

## DIRECTIVE 11/18

Supersedes: 03/16

# Minister for Industrial Relations Directive: Long Service Leave

### 1. Purpose:

To prescribe entitlements and conditions for long service leave.

### 2. Effective date: 11 May 2018

### 3. Legislative authority:

Section 54(1)(a) of the *Public Service Act 2008*.

Sections 51 and 52 of the *Public Service Act 2008* and section 941 of the *Industrial Relations Act 2016* apply if there is a conflict with an act, regulation or industrial instrument.

### 4. Application:

This Directive applies to:

- public service officers;
- tenured general employees engaged under section 147(2)(a) of the *Public Service Act 2008*;
- temporary employees engaged under section 148(2)(a) of the *Public Service Act 2008*; and
- employees engaged on a casual basis under sections 147(2)(b) and 148(2)(b) of the *Public Service Act 2008*.

### 5. Previous references:

- Directives 03/16, 10/13, 1/11, 13/08, 5/07, 21/05, 3/05, 1/01, 11/99: "Long Service Leave"
- Sections 24 and 33 of the *Public Service Management and Employment Regulation 1988* as in force on 24 February 1995
- Administrative Instruction Nos. 1 | 59

### 6. Related information:

- Directive: Leave without Salary Credited as Service
- Directive: Higher Duties
- Circular: Christmas/New Year Compulsory Closure

## DIRECTIVE

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### 7. Entitlement

- 7.1 Public service employees including public service officers, temporary employees, general employees and casual employees (referred to as "employees" in this Directive) are entitled to long service leave on full pay as provided in this Directive.

### 8. Long service leave entitlement and accrual

- 8.1 An employee who completes 10 years continuous service is entitled to long service leave on full pay of:
- (a) 6.5 working days for each year of continuous service; or
  - (b) 1.3 calendar weeks for each year of continuous service; and
  - (c) a proportionate amount for an incomplete year of service.
- 8.2 It is at the chief executive's discretion whether the leave is calculated in working time or calendar time.
- 8.3 Leave prescribed in this Directive may be converted to an hourly basis for the purpose of applying, granting and recording of the leave. Schedule One provides conversion formulas.
- 8.4 Part-time employees
- (a) Leave entitlements apply to part-time employees on a pro-rata basis.
  - (b) The qualifying period for long service leave purposes for part-time employees is 10 calendar years of continuous service worked on a part-time basis, or a combination of full-time, part-time and/or casual service.
- 8.5 Casual Employees
- (a) For the purpose of this Directive, the service of a casual employee is regarded as continuous if the employee has service that has been recognised for long service leave purposes and it extends over a period of 10 years or longer.
  - (b) A casual employee's entitlement to long service leave is to be calculated as follows:  
 Number of hours x rate of pay  
 Where:  
 Number of hours =  $\frac{\text{total hours of work}}{52} \times \frac{13}{10}$
- 8.6 Voluntary reversion to a lower classification
- (a) Where an employee voluntarily reverts to a lower classification, the employee will be entitled to long service leave accrued as at the date of the reversion at the employee's substantive classification and paypoint immediately preceding the reversion.
  - (b) The employee is not compelled to take accrued long service leave at the date of voluntary reversion to a lower classification.
  - (c) Long service leave accrued after reversion to a lower classification is payable at the employee's classification and paypoint at the relevant time.
  - (d) Should the employee subsequently attain a substantive classification and paypoint higher than the substantive classification and paypoint immediately preceding reversion to a lower classification, all long service leave accrued will become payable at the higher classification and paypoint.

## 9. Taking leave

- 9.1. The taking of long service leave is subject to departmental convenience.
- 9.2. Applications for long service leave are to be made in writing or in a form determined by the chief executive.

- 9.3. An employee is to give timely notice of the date from which long service leave is to take effect.
- 9.4. The employer must respond to a request to take long service leave in a timely manner indicating whether the leave applied for has been approved or not.
- 9.5. An employer and employee may agree when the employee is to take long service leave.
- 9.6. If the employer and employee cannot agree on the timing of the leave, the employer may decide when the employee is to take leave by giving the employee at least 3 months written notice of the date on which the employee must take at least 4 weeks long service leave.

## **10. Recall or cancellation of leave**

- 10.1. If departmental circumstances require it, a chief executive may:
  - (a) recall an employee from long service leave; or
  - (b) cancel the approval of any long service leave; or
  - (c) defer the taking of long service leave.
- 10.2. An employee who is recalled or whose leave is cancelled will be allowed to take leave at the earliest opportunity that is mutually convenient for the employee and the chief executive.
- 10.3. Where an employee has incurred expenses, such as deposit payments, relating to payments for accommodation and/or travel for the employee and/or their immediate family, and those expenses are lost due to a recall, cancellation or deferral of leave by the chief executive, the expenses will be reimbursed by the department. Such reimbursement is conditional upon the employee producing evidence of losses incurred, in the form of receipts or other evidence to the satisfaction of the chief executive.

## **11. Leave based on the number of hours that the employee would have worked**

- 11.1. Where leave is calculated in working time and an employee is rostered to work a specific number of hours on a day and the employee is absent from duty on that day, or for part of it, the employee's leave account is to be reduced. This reduction will be the number of hours that the employee was rostered to work on that day but did not work.

## **12. Minimum period**

- 12.1. The minimum period of long service leave that may be taken at any one time is one (1) calendar week (exclusive of public holidays) except in the following situations:
  - (a) where an employee is recalled from long service leave; or
  - (b) where an employee becomes ill and is granted sick leave instead of the long service leave already approved; or
  - (c) where the employer gives an employee at least 3 months written notice for the employee to take long service leave in the event the employer and employee are unable to agree on the timing of the leave; or
  - (d) where the chief executive determines that an employee may take long service leave for a period of less than one (1) week (but not less than one (1) day).

## **13. Calculation of leave available**

- 13.1. Long service leave may be taken up to the total amount of long service leave due as at the date of commencement of the leave. Long service leave will be calculated by:
  - (a) determining the total period of the employee's continuous service, including leave credited for service; and
  - (b) determining the total amount of long service leave entitlement appropriate to that period of continuous service; and

- (c) deducting from the total long service leave entitlement, any long service leave previously taken.

13.2. Notwithstanding clause 13.1, at the discretion of the chief executive an employee may be granted long service leave that accrues up to the end date of a period of long service leave. Nothing in this clause affects a qualifying period for long service leave.

#### **14. Payment of long service leave**

14.1. Payment of long service leave is based on the calculation of leave available (see clause 13.1 above) and the full pay to which the employee is entitled in his or her substantive position unless the conditions in the Ministerial Directive: Higher Duties apply.

14.2. Payment of long service leave in advance is at the discretion of the chief executive.

#### **15. Public holidays occurring during long service leave**

15.1. Long service leave is exclusive of any public holiday that falls during the period of the leave.

#### **16. Extension of long service leave on a half pay basis**

16.1. Long service leave may be granted on half pay for any purpose.

16.2. Granting of the leave on half pay is subject to departmental convenience, however requests for leave should not be unreasonably refused.

16.3. The standard conditions in this Directive apply to half pay long service leave arrangements in the following way:

- (a) Leave accrual

The period of the half pay long service 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 the accrual of sick, recreation and long service leave will remain at the normal entitlement for the period of half pay long service leave for employees working full-time and at the relevant proportional rate for employees working part-time.

- (b) Leave debit

Periods of half pay long service leave will be debited on a full-time equivalent basis. For example, half pay long service leave for a period of 8 weeks will attract a debit of 4 weeks from full pay credits.

- (c) Locality Allowance

For employees with an entitlement to locality allowance under an industrial instrument, the allowance will be paid on a proportionate basis for the period of the leave i.e. half the normal entitlement.

- (d) Minimum period of the leave

Half pay long service leave must be taken for a minimum one (1) calendar week. The leave may be taken in conjunction with other forms of leave.

- (e) Public Holidays

Half pay long service leave is exclusive of any public holiday that falls during the period of the leave. Half pay long service leave will be extended by any public holiday falling during the period of the leave. A public holiday that falls during a period of half pay long service leave will be paid at the employee's normal full-time or part-time rate.

- (f) Sick leave in lieu

Where sick leave is granted after starting a period of long service leave on half pay, such sick leave granted in lieu shall also be at half pay.

## **17. Teachers and vacation periods**

17.1. A vacation to which a teacher is entitled will not be counted as forming part of any period of long service leave taken by that teacher.

## **18. Sick leave instead of long service leave**

18.1. Sick leave may be granted instead of long service leave already approved where:

- (a) an employee becomes ill before the start of the long service leave and, before starting the leave, submits a written application for sick leave, supported by a medical certificate or other evidence of the illness acceptable to the chief executive; or
- (b) an employee becomes ill after starting the long service leave and submits a written application for sick leave, supported by a medical certificate or other evidence of the illness acceptable to the chief executive, and the period of illness is more than 3 days.

## **19. Cash equivalent of long service leave on termination**

19.1. Subject to clauses 21 and 22, a person who ceases to be an employee and who, at the date of cessation, has an entitlement to long service leave under this Directive, is to receive a payment instead of the long service leave not taken.

19.2. The calculation of the amount of the payment is based on:

- (a) the employee's entitlement to long service leave as at the date of cessation;
- (b) less any long service leave previously taken; and
- (c) the full-pay rate payable to the employee at the employee's substantive position at the date of ceasing employment, unless the conditions in the ministerial Directive: Higher Duties apply.

## **20. Public holidays in relation to a cash equivalent of long service leave**

20.1. A cash equivalent of long service leave also attracts the benefit of public holidays that would occur during the long service leave if it were granted immediately upon cessation of duty.

20.2. Where cash equivalent payments are being made for recreation leave and long service leave, the long service leave and recreation leave are presumed to have been taken from the day the termination takes effect and the employee is entitled to payment for any public holidays which fall within the period the employee is presumed to have taken the leave. For purposes of processing, it is presumed that the long service leave and recreation leave are taken concurrently.

20.3. Public holidays falling within the period the employee is presumed to have taken the leave are to be paid for only once.

## **21. Entitlement to a proportionate payment on termination after 7 years continuous service**

21.1. An employee who has completed at least 7 years continuous service but less than 10 years continuous service is entitled to a proportionate payment for long service leave on the termination of the employee's service only if:

- (a) the employee terminates his or her service because of:
  - (i) ill health or incapacity that is significant but does not qualify for ill health retirement; or
  - (ii) a domestic or other pressing necessity; or
- (b) the employer:
  - (i) dismisses the employee for a reason other than the employee's conduct, capacity or performance; or

(ii) unfairly dismisses the employee.

## **22. Entitlement to a proportionate payment on termination after various periods of continuous service**

22.1. Proportionate payments will be made to employees whose employment has been terminated in the following circumstances and they have completed the period of continuous service prescribed below:

(a) On termination of contract

Where the chief executive terminates the employment of an officer on a contract of employment under section 122 of the *Public Service Act 2008* and the termination is for reasons other than disciplinary action or retirement on grounds of mental or physical incapacity – 1 year of continuous service.

(b) On action because of surplus

A public service employee whose position is deemed to be surplus to the department's needs because the department employs more employees than it needs for the effective, efficient, economical and appropriate performance of its functions; or the duties performed by the employee are no longer required – 1 year of continuous service.

(c) Voluntary retirement

An employee referred to in section 136 of the *Public Service Act 2008* who:

- has elected to retire from the public service on turning 55 or older; and
- who is not an employee who is deemed to be surplus to the department's needs; or
- is permitted to retire under a Directive,
  - 5 years continuous service.

(d) Ill health retirement

A person referred to in section 174 of the *Public Service Act 2008*, who is retired on the grounds of mental or physical incapacity – 5 years continuous service.

(e) On death

An employee who dies – 5 years continuous service.

## **23. Payment on an employee's death**

23.1. Where a long service leave entitlement is payable to an employee who has died, the payment will be made to the employee's legal personal representative.

## **24. Taking pro rata long service leave after 7 years**

24.1. Subject to clause 9.1, employees are entitled to take pro rata long service leave after 7 years continuous service. See clause 21 for payment on termination after 7 years continuous service.

## **25. Payment instead of long service leave to a continuing employee**

25.1. Pursuant to the *Industrial Relations Act 2016*, an employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave if one of the following applies:

- (a) If an award, certified agreement or industrial agreement applying to the employee provides for the payment of all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made in accordance with the award or agreement, if the employer and employee agree by a signed agreement; or
- (b) If no award, certified agreement or industrial agreement provides for the employee to be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the

leave, payment may be made only if the payment is ordered by the Queensland Industrial Relations Commission on application by the employee.

The Commission may order the payment only if satisfied that the payment should be made on compassionate grounds; or on the ground of financial hardship.

## **26. Movement across/within departments (excluding machinery of government changes)**

- 26.1. Where an officer or permanent general employee moves within or between departments their long service leave accrual will automatically transfer with them.
- 26.2. Where an employee engaged on a temporary basis obtains a new role (permanent or new temporary role) or a new contract for the same role, within the same department, their long service leave accrual will automatically remain/transfer with them.
- 26.3. Subject to clause 26.4, where an employee engaged on a temporary basis obtains a role in a new department their accrued long service leave will be paid out by the former department in accordance with clause 19.
- 26.4. Where an employee engaged on a temporary basis, the former department and the new department all agree, long service leave accrual of the employee will transfer to the new department.

## **27. Definitions**

**Continuous service** includes service and periods of leave that have been recognised for long service leave purposes under the relevant Directive.

**Daily hours**, means –

- the number of ordinary daily working hours of an employee as specified in an industrial instrument.
- in any other case – the number of hours specified in the relevant industrial instrument as the average number of hours per working day of an employee during a pay period or other period that is reasonable in the circumstances.

**Employee's legal personal representative** means the executor or administrator of an employee's estate

**Full pay** means the employee's ordinary rate of pay and is inclusive of any fixed allowances that are part of the regular fortnightly pay.

**Half pay** means half of the rate of full pay.

**Industrial instrument** means an award, industrial agreement, certified agreement, contract, former determination of the Governor-in-Council, Directive or determination made under section 180 of the *Industrial Relations Act 2016*.

**Ordinary rate** means the rate that the relevant industrial instrument states is payable for ordinary time.

**Teacher** means an employee determined by the chief executive to be a teacher for the purpose of this Directive.

**Weekly hours** means -

- the number of ordinary weekly working hours of an employee as specified in the relevant industrial instrument; or
- in any other case – the number of hours specified in the relevant industrial instrument as the average number of hours per working week of an employee during a pay period or other period that is reasonable in the circumstances.

## SCHEDULE ONE – CONVERSION FORMULAS

### 1. Conversion of entitlements

This schedule sets out the formulas to be utilised when converting long service leave to hours.

### 2. Where leave is expressed in weeks

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

$$LE = W \times WH$$

Where:

LE = Leave Entitlement (means the amount of leave in working hours to which the employee is entitled)

W = Weeks (means the entitlement accrued in calendar weeks under this Directive)

WH = Weekly Hours (as defined)

### 3. Where leave is expressed in days

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

$$LE = D \times DH$$

Where:

LE = Leave Entitlement (means the amount of leave in working hours to which the employee is entitled)

D = Days (means the entitlement accrued in calendar days under this Directive)

DH = Daily Hours (as defined)

### 4. Where leave is expressed in weeks and days

If an employee's leave entitlement is expressed in weeks and days, the conversion to hours of the weeks and days components should be calculated separately and then added to give the new entitlement.

For example, to convert an entitlement where the leave balance is 5 weeks and 3 days:

(a) For an employee on 36.25 hours a week:      (b) For an employee on 38 hours a week:

$$LE \text{ (weeks)} = 5 \times 36.25 = 181.25$$

$$LE \text{ (weeks)} = 5 \times 38.00 = 190$$

$$LE \text{ (days)} = 3 \times 7.25 = 21.75$$

$$LE \text{ (days)} = 3 \times 7.60 = 22.8$$

Total entitlement (in hours) 203 hours

Total entitlement (in hours) 212.8 hours