

DIRECTIVE 7/24

Minister for Industrial Relations and Public Sector Commissioner Directive: Reproductive Health Leave

1. Purpose

To prescribe reproductive health leave entitlements for public sector employees.

2. Effective date 30 September 2024

3. Legislative authority

3.1 Sections 222 and 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 all public sector employees (excluding casuals).

5. Entitlement

5.1 An employee is entitled to up to 10 working days reproductive health leave on full pay during each entitlement year.

5.2 Leave taken to attend preventative screening should generally not exceed 4 hours per year, however it is acknowledged that circumstances such as additional travel requirements or retesting due to inconclusive results may require greater absences.

5.3 Reproductive health leave does not accumulate from year to year and is not paid on cessation of employment.

5.4 There is no requirement to exhaust other leave types before accessing reproductive health leave.

5.5 A part-time employee receives reproductive health leave on a pro-rata basis, credited based on their contracted fraction of a full-time equivalent. If during an entitlement year a part-time employee's contracted hours increase, or they work ordinary hours in excess of their contracted fraction, they may request that their balance is reviewed and adjusted for subsequent leave in that entitlement year.

5.6 Reproductive Health Leave may be converted to an hourly basis for the purpose of applying, granting and recording of the leave. Schedule One provides conversion formulas.

6. Leave circumstances

6.1 Reproductive health leave may be taken by an employee:

- (a) when chronic reproductive health conditions (such as, but not limited to, endometriosis, dysmenorrhea, adenomyosis, polycystic ovary syndrome, and menopause symptoms) require absence from the workplace;
- (b) to receive fertility treatment such as, but not limited to, in vitro fertilisation (IVF);
- (c) to attend preventative screening associated with reproductive health, including, but not limited to, breast and prostate screening; and
- (d) for treatment associated with reproductive health including, but not limited to, hysterectomy and vasectomy.

7. Taking leave

7.1 The employee must notify the employer of any absence as soon as practicable.

7.2 Applications and evidence

- (a) The employee must submit a timely application for every absence where reproductive health leave is sought.
- (b) If requested, the employee is to provide sufficient evidence to satisfy a reasonable person to support an application for reproductive health leave of more than 3 consecutive working days.
- (c) Any request for evidence is taken to be satisfied if the employee produces documentary evidence from a health practitioner that confirms any of the circumstances at clause 6.1 applies to the employee (e.g. 'a reproductive health condition', 'a chronic reproductive health condition' or 'a reproductive health circumstance/issue').
- (d) An employee accessing leave for chronic reproductive health conditions or fertility treatment cannot be requested to produce evidence for each absence of more than 3 consecutive working days if the circumstance has already been evidenced during the entitlement year in accordance with clause 7.2(c) as an ongoing circumstance or condition.
- (e) Information received from an employee in connection with a reproductive health leave application is to be kept confidential and only to be disclosed to the extent necessary to facilitate access to the appropriate leave.

7.3 Reproductive health leave will be debited based on the ordinary hours the employee would have worked, or was rostered to work, but did not work on the day the leave is taken. This applies even where it means that the employee's reproductive health leave balance is debited by a different number of hours than the employee's daily hours (as defined).

7.4 Reproductive health leave is exclusive of public holidays. Accordingly no debit should be made to the employee's reproductive health leave balance for leave that falls during a public holiday.

7.5 Reproductive health leave may be taken for a minimum period of one hour, unless otherwise approved.

7.6 Reproductive health leave is not available to be taken at half-pay.

8. Flexibility at work

8.1 Employees and managers are encouraged to discuss options that will assist an employee who is experiencing reproductive health concerns to manage their work demands, as an alternative to

taking reproductive health leave or where the leave entitlement may be exhausted, if it suits the needs of all concerned.

- 8.2 Employees may also request flexible working arrangements under the conditions set out in the *Industrial Relations Act 2016*, in the same way as other employees. Employees are encouraged to discuss their request for flexible working arrangements with their managers, in the first instance.

9. 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*.

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, directive or contract 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.

Entitlement year means 1 July in one year to 30 June in the following year, inclusive.

Full pay for the purpose of this directive means the employee's ordinary rate of pay and is inclusive of any fixed allowances that are part of the regular fortnightly pay, excluding shift, weekend and public holiday penalties and consolidated shift allowance payments.

Health Practitioner means a person registered to practise a health profession, other than as a student, under the Health Practitioner Regulation National Law.

Working day means one-fifth of the average number of ordinary hours worked in a week with reference to the employee's relevant industrial instrument. For example, a working day for an employee engaged on a 38 ordinary hour week is 7.6 hours.

SCHEDULE ONE - CONVERSION FORMULAS

1. Conversion of entitlements

1.1. This schedule sets out the formulas to be utilised when converting reproductive health leave to an hourly basis.

1.2. Converting reproductive health leave from working days to hours

$$LE = WD \times DH$$

Where:

LE = Leave Entitlement

WD = Working Days

DH = Daily Hours

1.3. If an entity's system for recording particulars of leave granted to an employee is based on hours and the daily hours of an employee change, the leave entitlements accumulated by the employee are also to be recorded in hours.

$$LAC = LBC \times \frac{HAC}{HBC}$$

Where:

LAC (leave entitlement after change) = the hours of leave to which the employee is entitled after the change.

LBC (leave entitlement before change) = the employee's leave entitlement expressed in hours before the change.

HAC (daily hours after change) = the employee's daily hours after the change.

HBC (daily hours before change) = the employee's daily hours before the change.