

Tasmanian State Service

Human Influenza Pandemic

Employment Management Guidelines

2009

Prepared by Public Sector Management Office, Department of Premier and Cabinet
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Introduction

These guidelines provide broad principles and a framework for the management of employment matters during a human influenza pandemic. This framework supports the terms and conditions of employment that currently apply within the Tasmanian State Service and Agency business continuity arrangements.

It is the intention of these guidelines that no employee will be disadvantaged in terms of their normal and conditions of employment.

The framework will come into effect and cease to have effect by direction of the Minister Administering the *State Service Act 2000* on the advice of the State representatives of the National Pandemic Emergency Committee having regard to the current circumstances surrounding the impact or likely impact of the virus.

The framework aims to effectively balance the need for any State Service employees who is ill or need to undertake caring responsibilities due to the pandemic to remain absent from the workplace, to contain the human influenza from spreading to other employees and for Agencies to manage normal operations and maintain service delivery.

Executive Summary

1. Wherever practical the normal management practices and State Service conditions of employment apply in relation to absences during a pandemic.
2. Employees will not be disadvantaged in terms of their normal entitlements and conditions of employment.
3. Unless employees are on approved leave or absence they are to continue to attend work.
4. Employees are able to access their Personal Leave entitlement when ill or for caring purposes.
5. Special Pandemic Leave (SPL) is available to an employee who is suffering from a pandemic related illness or who has caring responsibilities due to a pandemic related illness or situation and has exhausted their full pay Personal Leave entitlement.
6. Special Pandemic Leave is also available to employees, who have been directed by a Public Health authority, flu clinic or other similar authority to remain in quarantine due to contact with people suffering from an illness but who are not themselves suffering an illness and when an employee is prevented from attending work due to transport or other major disruption.
7. If it is not reasonably practicable to provide a medical certificate an employee is to provide a statutory declaration for acceptance by the Agency in lieu of a medical certificate to the Agency.
8. An employee who is sent home due to closure of the workplace is to continue to be paid without deduction from leave until the workplace is considered safe by the Agency for return. In some circumstances employees may be able to undertake some of their duties at home. This will need to be considered in light of OH&S requirements. The duty of care to the employee remains whether they undertake work or not as they are still on duty rather than absent on leave.
9. Any variation to duties within an Agency will be managed in consultation with the employee in the normal manner considering the skills, competence and training required and personal circumstances of the employee including any travel requirements.
10. The Public Sector Management Office (PSMO) has developed standard voluntary transfer agreements for internal State Service employees who move outside of their Agency to support the implementation of pandemic plans. Employing Agencies will continue to pay all salary and on-costs. However, each agency should keep a record so that funding arrangements can be managed at the appropriate time.

1. Continuity of Employment Principles

Existing provisions and procedures contained in legislation and industrial instruments including the *State Service Act 2000*, *State Service Regulations 2001*, *Industrial Relations Act 1984*, Industrial Awards, and Industrial Agreements will be maintained wherever possible.

All salaries and conditions of employment will continue to apply and any variations to these will be approved in the normal way.

All employees are required to attend the workplace as usual except where they are on approved leave, other approved absence, working from home or at an alternative workplace.

2. Employer Responsibilities

The overriding principle is that the employer has a duty to do all that is reasonably practicable to provide a safe workplace which includes reducing the risk of infection and implementing preventative measures to ensure the spread of illness is reduced or contained.

The basic principle is that an employee will continue to be paid their ordinary salary rate (including allowances and projected shift roster) where an employee is ready, willing and able to work but is directed by the Agency to not attend work and no alternative arrangements can be made.

3. Employee Obligations

Employees are required to attend work during the pandemic unless the employee is on approved leave, has approval to work from home or is otherwise approved not to attend the workplace.

Employees are to advise their Manager or “authorised person” as soon as practicable of an inability to attend duty as per the award/agreement provisions in the normal way.

Any concerns an employee has about the risks in the workplace must be discussed with their Manager or “authorised person” and any approval to not attend work must be given by the Agency prior to the absence.

Where the workplace is considered safe by the employer but an employee chooses not to attend work, and is not on any approved form of leave or absence, the employee is to be placed on leave without pay and/or directed to attend work.

An employee who does not discuss their concerns and does not attend work is to be cautioned about possible breach of the State Service Code of Conduct provisions.

4. Leave entitlements

Entitlements vary between awards, agreements and legislation but generally include the same forms of leave. There may be slight differences in specific awards and agreements relating to certain occupational groups.

An employee who is absent due to illness or caring purposes is to access their Personal Leave entitlement. If their Personal Leave on full pay is exhausted employees can access Special Pandemic Leave for up to 20 working days as required and approved for pandemic related personal illness, or to undertake caring responsibilities due to pandemic related illness or situation.

An employee who has exhausted their Special Pandemic Leave entitlement may access other forms of paid or unpaid leave. Any request from an employee to access other forms of leave when full pay Personal and Special Pandemic Leave is exhausted is not to be unreasonably withheld.

a) Personal Leave

Personal leave is available for a pandemic related personal illness and for caring purposes where an immediate family or household member is sick due to a pandemic related illness and requires support or due to an unexpected emergency due to a pandemic related situation. The amount of leave available is dependent on the accrual and length of service and the leave already taken.

i) Personal leave for caring purposes

Personal leave is available to an employee who is caring for a member of their immediate family or household due to a pandemic related illness or situation. Employees are entitled to access their personal leave for caring purposes.

An employee required to care for a child who has been quarantined or sick due to the pandemic is to be granted full pay Personal Leave.

An employee can use their full entitlements to Personal Leave for caring purposes due to pandemic related illness or situation for the duration of the Pandemic.

Immediate family is defined as a spouse (including a former spouse) of the employee, child or an adult child (including an adopted, a step child or exnuptial child), parent (including foster parent, step-parent or legal guardian), grandparent, grandchild, sibling or step sibling of the employee or the employee's spouse.

A spouse means a person who is in a significant relationship within the meaning of the Relationships Act 2003.

A significant relationship is a relationship between two adult persons who:

- (a) have a relationship as a couple; and
- (b) are not married to one another or related by family.

b) Special Pandemic Leave (SPL)

Special Pandemic Leave is a new entitlement to operate during a pandemic once the Minister Administering the *State Service Act* has issued a direction declaring the period within which the Special Pandemic Leave will operate.

Special Pandemic Leave is a grant of leave in addition to other leave entitlements. Special Pandemic Leave is available as approved by the Head of Agency or delegated person.

Special Pandemic leave is capped at a maximum of up to 20 working days.

Employees are eligible for up to 20 days Special Pandemic Leave as required and approved in the following circumstances:

- Personal illness where full pay Personal Leave credits are exhausted.
- Caring for employee's immediate family or household due to a pandemic related illness when full pay Personal Leave credits are exhausted.
- Caring for children if school or childcare centres have been closed due to pandemic related situations when full pay Personal Leave credits are exhausted.
- When employees have been directed by a Public Health Authority, a flu clinic or similar authority to remain in quarantine due to contact with people suffering from an illness but are not themselves suffering from an illness.
- Employees who are prevented from attending work due to transport or other major disruption caused by a pandemic can access Special Pandemic Leave for a reasonable period until alternate arrangements can be made.

c) Personal Leave and Special Pandemic Leave exhausted

When full pay Personal Leave and/or Special Pandemic Leave is exhausted employees can apply for other forms of leave where an entitlement exists including:

- Recreation leave
- Special Leave

- Long Service Leave (after qualifying period)
- Leave Without Pay and leave on reduced pay
- Flexi-time arrangements
- Personal Leave on half pay and without pay

Any request to access other forms of leave should not be unreasonably withheld.

5. Requirement for Medical Certificates

Employees who would normally have to submit a medical certificate from a registered health practitioner are to be relieved of this requirement where the provision of a medical certificate is unreasonable or not practical.

Employees who are showing symptoms of flu like illness should be encouraged to contact a flu hotline or the flu clinic.

Where it is unreasonable or impracticable for the employee to obtain the required medical evidence a statutory declaration in lieu of a medical certificate is to be submitted by the employee on their return to work which is to be accepted as evidence for the purposes of approving leave.

6. Casual employees

The application of these guidelines to casual employees will be considered on an Agency by Agency basis and determined by the relevant Head of Agency (or delegated person) in consultation with PSMO.

7. Absences from the workplace

Agencies are to manage absences and return to work of employees. Agencies should remain in contact with employees during their absence and ensure employees are fit to return to work after the absence.

An employee is to notify of their absence in the normal way to the appropriate Agency representative.

Absences from the workplace may occur for a number of reasons including:

- Illness of employees
- Absent due to caring responsibilities
- Closure of workplaces (including schools & childcare centres)
- Employee exhibiting flu like symptoms
- Quarantine
- Social distancing
- Transport or other major disruption

When an employee is absent because of personal illness related to the pandemic.

An employee who is absent due to a pandemic related personal illness is to access full pay Personal Leave where such an entitlement exists and up to a maximum of 20 days Special Pandemic Leave as required once their full pay Personal Leave entitlements are exhausted.

When an employee is absent due to caring for a member of the employee's immediate family or household who is ill with a pandemic related illness or there is an unexpected emergency

An employee who is absent due to caring responsibilities is to initially access full pay Personal Leave and up to a maximum of 20 days Special Pandemic Leave as required and approved once their full pay Personal Leave entitlements are exhausted.

When an employee is absent due to closure of schools and child care centres.

An employee who needs to care for their child(ren) due to the closure of their school or child care centre is to take Personal Leave and if full pay Personal Leave is exhausted they may access Special Pandemic Leave of up to 20 days.

An employee is to provide evidence of a school or child care centre closure where possible or where not reasonably available a statutory declaration can be provided.

Where an Agency directs an employee to not attend work

An employee who is not ill but is directed by the Head of Agency or delegated person to not attend work will continue to be paid their ordinary salary rate (including allowance and projected shift roster) without any deduction being made from any leave credits.

When a workplace has been closed

A workplace may be closed as a preventative measure, or because the premises have been closed due to health and safety issues.

Closing a workplace to the public by direction of DHHS does not necessarily exclude the employees from continuing work unless the premises themselves are quarantined.

An employee may be directed by the Head of Agency or delegated person where reasonable to undertake work at another location or where possible to work from home.

Employees who are directed to stay at home or are required to remain available for work and to stay in regular contact with the workplace and their Manager.

If the by the Head of Agency or delegated person closes a workplace and the employee is directed to stay at home but the employee remains ready, willing and able to work then the Agency must continue to pay the employee their ordinary salary (including allowances and projected shift roster) while they are absent on duty.

When employee refuses to come to work

When the workplace is considered safe by the Agency an employee cannot refuse to come to work where there are no reasonable grounds for the refusal.

It is the responsibility of an Agency to ensure that workplaces are safe places to work and have provided with formation regarding the risks associated with contracting the virus and the appropriate infection control procedures in their workplace.

An employee is to advise their Manager if they consider they have higher degree of susceptibility to a virus and/or may be more at risk (because of pre-existing medical conditions) of serious complications if they contract the virus. The Agency Manager needs to seek advice and discuss a management plan with the employee.

An employee who unreasonably refuses to come to work should be placed on leave without pay and advised that the refusal to attend to work may result in an action for potential breach of the State Service Code of Conduct.

When an employee shows symptoms of illness while at work and refuses to leave work

An employee who attends work showing symptoms of influenza virus is to be directed by the Head of Agency or delegated person to leave the workplace and take full pay Personal Leave and if this is exhausted they may access Special Pandemic Leave. Employees have a duty to obey a lawful and reasonable direction which may include a direction to take Personal Leave. Any refusal can be subject to potential action for breach of the code of conduct.

When an employee needs to be isolated due to contact with an affected person in the workplace and is directed by the Head of Agency or delegated person to leave the workplace.

An employee who is not ill or presenting flu like symptoms but has come into contact with a person who is confirmed or suspected of having a pandemic illness and is required by the Head of Agency or delegated person to be isolated or quarantined is to continue to be paid their ordinary salary (including allowances and projected shift roster) without the deduction of leave until the workplace is considered safe by the Agency and/or the required isolation or quarantine period has ended.

When employees are directed by a Public Health Authority, Flu Clinic or similar authority to remain in quarantine

An employee who has been directed by a Public Health Authority, a Flu Clinic or similar authority to remain in quarantine due to contact with people who have a confirmed or suspected pandemic illness but are not themselves suffering from an illness will be able to access Special Pandemic Leave for up to 20 days.

When employees are unable to get to work due to transport or other major disruptions

An employee who is unable to get to their normal workplace by any reasonable means due to transport or other major disruption must advise their Manager. An employee may access Special Pandemic Leave for up to 20 days for an approved period to enable alternative arrangements to be made. Alternative arrangements may include working from home or another location.

Evidence of transport or other disruption is to be provided or where not reasonably available a statutory declaration may be provided.

8. Variation to duties within an Agency

During the pandemic it may be necessary to vary the duties of employees within an Agency to undertake essential roles and to ensure workplaces remain open. Normal conditions for the variation of duties will apply.

Any variation to duties will be managed in consultation with the employee in the normal manner considering the skills, competence and training required and personal circumstances of the employee including any travel requirements.

Employees are not to be financially disadvantaged in the event that a variation to duties occurs due to a pandemic. Employees are to continue to receive their ordinary rate of pay (including allowances and projected shift).

Normal arrangements for claims for additional reasonable travel costs incurred as a result of a change in workplace due to the variation of duties will apply in accordance with the relevant award or agreement.

Where a permanent employee is required to undertake higher or more responsible duties the normal arrangement for payment of these allowances will apply.

9. Additional Hours of Work

Normal award/agreement entitlements in relation to overtime and penalty payments will apply to employees who work additional hours to cover absences of other employees.

10. Community Services Volunteers/Undertaking volunteer roles

The arrangements contained in Ministerial Direction No.14 (Leave and related arrangements for emergency service volunteers) will continue to apply however any specific pandemic related training required will be approved with pay.

11. Other related issues

a) Voluntary transfer across Agencies

By agreement between an employee and Heads of Agencies employees can be voluntarily transferred between Agencies within the State Service.

During the pandemic this will generally be a transfer to the Department of Health and Human Services but could include other Agencies. Employees will be requested to volunteer to undertake essential duties.

The PSMO has developed standard voluntary transfer agreements for internal volunteers that move outside of their Agency to support the implementation of pandemic plans.

The transfer agreements outline the agreed term of the transfer and conditions of employment. It is proposed that the employing or original Agency will continue to pay all salary and on-costs.

However, each agency should keep a record (for example by charging all relevant expenditure to a budget code created for recoding pandemic expenditure) so that funding arrangements can be managed at the appropriate time.

All roles identified will include statements of duties and will be classified in accordance with the Tasmanian State Service Award or Health and Human Services (Tasmanian State Service) Award, or other relevant awards where the duties are of a specialised nature. All State Service employees are to be paid at either the classification of the duties to be performed or their normal salary, whichever is the greater.

b) Fixed-term employees to cover short-term absences for specialist roles

During the pandemic it may be necessary to fill short-term specialist roles from outside the State Service with persons such as ambulance officers, doctors and nurses who possess necessary specialist skills on a fixed-term basis at short notice.

Agencies are to request the State Service Commissioner to provide approval to appoint without the normal advertising requirements.

c) Secondments from outside the State Service

During the pandemic Agencies may consider secondment arrangements to fill essential roles during the pandemic. Approval for the specific secondment arrangements need to be approved by the State Service Commissioner.

d) Role of PSMO

During the pandemic the Public Sector Management Office (PSMO) will be a point of central co-ordination and advice to Government and individual Agencies on employment and industrial relations issues. PSMO will oversee workplace arrangements having regard to the needs and circumstances of both the Agency and its employees, and that any proposed changes to previously agreed terms and conditions of employment are reasonably applied and appropriate to the changed circumstances.