

EMERGENCY RESPONSE – GUIDE TO MANAGING ACTPS EMPLOYEES ON COVID-19 LEAVE



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Purpose

The purpose of this document is to provide advice to managers on managing workforce issues in the ACT Public Sector (ACTPS) in response to the COVID-19 pandemic. This advice summarises the purpose and application of COVID-19 leave in the workforce to assist managers in managing employees accessing COVID-19 leave.

This advice should be read in conjunction with the [Emergency Response - ACTPS employee entitlements and access to leave during the COVID-19 pandemic](#) and the [Emergency Response - Guide to applications for leave for COVID-19 Purposes \(Other than Personal Leave\)](#) documents.

This advice applies to officers, employees and executives employed in the ACTPS under the *Public Sector Management Act 1994* (PSM Act).

Background

COVID-19 leave was introduced to address situations where ACTPS employees were unable to perform their required workplace duties as a result of COVID-19, including through self-isolation requirements arising from overseas travel or medical vulnerability and caring duties of children unable to attend school or child care. The ACT Government formed the view that employees ready and willing to work, but who were unable to perform work due to COVID-19 and who were not sick, should be provided with income security and not have to access their personal or annual leave credits during this unprecedented event.

While the formal mechanism is through the leave category 'take leave where leave cannot be granted under any other provision', COVID-19 leave is not leave in the sense that the employee is unavailable for work. Rather, the employee remains able and ready to work, but is unable to be given duties that can be performed remotely.

When COVID-19 leave was introduced, it was at a time when there was exponential growth of confirmed COVID-19 cases. The emergency response COVID-19 policies and guidelines were developed to prepare the Service for a worst-case scenario. These guidelines may be adapted depending on the circumstances of the pandemic and official health advice.

It is important to note that the COVID-19 pandemic has changed the way our workforce delivers outcomes and workplaces may not necessarily return to pre-COVID-19 conditions. For example, employees may wish to continue to work from home, where this can be done effectively, and our vulnerable employees may not be able to return to their workplace even when other parts of the workforce begin to do so.

The severity of the pandemic can change quickly. The ACTPS workforce needs to be prepared to change working arrangements if the situation worsens due to a surge in infection rates and workplaces and schools close.

Issues

COVID-19 leave is currently available in certain COVID-19 related circumstances to assist employees as outlined in the [Emergency Response - ACTPS employee entitlements and access to leave during the COVID-19 pandemic](#).

COVID-19 leave is not unlimited, and employees can be asked to work if and when circumstances allow, either where duties become available that an employee can perform from home, or where restrictions on movement of non-essential workers are eased and the employee can return to their usual workplace. However, there are circumstances where an employee may have a legitimate need to remain at home due to COVID-19 related issues and these employees may still be eligible to access COVID-19 leave.

There are a number of conditions that employees must meet and continue to meet in order to be eligible for COVID-19 leave. The conditions include that the employee:

- is unable to attend their workplace and cannot be flexibly deployed to another workplace;
- cannot be provided with suitable duties to be performed from home; and
- is willing and ready to work if safe and appropriate work is available for them to perform.

It is incumbent on managers and employees to keep in regular contact and to regularly review the circumstances that have led to an employee being on COVID-19 leave and to ensure these conditions continue to be met, or whether the circumstances have changed.

Employees can apply for COVID-19 leave using the COVID-19 Leave Application form on the Commercial Services and Infrastructure Group website [here](#).

Employee is unable to attend their usual workplace and cannot be flexibly deployed to another workplace

An employee may be unable to attend their usual workplace due to the workplace closing or being unavailable during the COVID-19 pandemic. As physical distancing restrictions are lifted, there may be possibilities where the employee can return to work, even on a flexible basis e.g. staggering or rotating working hours or days with other employees.

Managers and employees are encouraged to be innovative and flexible in supporting our employees to work productively in these unprecedented circumstances.

Consideration of flexible arrangements are appropriate if there are school or child care closures due to COVID-19.

An employee who is caring for a child or immediate family member who is ill with COVID-19 should take personal leave. In this circumstance they will not meet the criteria for COVID-19 leave as they are not 'ready and willing' to be deployed to work due to their caring responsibilities.

Where an employee has caring responsibilities looking after a vulnerable family member or other circumstances relating to COVID-19 and they do not want to attend their workplace, it is appropriate that they take personal leave. In circumstances where an employee exhausts their leave provisions, 'COVID-19 leave' may be considered by the appropriate delegate on compassionate grounds on a case-by-case basis.

An employee may be unable to attend their usual workplace because they have been identified as a vulnerable worker and their manager is unable to make appropriate arrangements for their work health and safety, such as working from home or in a role with reduced COVID-19 risk. A vulnerable employee should identify themselves to their manager and will be eligible to access COVID-19 leave. If the manager is concerned that the employee does not meet the criteria of a vulnerable worker as set out in the [ACTPS WHS Guidance: COVID-19 and WHS Requirements for Vulnerable Workers](#), they may ask the employee to provide further evidence of their vulnerabilities, e.g. a medical certificate.

Employee cannot be provided with sufficient duties to be performed remotely

Where at all possible, employees should be productively tasked. If an employee is unable to attend their workplace and isn't already working from home on their normal duties, managers should look for innovative ways they can find tasks for the employee to perform from home. Where there is not enough work for an employee and they remain on COVID-19 leave, managers should discuss expectations in relation to work output, as this is an important way of staying in touch with the employee and making them feel connected. Where an employee works from home but does not have enough work or flexibility to complete their standard hours, they will not be required to take leave.

Where an employee cannot work from home in a regular way and is on COVID-19 leave, they can still be asked to do some work from home or can be asked to return to duty, 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 flexibly redeployed to other duties provided that the employee can reasonably be expected to perform the work. Where an employee is working remotely, but not on full time hours, it is a matter of judgement based on the circumstances whether or not they are on duty, or on COVID-19 leave.

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.

Employee is willing and ready to work if safe and appropriate work is available to them

The most important element of COVID-19 leave is that the employee is ready and willing to work if safe and appropriate work is available for them to perform. All employees accessing COVID-19 leave should stand ready to perform work if suitable work is provided to them.

An employee who refuses to perform reasonable work that is tasked to them is not entitled to continue to access COVID-19 leave. If an employee refuses to perform reasonable work tasked, then it is appropriate that the employee take personal leave or annual leave to cover their absence from the workplace. The key consideration here is that the work tasked must be reasonable in terms of the employee's skills and abilities and health and safety considerations have been taken into account.

Where an employee is a critical frontline worker and is unable to work from home, managers should refer to the advice [Emergency Response – ACTPS Advice about critical frontline workers during COVID-19 pandemic](#).

Regular review of COVID-19 leave

Arrangements where employees are accessing COVID-19 leave should be reviewed regularly by managers to ensure employees are meeting the conditions for COVID-19 leave. Managers should review employee's circumstances, which may have changed since first applying for COVID-19 leave, and reassess whether there is any ability to provide employees with appropriate work from home or explore the possibility of employees returning to the workplace. For further information about flexibility in the workplace during the COVID-19 pandemic managers should refer to [Emergency Response – ACTPS Workforce Mobility and Flexibilities During the COVID-19 pandemic](#).

Managers should look for innovative and flexible ways they can support their employees to provide productive output whilst they are on COVID-19 leave. Managers should not seek to direct their employees to work if the employee genuinely meets the requirements for COVID-19 leave, rather they are encouraged to provide the employee with support and try to work towards finding a way employees can be productively tasked if at all possible.

Legislative References

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

- [Public Sector Management Act 1994](#)
- [Public Sector Management Standards 2016](#)
- [ACTPS Enterprise Agreements](#)

More Information on Coronavirus

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. This includes practising good hygiene, such as frequent hand washing, to protect against infections.

Guidance and Resources

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

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

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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