

Coronavirus (COVID-19) Maintenance of Employment

Frequently Asked Questions – 28 April 2020

Background

On 22 April 2020, the Department of Health and Human Services issued advice directly to all public health sector entities aimed at supporting casual (and part-time) employees whose weekly hours and patterns of work may have been disrupted by coronavirus (COVID-19)-related matters. This advice coincides with a relaxation of restrictions applying to non-urgent (elective) surgical procedures.

The advice should be treated as a direction.

While demand directly related to coronavirus (COVID-19) remains low, these staff may be able to assist with planning and preparation for outbreaks, commissioning of expanded capacity, training, Personal Protective Equipment distribution and checking, preparation for elective surgery increases and assistance with new models of care, including home-based care.

This document expands on the department's 22 April 2020 advice with some further details of the department's intent and by way of answers to frequently asked questions.

This advice does not apply to and has no effect on arrangements for full-time employees.

Employment Stability Payments

Effective from 1 April 2020, and until elective surgery restrictions have been completely lifted (or otherwise as directed by the Department of Health and Human Services), health services should remunerate affected employees for the equivalent of their average earnings over the last twelve months (or shorter period if they have not been an employee of the relevant public health sector entity for twelve months). This will ensure that employed staff remain available for any coronavirus (COVID-19)-related or other work during this uncertain time.

The arrangement applies to all casual staff employed directly by the public health service, however described, on a regular and systematic basis. This includes clinical and non-clinical staff across any work functions. There is no minimum weekly-hours requirement for those employees to qualify for this support.

The key premise of this arrangement is to avoid disadvantage to, but not create an advantage for, affected employees. Applying this premise will help employers to discern what approach they should take in the range of circumstances that they may face and informs all of the answers in the Frequently Asked Questions below.

Employers are expected to apply the department's advice with this key premise in mind. This may require employers to consult and to act cooperatively with each other in assessing and addressing potential disadvantage to employees.

Frequently Asked Questions

Eligibility

Can you confirm whether the arrangement relates to health services that offer elective surgery as well as those that don't?

The directive applies to all public health services.

Does the reference to 'bank staff on variable hours' include all casual staff, or only staff employed into a defined 'bank arrangement'?

The arrangement applies to all casual staff employed directly by the public health service, however described, on a regular and systematic basis for the previous 12 months, or less if they commenced employment within the last 12 months. This includes clinical and non-clinical staff across any work functions. There is no minimum hour requirement for those employees.

Does the arrangement apply to contracted services? (For example, Spotless and other organisations who provide hotel or maintenance services.)

No. The arrangement only applies to staff directly employed by the hospital/health service. In a similar manner, it does not apply to agency staff.

Does the arrangement apply to Visiting Medical Officers?

The arrangement applies only to direct employees of a health sector entity. Therefore, it applies to medical staff that are employed by the health service on a fractional basis, for the hours normally worked on that fractional basis. The arrangement does not apply to medical staff that are engaged by the health services under a 'fee for service' arrangement.

Does the arrangement apply where the health service has a mix of clinical and non-clinical casual employees?

Yes. The arrangement applies in relation to **all** casual employees directly engaged by the Health Service.

Does the advice apply to casual or part-time employees who have worked regularly for less than 12 months or who have converted to casual or part-time employment less than 12 months ago?

While the advice is aimed primarily at employees who have worked regularly as a casual or part-time employee for 12 months, employees who have worked as a casual or part-time employee for less than 12 months can be included in this arrangement. Employers should consider the period worked so far and the likely period for which the employee would maintain regular hours going forward in determining eligibility and what payments should be made.

Does the arrangement also apply to part time employees contracted to minimum hours but who have regularly worked additional hours over during the past 12 months?

Yes. Part-time employees who have regularly worked more hours in the past 12 months in excess of the hours stated in their employment contract, should also be considered in the application of this arrangement.

What if the employee is already accessing paid Special Leave to cover their absence from work for coronavirus (COVID-19)-related reasons (such as self-quarantine, higher risk employee or school closure/online teaching)?

If there is no disadvantage to the employee in the pay they are receiving on paid Special Leave (that is, it is what they would have otherwise received if they had worked), then no additional payment is required.

Calculation and payment

Are payments to both casuals and part time employees calculated only on their base rate against average hours or are penalty rates and allowances included too?

Using the premise of 'no disadvantage', the employee should be paid as if they had worked the hours/shift in question, if that's what would otherwise have happened.

How do I work out the payment for employees who have had various roles in the last 12 months (for example, casual or part time roles in different areas)?

As for the above question, you should average what they have received with a view to not disadvantaging them.

How should these 'stability' payments be made to employees? Are they paid as a 'lump sum' or in the regular pay periods?

The payments are intended to substitute for or top-up the normal pay the employee would receive each pay period and should be paid on that basis. The easiest way to do this may be to treat the payment as ordinary or additional hours.

Where any arrears are due, they can be rolled up in a single pay period.

During the last 12 months if people have worked on 'blitz lists' that are not part of their normal work pattern, should these be included in the 'averaging'? What if the employee acted in a different role at higher hours for part of the last 12 months?

The intention is to 'not disadvantage' employees compared with what their normal work pattern would be. So, unless such a 'blitz' would normally be occurring at this time for which the employee could be reasonably expected to accept increased hours, then these 'spikes' in their hours need not be included as that may 'advantage' the employee. The effects of 'winter demand' and other seasonal or once-off variations in hours can also be treated this way.

The same applies to any acting assignments at higher than usual hours.

Does this apply to staff who would be working overtime during this period that are now not?

If the employee would normally be rostered to work overtime now, this should be included in the calculation.

What if the employee has taken paid or unpaid leave during the last 12 months? How is this dealt with in the calculation?

If paid leave was taken, it is likely to have been paid at the employee's ordinary or 'contracted' hours, so this should fit neatly within the averaging calculation. Where a period of unpaid leave has been taken, that period should be excluded from the calculation.

Where an employee who normally works two shifts per week with my health service and the same with another health service is unable to work the shifts at my health service for coronavirus (COVID-19)-related reasons, do I have to pay that employee for the shifts normally worked with my health service?

This will depend on what shifts the employee is working elsewhere. If the employee has picked up shifts elsewhere to compensate in whole or in part for not working the normal shifts with your health service, then there is no disadvantage to the employee and no payment is required. However, if the employee has not been able to replace the shifts with your health service in whole or in part, then a payment is warranted.

Ascertaining whether a disadvantage has occurred may require you to consult with other employers.

Do the 'stability' payments made to casual and part-time employees attract superannuation or count for leave accrual purposes?

Generally, yes. Because the payment is being paid in lieu of salary for hours that would normally be worked, and because of the intention to not disadvantage employees whose hours have been reduced for reasons outside their control, superannuation and leave accruals should apply as if those hours were worked. Nonetheless, payments or hours that would not normally attract superannuation or be counted for leave accrual purposes should be treated in the same way in this case as the intention is also not to 'advantage' employees over normal arrangements.

What if an employee is refusing to accept shifts offered to them that they would normally work or where other work is available and offered but refused?

The arrangement is meant to neither disadvantage nor advantage an employee. Payment to an employee is predicated on them being willing and available to work unless on an approved period of leave. It is not the department's intention that the 'stability' payment be made to an employee where work is available, offered but refused.

Other matters

What is the start date for the directive?

It commences immediately and should be backdated to 1 April 2020. For simplicity of calculations, this can be treated as the full pay period in which 1 April 2020 falls.

Should we be able to bring people in to work if we are paying them so they can help with tasks?

This should be the first premise of maintaining hours and pay for these employees. The stability payment should occur after such opportunities are exhausted.