major Emergency declaration remains active. CEs may still opt to request a medical certificate or other evidentiary provision in specific, explicit circumstances. Medical clearance may be required prior to return to work.
Sick/Carer's Leave	Up to 10 days of sick/carer's leave entitlement per service year	No cap on accessing carer's leave through sick leave entitlements per service year.
Direction to take annual/recreation leave	At least two (2) weeks' notice to staff with more than 24 months of accrual	At least three (3) days' notice to staff. Ability to direct staff with more than 12 months of accrual.
Access to annual/recreation leave at half pay	Not Applicable	New provision to access annual/recreation leave entitlements at half pay. Will be treated as per Long Service Leave at half pay.

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

In response to the declaration on 16 March 2020 of a public health emergency relating to the COVID-19 pandemic, and the subsequent declaration of a Major Emergency on 22 March 2020 a new category of special leave with pay of up to 15 days will be available to support absences from the worksite or 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.

While special leave with pay for COVID-19 may be accessed more than once, the aggregate is still limited to 15 days per service year.

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 for an employee's ordinary working day.

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Prevention and Minimisation

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

Agencies will continue to monitor and apply guidance from SA Health in relation to personal hygiene and social distancing. Agencies must actively consider and must implement 'work from home' arrangements for populations within their workforce who are able to do so, within the constraints of maintaining effective operations and essential services.

Requirement on employee to self-report

An employee must self-report to their agency if they are self-quarantining or self-isolating and the reason for self-quarantining or self-isolating if they:

- Are unwell and exhibiting COVID-19 symptoms;
- Have had close contact with a confirmed case of COVID-19;
- Have been advised or directed to self-isolate or be tested for COVID-19;
- Have been tested and are awaiting test results;
- Have been tested positive to 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.

Workplace shutdown for deep-cleaning

In the event the Government or Chief Public Health Officer directs 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'.

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 a service should temporarily cease (full or partial), or where a workplace physically closes, 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.

Overseas and interstate travel

The below travel provisions relate to:

1. overseas travel that commenced after the declaration by the Australian Government relating to self-isolation requirements from 12.01am on Monday 16 March 2020; and
2. interstate travel after the declaration by the South Australian Government relating to self-isolation requirements from 22 March 2020, enforced by SA Police from 4.00pm 24 March 2020.

Any subsequent travel restrictions or bans put in place by the Australian Government, South Australian Government, or State Coordinator will also apply to the following provisions.

Returning from travelling overseas or interstate for business reasons

Where an employee is required to undertake self-isolation as a result of business travel, and South Australian Government or Australian Government directions were issued post travel commencement, but otherwise the employee remains well, access to flexible working arrangements (i.e. working from home arrangements) will be explored and implemented in the first instance. Where it is not practicable and appropriate to work from home, access to special leave with pay for COVID-19 will be provided.

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

Returning from travelling overseas or interstate for personal reasons

Any employee who commenced travelling overseas or interstate for personal reasons prior to the direction from the Australian Government on 15 March 2020 for mandatory self-isolation for 14 days on return to Australia, and where it is not practicable and appropriate to work from home, will be placed on special leave with pay for COVID-19 for the period of self-isolation.

Employees with planned overseas or interstate travel commencing after the implementation of any relevant government direction must adhere to the relevant travel requirements, and factor in an additional 14-day absence for self-isolation purposes on their return to Australia/South Australia. In this specific circumstance, the employee is not entitled to special leave with pay. If they still choose to travel, the employee is either required to work from home where this is practicable and appropriate for the period of self-isolation, or use their individual leave entitlements (recreation, long service, retention leave), or flexi balances, or be placed on special leave without pay.

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.

Contact from the Communicable Diseases Control Branch of SA Health

Where an employee is contacted by SA Health as part of contact tracing procedures, and they are subsequently required to self-isolate and it is not practicable and appropriate to work from home, special leave with pay will be approved for the required period of self-isolation.

If the employee subsequently tests positive for COVID-19, the absence will be managed in accordance with the agency's 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. In instances where sick leave is exhausted and the employee has tested positive for COVID-19 and is unable to work, Chief Executives may grant special leave with pay on a case-by-case basis.

Medical Certificates during the Major Emergency declaration

It is recognised that the current obligation to furnish a medical certificate for a continuous absence of three (3) days or more may place additional, unnecessary burden on the health system.

A medical certificate will not be required to access sick leave entitlements while the Major Emergency declaration remains active, unless expressly required by the Chief Executive.

Chief Executives may additionally communicate a requirement to gain medical clearance for particular employees providing frontline services, prior to their return to work.

Vulnerable employees

The strong advice of the Australian Health Protection Principal Committee to National Cabinet is for self-isolation at home to the maximum extent practicable for employees who are:

- Aboriginal and Torres Strait Islander people 50 years and older with one or more chronic medical conditions;
- People 65 years and older with chronic medical conditions;
- People 70 years and older; or
- People with compromised immune systems.

Agencies should refer to the Australian Department of Health website for the most current list of chronic medical conditions which may be deemed high risk.

Agencies are to enable self-isolation wherever possible and provide, where appropriate, access to work from home arrangements. Where it is not practicable and appropriate to work from home, COVID-19 special leave with pay will be applied. If COVID-19 special leave with pay is exhausted, access to the employee's own leave entitlements will be provided to enable the employee to stay at home.

Where a vulnerable employee is delivering essential services, 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. Agencies must ensure appropriate mitigation of any identified risks as far as is reasonably practicable.

If a vulnerable employee wishes to remain in the workplace they may do so, provided the agency has appropriately assessed any risks and is comfortable they can ensure appropriate observance of any government protocols relating to social distancing.

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 will offer access to flexible working arrangements where possible. Where it is not practicable and appropriate to offer flexible working arrangements, the employee will be entitled to access sick/carer's leave entitlements. On exhaustion of sick leave, the employee

should be directed to take any accrued annual/recreation leave in excess of 12 months' worth of accrual.

If recreation leave does not exceed 12 months' of accrual, special leave with pay for COVID-19 will be provided.

If the vulnerable family member becomes unwell, the employee may access the carer's leave provisions below.

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 will 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 of 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.