

Joint Statement (Revised): Responding to the Coronavirus (COVID-19) pandemic

Introduction

On 17 March 2020 Local Government NSW (LGNSW), the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union (USU), Local Government Engineers Association (LGEA) and Development and Environmental Professionals Association (depa) issued a Joint Statement to provide guidance to Local Government employers and employees on how to respond to the COVID-19 pandemic. Since then, the situation has developed at a rapid pace and we have determined that it is necessary and appropriate to issue this revised **Joint Statement**.

We recognise that a uniform approach is not possible and timely decisions need to be made that are appropriate to the specific circumstances and available resources.

This Joint Statement establishes what we consider to be the minimum standards that should apply. Employers may wish to supplement the provisions of this Joint Statement.

Work Health & Safety (WHS)

Work Health & Safety (WHS) is paramount and must be at the forefront of everyone's mind when responding to the COVID-19 pandemic.

Employers (persons conducting a business or undertaking) have a primary duty of care under section 19 of the *Work Health and Safety Act 2011* (WHS Act) to ensure, so far as is reasonably practicable, the health and safety of workers, contractors and other persons at the workplace, and that persons are not put at risk from work carried out as part of the business or undertaking.

Workers and every other person at a workplace (including councillors) have a health and safety duty under sections 28 and 29 of the WHS Act to take reasonable care for their own health and safety, to take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons, and to comply, so far as they are reasonably able to, with any reasonable instruction that is given by the employer or to allow the employer to comply with the WHS Act.

Unable to work due to illness associated with COVID-19

If an employee is sick, current sick leave entitlements and conditions apply as per clause 21A [Sick Leave] of the *Local Government (State) Award 2017* ("**Award**").

Where an employee's paid sick leave entitlement is exhausted, additional sick leave may be granted in accordance with clause 21A(ix) of the Award. Alternatively, the employee may apply to use other forms of accrued leave under the Award (e.g. annual leave and long service leave).

Where the employee has exhausted all accrued leave entitlements under the Award, the employee may apply to the employer for special leave, either with pay or without pay, as per clause 21L [Special Leave] of the Award. Any such requests shall not be unreasonably refused by the employer.

Working flexibly

Employers are encouraged to explore flexible work arrangements to help reduce the spread of COVID-19 and to enable employees to better manage their work and family responsibilities during the crisis, taking account of any protection measures recommended by NSW Health and/or Commonwealth health authorities. Requests for flexible work should be managed in accordance with clause 22 [Flexibility for Work and Family Responsibilities] of the Award.

Where employees are working from home whilst also providing care to a family member, it is expected employees can balance caring responsibilities with their ability to undertake productive work, or other leave provisions can apply.

Where there is a requirement to ensure that each workplace remains open at all stages, employers may deploy employees into other roles of the business where possible, in accordance with clause 8 [Use of Skills] of the Award. Employees may be required to undertake different work (most likely for essential work) as directed by their employer.

Exclusion from the workplace due to isolation requirements

Where an employee is not sick but is directed not to attend the workplace due to isolation requirements, employers should identify options for employees to work from home during the quarantine period.

Where work is unable to be provided to employees who are required to self-isolate (in accordance with isolation requirements set by State and/or Commonwealth health authorities), the employees should be paid as normal and placed on paid special leave for the length of the isolation (which as at 19 March 2020 is 14 days) provided that:

- (i) Employees have a right to request an extension to, or further period of, paid special leave, and such requests shall not be unreasonably refused by the employer;
- (ii) Employers may refuse to grant paid special leave to employees who are required to self-isolate on more than one occasion as a result of not adhering to the [social distancing guidance](#) of State and/or Commonwealth health authorities. An employer bears the onus of establishing that an employee did not adhere to the [social distancing guidance](#) of State and/or Commonwealth health authorities; and
- (iii) Employers may refuse to grant paid special leave to employees who, after 16 March 2020, leave the country to travel to a country or region which requires the employee to self-isolate on return to Australia.

Unable to work

Up to two (2) weeks paid special leave will be provided before other leave entitlements need to be accessed to employees who, due to the COVID-19 crisis, are unable to work because they are:

- caring for family members due to closure of schools and caring facilities; or
- unable to attend work due to transport disruptions.

After the two (2) weeks of paid special leave has been used, employees may access accrued leave entitlements (e.g. sick, carer's, annual and/or long service leave). Where the employee has exhausted all accrued leave entitlements under the Award, the employee may apply to the employer for special leave, either with pay or without pay, as per clause 21L [Special Leave] of the Award. Any such requests shall not be unreasonably refused by the employer.

Employers shall not unreasonably refuse requests for carer's leave in excess of two weeks which arise as a result of the COVID-19 crisis.

Workplace is closed

Where the workplace is closed the following approach will be taken:

- (i) the employer will make arrangements for employees to work remotely;
- (ii) where it is not possible for the employee to work remotely, the employee will be placed on paid special leave for the entirety of the closure unless:
 - (a) the employee is directed, within the limited circumstances of sub clause 21D(v) of the Award, to take annual leave; or
 - (b) the employee is directed, within the limited circumstances described in sub clause 21E(iii) of the Award, to take long service leave.

Regular casual employees

A "regular casual employee" means a casual employee who, in the preceding period of 6 months, worked a pattern of hours on an ongoing basis without significant adjustment and who, but for the COVID-19 pandemic, had a reasonable expectation of ongoing employment.

Where a regular casual employee is unable to perform their regular shift due to self-isolation requirements (in accordance with isolation requirements set by State and/or Commonwealth health authorities), the regular casual employee should be paid as normal and placed on paid special leave for the length of the isolation (which as at 19 March 2020 is 14 days).

Where a regular casual employee is unable to perform their regular shift because of a workplace closure that is attributed to the COVID-19 pandemic, the regular casual employee should be placed on paid special leave for the following length of time:

- the period of the closure or a period of four (4) weeks, whichever is the lesser period; or
- in the case of a seasonal employee, the balance of the season or a period of four (4) weeks, whichever is the lesser period.

In the case of long term regular casual employees (i.e. greater than 5 years continuous service), employers are encouraged to consider more beneficial arrangements than the arrangements recommended in this Joint Statement.



Further contact

For further information:

- Employers should contact LGNSW's Workplace Relations Unit, and
- Employees should contact their union or HR representative.

A handwritten signature in blue ink that reads 'Linda Scott'.

Cr Linda Scott
President LGNSW

A handwritten signature in blue ink that reads 'Graeme Kelly'.

Graeme Kelly OAM
General Secretary USU

A handwritten signature in blue ink that reads 'Gordon Brock'.

Gordon Brock
Director, LGEA

A handwritten signature in blue ink that reads 'Ian Robertson'.

Ian Robertson
Secretary, depa

20 March 2020