Suspension of employees

Policy Number: E14 (QH-POL-400)

Publication date: January 2020

Purpose: To outline the suspension of employment arrangements within Queensland Health.

Application: This policy applies to all Queensland Health employees working for:

- the Department of Health
- non-prescribed Hospital and Health Services
- prescribed Hospital and Health Services.

This policy does not apply to employees of Queensland Ambulance Services. Instead, Queensland Ambulance Service employees are to refer to their local policy/procedure, where applicable.

Delegation: The ‘delegate’ is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Hospital and Health Services Human Resource (HR) Delegations Manual, as amended from time to time.

Legislative or other authority:
- Human Rights Act 2019
- Public Service Act 2008
- Public Service Regulation 2018

Related policy or documents:
- Discipline HR Policy E10 (QH-POL-124)
- Public Service Commission Guideline 01/17: Discipline
- Code of Conduct for the Queensland Public Service

Policy subject:

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1 Suspension of employees

The provisions of the Public Service Act 2008 relating to discipline have been extended to health service employees via Public Service Regulation 2018.

Suspension from duty is not a disciplinary penalty, but an administrative action designed to temporarily remove the employee from the workplace.

1.1 Suspension under section 137 of the Public Service Act 2008 (other than as disciplinary action)

Section 137 of the Public Service Act provides for the suspension of a permanent employee as follows:

- The chief executive of a department may, by notice, suspend an employee if the chief executive of a department reasonably believes the proper and efficient management of the department might be prejudiced if the employee is not suspended.

The period of the suspension under section 137 cannot be more than the period the chief executive reasonably believes is necessary to avoid the prejudice to the proper and efficient management of the department.

1.2 Suspension under section 189 of the Public Service Act 2008 (employee liable to discipline)

Section 189 of the Public Service Act provides for the suspension of an employee as follows:

- The chief executive may suspend an employee if the chief executive reasonably believes the employee is liable to discipline under a disciplinary law.

2 Consideration of alternative duties

Before suspending an employee, either under section 137 or 189 of the Public Service Act, there is a legislative obligation that the chief executive must consider all alternative duties the employee may be able to perform. The duties do not have to form part of an established role and can be outside the employee’s usual place of work.

Prior to suspending an employee, consideration must also be given to (and is not limited to):

- temporary transfer to alternative duties (either in the employee’s workplace or at another workplace)
- directing the employee to work under close supervision or with another employee
- working from home
- asking the employee if they wish to access accrued recreation and/or long service leave (access to accrued leave is at the discretion of the employee).

In determining whether suspension is appropriate, consideration can be given to whether:

- the safety or well-being of other employees, clients or members of the public may be adversely affected if the employee were to remain in the workplace
• the alleged behaviour of the employee is so unacceptable it is likely to cause loss or damage to Queensland Health either physically or through public perception
• any investigation would be compromised if the employee were to remain in the workplace e.g. there is a possibility that evidence will be destroyed or witnesses may be inappropriately approached or feel intimidated
• there is a likelihood the employee will continue with the alleged unacceptable conduct and the potential impact if this were to occur
• the significance of any effect on the proper efficient management of the department.

3 Notice of suspension

As required by the following sections of the Public Service Act, the delegate must give the employee written notice of the suspension:

• Section 137(2) for suspensions other than disciplinary action
• Section 192 for suspensions of employees liable to disciplinary action.

The notice must state:

• when the suspension starts and ends
• the remuneration the employee is entitled to for the period of the suspension
• the effect alternative employment may have on the remuneration the employee is entitled to while suspended.

The record should also indicate alternative duties which were considered and why they were deemed unworkable.

4 Suspension with pay

An employee suspended under section 137 of the Public Service Act is entitled to normal remuneration, less any amount they earn from alternative employment during the period of suspension. An employee suspended under section 137 cannot be suspended without pay.

An employee suspended under section 189(1) of the Public Service Act is entitled to normal remuneration, less any amount they earn from alternative employment during the period of suspension.

5 Suspension without pay

Where a chief executive decides the suspended employee (suspended under section 189 of the Public Service Act) is not entitled to normal remuneration the employee may be suspended without pay. Before a decision is made to suspend without pay the employee must be afforded an opportunity to respond, in writing, to the proposed action. The principles of natural justice apply for suspensions without pay.

6 Alternative employment

If an employee engages in alternative employment during a period of suspension the employee must advise the employer. Alternative employment does not include employment that the employee was engaged in at the time of the suspension and which is not in contravention of the Public Service Act, the Code of Conduct for the Queensland Public Service or a directive issued by the Public Service Commission.
Any amount earned from the alternative employment that the employee engages in during the suspension period is to be deducted from the remuneration paid to the employee while suspended. The amount deducted must not be more than the amount of the employee’s normal remuneration during the period of the suspension.

7 Continuity of employment

Suspension does not break the continuity of the employee’s service.

8 Monitoring of suspension

An employee’s suspension must be monitored. Consideration should be given to a number of factors including, but not limited to, whether:

• the employee should remain suspended
• any circumstances have changed
• there are alternative duties the employee could perform
• the suspension should be without pay (if suspended under section 189(1)).

Regular communication should be maintained with the suspended employee for the duration of the suspension.

9 Ending suspension

The chief executive may cancel the suspension at any time. The employee is to be advised of the cessation of the suspension in writing.

10 Reporting

Information must be recorded on all suspensions and reported quarterly as per the Public Service Commission reporting requirements.

Definitions:

| Alternative employment | Under section 191(3) of the Public Service Act 2008, alternative employment does not include employment if—
|------------------------|------------------------------------------------------------|
|                        | a) the employee was engaged in the employment at the time of the suspension; and
|                        | b) the officer’s engaging in the employment was not in contravention of—
|                        |   I. this Act; or
|                        |   II. a standard of conduct applying to the officer under an approved code of conduct under the Public Sector Ethics Act 1994; or
|                        | c) a standard of conduct, if any, applying to the officer under an approved standard of practice under the Public Sector Ethics Act 1994. |

| Normal remuneration    | Means:
|------------------------|------------------------------------------------------------|
|                        | • the ordinary hours worked by the employee; and
|                        | • the amounts payable to the employee for the hours, including (for example) allowances, loadings and penalties; and
|                        | • any other amounts payable under the employee’s employment contract. |

Where the employee is a shift worker, any decision to suspend the
| Natural justice | Natural justice has two rules:
|                | Rule against bias: decision-makers are to be objective, free of bias, and have no personal interest in the matter being decided.
|                | Hearing rule: an individual is to be informed of the decision to be made and have the opportunity to present their case prior to a decision being made. |

**History:**

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| January 2020 | - Policy:  
|             |   - formatted as part of the HR Policy review  
|             |   - updated to include reference to the Human Rights Act 2019. |
| October 2018| - Policy:  
|             |   - formatted as part of the HR Policy review  
|             |   - amended to update references and naming conventions  
|             |   - application excludes employees of Queensland Ambulance Service  
|             |   - amendments to the paid and unpaid components of suspension to align with the Public Service Act 2008  
|             |   - amendments to align with the current reporting requirements. |
| January 2014 | - New policy developed. Suspension content removed from the Discipline HR Policy E10 and incorporated into this policy. |