

DIRECTIVE 08/24

Supersedes: 05/20

Minister for Industrial Relations Directive: Paid Parental Leave

1. Purpose:

To prescribe the entitlement to paid parental leave, appointment leave and associated matters.

2. Effective date: 30 September 2024

3. Legislative authority:

3.1 Section 223 of the *Public Sector Act 2022* (PS Act).

3.2 Section 228 of the PS Act outlines the relationship between a directive and an Act or subordinate legislation, including how to deal with inconsistencies.

3.3 Section 229 of the PS Act outlines the relationship between a directive and industrial instrument, including how to deal with inconsistencies.

4. Application:

4.1 This directive applies to industrial instrument employees (i.e. employees who are covered by an award, certified agreement or arbitration determination) who are:

(a) public service employees, including long-term casual employees as defined under section 15 of the *Industrial Relations Act 2016* (IR Act); or

(b) public sector employees employed under the establishing legislation¹ of the following entities:

- (i) Queensland Health;²
- (ii) Hospital and Health Services;
- (iii) Queensland Ambulance Service;
- (iv) Queensland Fire and Emergency Service (other than auxiliary fire officers);
- (v) Queensland Building Construction Commission;
- (vi) Queensland Building Construction Commission Employing Office;
- (vii) Queensland Rural Industry Development Authority;
- (viii) Residential Tenancies Authority;
- (ix) Residential Tenancies Employing Office;
- (x) Trade and Investment Queensland;
- (xi) South Bank Employing Office; or
- (xii) Office of the Queensland Integrity Commissioner.

¹ For example, the establishing legislation of the Queensland Building and Construction Employing Office is the *Queensland Building and Construction Commission Act 1991*.

² For avoidance of doubt, this includes Health Service Employees employed by Queensland Health (Department of Health).

- 4.2 This directive does not apply to:
- (a) short term casual employees; or
 - (b) auxiliary fire officers.

5. Key concepts

- 5.1 The IR Act provides an entitlement to unpaid leave in relation to the birth, adoption, surrogacy or cultural parentage of a child or children. This is referred to as 'unpaid parental leave' within this directive.
- 5.2 Unpaid parental leave is either long unpaid parental leave (generally taken by an employee to be responsible for the care of the child) or short unpaid parental leave (generally taken by a spouse in connection with the arrival of the child).
- 5.3 The IR Act provides the conditions for taking unpaid parental leave including who can take it, when it can be taken and how much notice and information (including evidence) is required.
- 5.4 This directive provides for payments, on conditions set out herein, that are available to an eligible employee when the employee is on the relevant approved unpaid parental leave period. The payments are referred to as 'paid parental leave'.
- 5.5 Paid parental leave corresponds with the type of unpaid parental leave the employee is taking and accordingly can be either long paid parental leave or short paid parental leave.
- 5.6 This directive also provides for appointment leave entitlements and other associated matters for eligible employees.

6. Eligibility

- 6.1 Eligible employees covered by this directive and who meet the qualifying service period are entitled to access the paid parental leave and appointment leave entitlements on the conditions in this directive.
- 6.2 Employees are ineligible if they:
- (a) are short term casual employees and do not accrue an entitlement to paid sick leave; or
 - (b) are solely remunerated by fees, allowances or commission; or
 - (c) are on unauthorised absence immediately before the start of the minimum period of long birth related leave; or
 - (d) do not have a period of continuous employment of at least 12 months except in the case of long-term casual employees or except in the case of employees whose service has been recognised under the Recognition of Previous Service directive.
- 6.3 Part time and long-term casual employees are entitled to the provisions of this directive on a pro-rata basis.

7. Qualifying service period

- 7.1 "Qualifying service period" for the purposes of paid leave in this directive means at least 12 months service in one or more Queensland Public Service entities (s9, PS Act) or entities listed at clause 4.1(b).
- This service:
- (a) is unbroken (i.e. qualifying service period is nullified where there is a break in service); or
 - (b) may be inclusive of paid and unpaid leave (the first 3 months only of any unpaid leave is to be credited towards the qualifying service period); or
 - (c) may be inclusive of service recognised under the Recognition of Previous Service directive.

- 7.2 Casual employment is not recognised as contributing towards the qualifying service period except where the employment meets the definition of a long-term casual employee in section 15 of the IR Act.
- 7.3 The qualifying service period need only be met once in an employee's period of continuous service.
- 7.4 In determining the qualifying service period for a part-time employee, the passage of time and not the completion of equivalent hours worked as a full-time employee is to be used.

Example 1:

| | | | |
|-----------------------|----------------------------------|-----------------------|---------------------|
| 6 months | 3 months | 3 months | 12 months |
| Normal working period | Paid leave recognised as service | Normal working period | = qualifying period |

Example 2:

| | | | |
|-----------------------|---|-----------------------|---------------------|
| 6 months | 3 months | 3 months | 12 months |
| Normal working period | Paid and unpaid leave recognised as service | Normal working period | = qualifying period |

8. Entitlement to paid parental leave

8.1 Long paid parental leave

- (a) Long paid parental leave is only available to the parent who is taking long unpaid parental leave at the *significant date*.³
- (b) An eligible employee will be entitled to 14 weeks long paid parental leave to be taken as the initial absence on their long unpaid parental leave under the IR Act.

8.2 Short paid parental leave

An eligible employee will be entitled to 1 week short paid parental leave to be taken as the initial absence on their short unpaid parental leave under the IR Act.

- 8.3 An employee cannot access both entitlements to long paid parental leave and short paid parental leave (i.e. 14 weeks and 1 week).
- 8.4 The notice and information (evidence) requirements under the IR Act for unpaid parental leave apply equally for paid parental leave.
- 8.5 The paid parental leave period is inclusive of any public holidays arising within that time.
- 8.6 The paid parental leave period can be extended by the employee taking the leave on a half pay basis.
- 8.7 The paid parental leave period can be extended by the employee taking paid sick leave while on paid parental leave.
- 8.8 In cases of financial hardship or other exceptional circumstances the employee may ask, and the chief executive may exercise discretion in paying the full paid parental leave entitlement in advance.

8.9 Long paid spousal leave

- (a) An eligible employee whose spouse has given birth can access any of the entitlement to long paid parental leave under clause 8.1 of this directive, which has not been used by a parent of the child, as long paid spousal leave.
- (b) Long paid spousal leave is available whether or not the birth giving parent has an entitlement to long paid parental leave.

³ See also clause 8.9 regarding long paid *spousal* leave available to the spouse of a birth-giving parent.

- (c) Long paid spousal leave is subject to:
 - (i) the employee meeting eligibility requirements prior to the date of birth of the child;
 - (ii) the employee being primarily responsible for the care of the child at the time the leave is taken; and
 - (iii) the leave being taken during their approved unpaid long birth-related leave period prior to the child's first birthday
- (d) The conditions applicable to long paid parental leave in this directive apply to long paid spousal leave, except for the conditions at clauses 8.1(b) in relation to it being the initial absence and 8.3.
- (e) Documentation such as a statutory declaration or other material to the satisfaction of the chief executive, in support of the application must state that the employee is primarily responsible for the care of the child for the relevant period of the long paid spousal leave and the amount (if any) of the long paid parental leave entitlement used by the employee's spouse.

9. Appointment leave

- 9.1 An eligible employee who presents the *required evidence* (see clause 9.6) will have access to paid leave to attend medical, legal, tribunal, official or such other necessary preparations or appointments ('appointment leave') prior to the *significant date*.
- 9.2 The amount of paid appointment leave is:
 - (a) For the parent who intends to take long unpaid parental leave at the *significant date* - up to a total of either 36.25 or 38 hours (i.e. 1 week based on the average number of ordinary hours worked in a week with reference to the employee's relevant industrial instrument)
 - (b) For a parent who does not intend to take long unpaid parental leave at the *significant date* – up to a total of either 7.25 or 7.6 hours (i.e. 1 day based on the average number of ordinary hours worked in a day with reference to the employee's relevant industrial instrument)
- 9.3 An employee cannot access both entitlements to appointment leave in clause 9.2 (i.e. 1 week and 1 day).
- 9.4 Paid appointment leave is on a per pregnancy, adoption, surrogacy or cultural parental transfer basis.
- 9.5 The work unit should be flexible enough to allow such employees the ability to leave work and return on the same day.
- 9.6 **Required evidence for appointment leave**
 - (a) An employee must present, if requested, the below evidence to access the relevant appointment leave:

| Leave relates to | Evidence |
|----------------------------|---|
| Birth | Sufficient evidence to satisfy a reasonable person that the employee, or the employee's spouse, is pregnant |
| Adoption | Statement from an adoption agency confirming the employee's status as a prospective adoptive parent |
| Surrogacy | Statutory declaration that the employee is an intended parent under a surrogacy arrangement |
| Cultural recognition order | Statutory declaration that the employee is intended to be recognised as a cultural parent under a Cultural Recognition Order. |

- (b) An application shall be submitted for every absence on appointment leave, and only if requested supported by evidence to satisfy a reasonable person that the leave is taken for an *appointment* purpose (as outlined in clause 9.1).

10. Conversion to an Hourly Basis

10.1 Leave prescribed in this directive may be converted to an hourly basis for the purpose of accrual, granting and recording of leave on the following basis:

10.2 If an employee's leave entitlement is expressed in weeks or days, it may be read as if it were expressed in hours using the following formula:

(a) **LE=W x WH**

Where:

LE (leave entitlement) means the amount of leave entitlement expressed in working hours to which the employee is entitled.

W (weeks) means the entitlement accrued in calendar weeks under this directive

WH (weekly hours) means the employee's weekly hours of work or the average number of hours per working week of an employee during a pay period or the period that is reasonable under the circumstances.

(b) **LE=D x DH**

Where:

LE (leave entitlement) means the amount of leave entitlement expressed in working hours to which the employee is entitled.

D (days) means the entitlement accrued in calendar days under this directive.

DH (daily hours) means the employee's daily hours or the average number of hours per working day of an employee during a pay period or other period that is reasonable under the circumstances.

Where an employee's existing entitlement is expressed in weeks the conversion from weeks to hours is determined by applying the formula. For example, to convert an entitlement for a public service officer whose weekly hours are 36.25 and who currently has 14 weeks leave:

LE (weeks) = 14 x 36.25 = 507.5 hours full entitlement

11. Pro-rata Payment for Part-Time Employees and Long-Term Casual Employees

11.1 A part-time or long-term casual employee's entitlement to 14 weeks long paid parental leave is to be calculated as follows:

Number of hours x working days of entitlement

Where number of hours =

total ordinary hours worked over the last 12 months x 70 days

total ordinary hours of a full-time employee over previous 12 months

11.2 A part-time or long-term casual employee's entitlement to 1 week's short paid parental leave or appointment leave is to be calculated as follows:

Number of hours x working days of entitlement

Where number of hours =

total ordinary hours worked over the last 12 months x 5 days

total ordinary hours of a full time employee over previous 12 months

11.3 A part-time or long-term casual employee's entitlement to 1 day's appointment leave is to be calculated as follows:

total ordinary hours worked over the last 12 months

total ordinary hours of a full time employee over previous 12 months

11.4 Notwithstanding the above formulae, any approved absence from work cannot be taken into account to disadvantage an employee when determining their paid parental leave payment.

Example 1:

| 6 months | 3 months | 3 months | Entitlement |
|---|----------------------------------|--|--|
| Normal working period at part- time 0.5 | Paid leave recognised as service | Normal working period at part-time 0.5 | = Paid parental leave at part-time 0.5 |

Example 2:

| 6 months | 3 months | 3 months | Entitlement |
|---|------------------------------------|--|--|
| Normal working period at part- time 0.8 | Unpaid leave recognised as service | Normal working period at part-time 0.8 | = Paid parental leave at part-time 0.8 |

Example 3:

| 18 months | 12 months | Entitlement |
|--|-----------------------|--|
| Normal working period at part-time 0.5 | Approved unpaid leave | = Paid parental leave at part-time 0.5 |

12. General Conditions

12.1 Notice periods for parental leave are contained in legislation and/or industrial instruments.

12.2 Parental Leave and Access to Other Leave: Except where specifically provided under this directive, the provisions of the relevant industrial instrument shall apply.

12.3 Recreation Leave and Long Service Leave

(a) Where there is an entitlement, employees may use recreation and long service leave during the period of unpaid parental leave in accordance with the relevant Ministerial Directives⁴.

(b) An entitlement to paid sick leave may be established during periods of recreation leave and long service leave in accordance with the relevant Ministerial Directives⁴.

12.4 Sick Leave

(a) Paid sick leave is available to an employee on paid parental leave. Sick leave may be granted instead of paid parental leave already approved where:

(i) an employee submits a written application for sick leave, supported by sufficient evidence of the illness to satisfy a reasonable person if required, to the chief executive; and

(ii) the period of illness is more than three (3) working days.

(b) Paid sick leave is not available to an employee on unpaid parental leave.

12.5 An employee can only be on one form of approved paid leave at any one time (subject to the sick leave arrangements provided at clauses 8.7 and 12.4).

12.6 In the case of school teachers who do not accrue recreation leave credits, the period of paid leave is exclusive of school vacation periods.

⁴ Only for employees that the relevant Ministerial Directives apply to

12.7 Access to a Subsequent Period of Paid Parental Leave

Without limiting the circumstances in which an employee may be eligible to access a subsequent period of paid parental leave, an employee is eligible, without resuming duty, for a subsequent period of parental leave in accordance with the provisions of this directive if:

- they become pregnant while on parental leave; or
- their spouse becomes pregnant while that employee is on parental leave; or
- they are to adopt a child while on parental leave; or
- they are an intended parent under a surrogacy arrangement while on parental leave; or
- they are to be recognised as a cultural parent under a cultural recognition order while on parental leave.

12.8 Less than the standard paid parental leave taken: Except as provided by clause 8.9 (long paid spousal leave), where less than the standard parental leave is taken the unused portion of the period of paid leave cannot be banked or preserved in any way.

12.9 Special Birth Related Leave

- (a) Where a pregnancy ends in other than the birth of a living child and the employee has already given notification of intention to proceed on long paid parental leave or long paid spousal leave, the employee shall notify the chief executive of the changed circumstances as soon as practicable.
- (b) Where a pregnancy ends by the birth of a stillborn child or where the child dies during the period of long paid parental leave or long paid spousal leave, the employee shall continue to be entitled to their period of paid parental leave.

12.10 Recognition of Service

- (a) Continuity of Service: Continuity of employment is not broken by authorised leave, paid or unpaid. However, absences on unpaid leave do not count as service except as provided under the applicable industrial instrument or directive (e.g. Ministerial Directive: "Leave without Salary Credited as Service").
- (b) Paid Leave Counted as Service: Periods of paid leave during parental leave count as service for all purposes.

12.11 Extension of Leave on a Half-Pay Basis

- (a) An employee may request, and an employer may agree to extend the amount of long and short paid parental leave for which the employee qualifies by the employee taking the leave on half-pay i.e.:
 - 14 weeks may be extended to 28 weeks at half-pay
 - 1 week may be extended to 2 weeks at half-pay
- (b) An employee cannot take appointment leave on half-pay.
- (c) The employee may choose to combine a period of full and half-pay but this option should be made before the commencement of the paid parental leave. The employer would not be expected to agree to any change in leave payments once leave has commenced unless the employee offers a substantial reason for the change.
- (d) The minimum period of paid parental leave on half-pay is two calendar weeks (irrespective of the rate of pay for the period). The leave may be taken in conjunction with long service leave and recreation leave, including at half-pay in accordance with the relevant Ministerial Directives.
- (e) Granting of the paid parental leave on a half-pay basis is subject to the entity's convenience however requests should not be unreasonably refused.
- (f) Leave Accrual: The period of the leave will be recognised as normal full-time or part-time service applying to the employee at the time of taking the leave, i.e. increments and accrual of sick leave, recreation leave and long service leave will remain at the normal entitlement for the

period of half-pay parental leave for employees working full-time and at the relevant proportional rate for employees working part-time.

- (g) **Leave Debit:** Periods of half-pay parental leave will be debited on a full-time equivalent basis e.g. half-pay long paid parental leave for a period of 28 weeks will attract a debit of 14 weeks from full pay credits; half-pay short paid parental leave for a period of 2 weeks will attract a debit of 1 week from full pay credits.
- (h) **Locality Allowance:** For those employees with an entitlement under a directive or relevant industrial instrument, this allowance will be paid on a proportionate basis for the period of the leave i.e. half the normal entitlement.
- (i) **Public Holidays falling Within a Period of Parental Leave Taken at Half-Pay:** Public holidays falling within periods of half-pay are paid for at the half-pay rate. Where a public holiday falls either at the beginning or at the end of a period of half paid leave and is immediately preceded/followed by a period of unpaid leave, the public holiday shall be paid at the half-pay rate.

12.12 **Promotion**

- (a) An employee on paid or unpaid parental leave continues to maintain their rights to promotion as if they were on duty. An employee can apply for and succeed in being promoted and transferred as well as lodging appeals and grievances.
- (b) An employee cannot be denied promotion because they are unavailable to take up duty before the completion of the paid or unpaid parental leave.

12.13 Professional Development: An employee on parental leave may be offered opportunities for professional development to keep their skills current. The employee's participation in this training or development is voluntary.

12.14 Higher Duties Amount While on Paid Parental Leave: An employee on parental leave who is paid a higher duties amount under the Higher Duties directive before taking the leave is to be paid for the leave in accordance with the provisions of the Higher Duties directive. Such employees taking half-pay leave options are not to be disadvantaged by this provision.

12.15 **Recall to Duty**

- (a) Subject to agreement between the employee and the employer, or provisions of any industrial instrument/legislation, the employee may be temporarily recalled to duty including for the purpose of a "keeping in touch day" in accordance with section 80 of the IR Act. This recall does not break or extend the period of parental leave. Instead, the employee may be paid as a casual under a mutually exclusive second (casual) contract.
- (b) An employee on unpaid parental leave continues to receive entitlements associated with this leave as well as entitlements due when working as a casual employee whilst on unpaid parental leave. These two contracts of employment are mutually exclusive, and the entitlements accrued under the second (casual) contract cannot be transferred to the first contract of employment. This clause is not intended to encourage employees to undertake casual employment whilst on parental leave, however, makes provision should the situation arise.
- (c) Subject to the provisions of any industrial instrument/legislation, a recall to duty while on paid or unpaid leave is voluntary on the part of the employee. An employee who declines the offer of a recall to duty under these circumstances is not to be discriminated against as a result of that decision.

12.16 **Access to Flexible Work Practices**

- (a) On or following return to work from parental leave, flexible work practices (e.g. part-time employment) may be utilised in accordance with sections 27 and/or 74 of the IR Act where suitable to both the employer and employee.
- (b) Information in relation to Flexible Work Practices is available on the Public Sector Commission website at www.forgov.qld.gov.au/pay-benefits-and-policy/benefits/flexible-work.

12.17 Anti-discrimination and human rights

Entities and employees are reminded that the *Anti-Discrimination Act 1991* provides protection against discrimination on the basis of pregnancy, parental status, breastfeeding and family responsibilities in the workplace. Further, the *Human Rights Act 2019* requires Queensland Government departments and agencies to act and make decisions which are compatible with human rights.

12.18 Grievance Procedure

The entity's grievance procedure is to be used for any complaint related to the application of these conditions and entitlements.

13. Definitions

Except where otherwise defined, terms in this directive are consistent with their meanings in the *Industrial Relations Act 2016* and/or the *Public Sector Act 2022*.

"Cultural recognition order" means an order made under section 58 of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* in relation to cultural parentage. A cultural parent is a person who, in accordance with Ailan Kastom child rearing practice, agrees to accept the permanent transfer of the parental rights and responsibility for a child from the child's birth parents to the person.

"Long term casual employee" shall be in accordance with the definition provided in section 15 of the IR Act, i.e.

"a casual employee engaged by a particular employer, on a regular and systematic basis, for 1 or more periods of employment during the 1 year immediately before the employee seeks to access an entitlement under this chapter".

"Significant date" means:

- (a) in relation to birth related leave, the date of birth;
- (b) in relation to adoption leave, the date of adoption;
- (c) in relation to surrogacy leave, the residence date; and
- (d) in relation to cultural parentage leave, the date parentage is transferred under a cultural recognition order.

"Spouse" of an employee includes a spouse of the same sex as the employee and includes –

- (a) a former spouse; and
- (b) a de facto spouse.

"Stillborn child" means a child—

- (a) who has shown no sign of respiration or heartbeat, or other sign of life, after delivery of the child has been completed; and
- (b) who—
 - (i) has been gestated for 20 weeks or more; or
 - (ii) weighs 400g or more.