

- 1. TITLE:** **Long Service Leave**
- 2. PURPOSE:** To prescribe the entitlements for long service leave.
- 3. LEGISLATIVE PROVISION:** Section 34(2) of the *Public Service Act 1996* and section 686 of the *Industrial Relations Act 1999*.
- 4. APPLICATION:** This directive applies to –
 - public service officers;
 - tenured general employees engaged under section 112(1)(a) of the *Public Service Act 1996*;
 - temporary employees engaged under section 112(2)(a) and 113(2)(a) of the *Public Service Act 1996*; and
 - employees engaged on a casual basis under sections 112(2)(b) and 113(2)(b) of the *Public Service Act 1996*.
- 5. STANDARD:** The conditions and entitlements prescribed in the Schedule apply.
- 6. EFFECTIVE DATE:** This directive is to apply from **3 June 2001**.
- 7. VARIATION:** The provisions in the Schedule may be varied in accordance with certified agreements made under Chapter 6, Part 1 of the *Industrial Relations Act 1999* or decisions of an industrial tribunal of competent jurisdiction.
- 8. INCONSISTENCY:** Sections 34 and 117 of the *Public Service Act 1996* and sections 686 and 687 of the *Industrial Relations Act 1999* apply if there is a conflict with an award, regulation or industrial instrument.
- 9. SUPERSEDES:** Ministerial directive 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 No. 11159.
- 10. SEE ALSO** Part 3 *Industrial Relations Act 1999* (Long Service Leave) as amended.
Directive: "Leave Credited as Service"
Directive: "Higher Duties Allowance"

SCHEDULE A GENERAL CONDITIONS

Entitlement

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

Conversion to hourly basis

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:

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

a) $LE = W \times WH$

Where:

LE (leave entitlement)
means the amount of leave, 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 week in the relevant industrial instrument (as defined for an employee during a pay period or other period that is reasonable in the circumstances).

b) $LE = D \times DH$

Where:

LE (leave entitlement)
means the amount of leave 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 in the relevant industrial instrument (as defined) for an employee during a pay period or other period that is reasonable in the circumstances.

Where an employee's existing entitlement is expressed in weeks and days the conversion from weeks to hours and days to hours 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:

for a public service officer on 36.25 hours a week:

LE (weeks)	= 5 x 36.25	=	181.25
LE (days)	= 3 x 36.25	=	<u>21.75</u>
Total entitlement (in hours)			203 hours

and
for an employee on 38 hours a week:

LE (weeks)	= 5 x 38.00	=	190
LE (days)	= 3 x 38.00	=	<u>22.8</u>
Total entitlement (in hours)			212.8 hours

Departmental convenience

While an employee has an entitlement to leave in this schedule, the taking of that leave is always subject to departmental convenience.

Recall or cancellation of leave

A chief executive, if departmental circumstances require it, may:

- recall an employee from long service leave; or
- cancel the approval or granting of any long service leave; or
- defer the taking of that leave.

An employee who is recalled or whose leave is cancelled will be allowed to take leave at the earliest opportunity that is mutually convenient to the employee and the chief executive.

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 (as defined); or
- in any other case – the number of hours in the relevant industrial instrument, (as defined) 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 personal representative” for the purpose of this directive, means an executor or administrator, whose duty it is to settle the affairs and dispose of the property of a deceased person. Where there is no personal representative or the employee is without provision of a will then the long service leave entitlement is to be forwarded to the Public Trustee’s Office for distribution as per the relevant provisions of the *Succession Act 1981*.

“full pay” for the purpose of this directive, is the employee’s ordinary rate of pay and is inclusive of any fixed allowances that are part of the regular fortnightly pay.

“industrial instrument” for the purposes of this directive means an award, industrial agreement, certified agreement, contract, former determination of the Governor-in-Council or directive.

“ordinary rate” as defined in the *Industrial Relations Act 1999* means, for an employee under an industrial instrument, the rate that the 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 an industrial instrument (see definition); or
- in any other case – the number of hours in the relevant industrial instrument, (as defined) 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.

“working hours” means the number of hours stated in or determined by the relevant industrial instrument (as defined) as the hours the employee is required to work.

Accrual of leave

An employee who completes 10 years continuous service is entitled to:

- 6.5 working days on full pay for each year of continuous service; or
- long service leave at the rate of 1.3 weeks on full pay for each year of continuous service; and
- a proportionate amount for an incomplete year of service.

It is at the chief executive’s discretion whether the leave is calculated in working days or hours.

Part time employees

The permanent part time employment arrangements contained in the relevant industrial instrument apply, or, where there are none, those contained in the *Flexible Work Practices Framework and Options Kit* (Number 1 in the Attraction and Retention Series).

However, the qualifying period for long service leave purposes for part time employees is 10 chronological years of service worked on a part time basis, or a combination of full, part time and or casual service.

Casual employees

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.

A casual employee’s entitlement to long service leave is to be calculated as follows:

Number of hours x rate of pay

Where:

$$\text{Number of hours} = \frac{\text{total hours of work}}{52} \times \frac{13}{10}$$

Extension of long service leave on a half-pay basis

An employee may request and an employer may agree to extend the amount of long service leave for which the employee qualifies by the employee taking the leave on half pay for the following purposes:

- family responsibilities; or
- study.

Granting of the leave is subject to departmental convenience however requests for leave should not be unreasonably refused.

The application of standard conditions to half pay long service leave arrangements is as follows:

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. accrual of sick leave, recreation and long service leave will remain at the full time rate 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.

Leave debit: Periods of half pay long service leave will be debited on a full-time equivalent basis e.g. half-pay long service leave for a period of 8 weeks will attract a debit of 4 weeks from full pay credits.

Locality Allowance: For those employees with an entitlement under an industrial instrument, this allowance will be paid on a proportionate basis for the period of the leave i.e. half the normal entitlement.

Minimum period of the leave: 2 calendar weeks or 2 working weeks, where leave is converted to an hourly basis, irrespective of the rate of pay for the period. The leave may be taken in conjunction with other forms of leave.

Public Holidays: The period of leave will be extended by the public holidays that, if they occur during the period of the leave, will be paid at half pay.

Application for long service leave

Applications for leave are to be made in writing or in a form determined by the chief executive.

Timely notice

An employee is to give timely notice of the date from which long service leave is to take effect.

The employee is to be given timely notice as to whether the leave applied for has been approved.

Where agreement cannot be reached

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.

Leave granted on an hourly basis

If an employee applies for leave on a basis other than an hourly basis, the leave may be granted on an hourly basis.

Leave based on the number of hours that the employee would have worked

If 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 is to be the same number of hours that the employee was rostered to work on that day but did not work.

Minimum period

The minimum period of long service leave that may be taken at any one time is 2 calendar weeks except in the following situations:

- where an employee is recalled from long service leave; or
- where an employee becomes ill and is granted sick leave instead of the long service leave already approved.

Statutory holidays occurring during long service leave

Long service leave is exclusive of any statutory holiday.

Employees granted long service leave on a calendar week basis are to be granted a minimum period of two calendar weeks which is to be extended by any public holidays falling during the period of leave. Any such days should be added immediately to the end of the leave granted irrespective of the days on which they fall.

Employees granted long service leave on a working-day basis are to be granted leave to ensure that the absence is for a minimum of two working weeks (i.e. 72.5 hours or 76 hours as appropriate) exclusive of statutory holidays falling during the currency of the leave.

Teachers and vacation periods

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

Sick leave instead of long service leave

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

- (i) an employee becomes ill before the start of the long service leave and submits a written application supported by a medical certificate or other evidence of the illness acceptable to the chief executive before starting the leave; or
- (ii) an employee becomes ill after starting the long service leave and submits a written application, supported by a medical certificate or other evidence of the illness acceptable to the chief executive, and the period of illness is at least one calendar week.

Calculation of leave available

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 shall be calculated by:

- determining the total period of the employee's continuous service, including leave credited for service; and
- determining the total amount of long service leave entitlement appropriate to that period of continuous service; and
- deducting from the total entitlement, long service leave previously taken.

Payment of long service leave

Payment of long service leave is based on the calculation of leave available (see 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 Allowance* apply.

Cash equivalent of long service leave at the date of termination

A person who ceases to be an employee and who, at that date, has an entitlement to long service leave under this schedule, is to receive a payment instead of the long service leave not taken.

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

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

Period of service applying to cash equivalent of long service leave on termination

In determining the long service leave entitlement of employees for cash equivalent purposes, the following required minimum number of years of continuous service is to be completed by the employee whose services have been terminated in the following circumstances:

On termination of contract

Where the competent authority terminates the employment of an officer on a contract of employment under section 70 of the *Public Service Act 1996* and the termination is for reasons other than for disciplinary action or retirement on grounds of mental or physical incapacity - **1 year of continuous service**.

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**.

Voluntary retirement

An employee referred to in section 86 of the *Public Service Act 1996* who:

- has elected to retire from the public service on turning 55; 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**.

Ill health retirement

A person referred to in section 85 of the *Public Service Act 1996*, who is retired on the grounds of mental or physical incapacity – **5 years continuous service**.

On marriage

A female officer who was employed under the former *Public Service Act 1922* and was appointed before 18 July 1988, resigns to be married - **5 years continuous service**.

Payment under this section is dependent upon:

- a certified copy or certified extract of the certificate of marriage or a statutory declaration by both parties to the marriage giving the place and date of marriage, being furnished to the chief executive; and
- the marriage happening within 3 months of the date of resignation.

This clause expires on 18 July 2005.

On death

An employee who dies — **5 years continuous service**.

Payment on an employee's death

The long service leave amount payable is to be made to the employee's personal representative.

Termination for reasons other than those mentioned above

If an employee's service is terminated before the employee has completed 10 years continuous service the employee is entitled to a proportionate payment after 7 years continuous service only if:

- the employee terminates his or her service because of ill health or incapacity that does not qualify for ill health retirement; or
- there is a domestic or other pressing necessity; or
- the employer dismisses the employee for a reason other than the employee's misconduct, incapacity or diminished performance; or
- where the employer unfairly dismisses the employee.

On resignation

A public service employee who lawfully terminates their employment-

- for reasons of domestic and other pressing necessity – **calculated on a pro rata basis for 7 years continuous service**;
- for reasons of ill health or incapacity that are significant but insufficient to warrant ill health retirement – **calculated on a pro rata basis for 7 years continuous service**.

On qualification for parental leave

Employees are entitled to pro-rata long service leave after 7 years of service for purposes of parental leave as defined in Part 2 of the *Industrial Relations Act 1999*.

In particular long service leave can be used as follows:

In the case of a pregnant employee:

In addition to 6 weeks paid maternity leave, long service leave can be taken instead of the equivalent of unpaid parental leave provided that the total period of parental leave does not exceed 52 weeks and the employee is to be the child's primary care giver for the period of the long service leave.

In the case of an employee's spouse and after the birth of a child:

Long service leave can be taken instead of the equivalent of unpaid parental leave provided that the total period does not exceed 52 weeks and the employee is to be the child's primary care giver for the period of long service leave.

In the case of the adoption of a child:

Long service leave can be taken instead of the equivalent period of unpaid parental leave provided that the total period of leave does not exceed 52 weeks and the employee is to be the child's primary care giver for the period of long service leave.

Provided that parental leave must not extend beyond 1 year after the child is born or adopted.

Long service leave under this provision is additional to any paid maternity leave entitlement.

Payment of long service leave to a continuing employee

The *Industrial Relations Act 1999* says that 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 the following applies –

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.

- If the award, certified agreement or industrial agreement does not provide for an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made only if the Queensland Industrial Relations Commission approves the payment in lieu of leave on application by the employee.

The Commission may, by order, approve a payment only if satisfied that the payment should be made –

- on compassionate grounds; or
- on the ground of financial hardship.

Statutory holidays in relation to cash equivalents of long service leave

Cash equivalents of long service leave also attract the benefit of statutory holidays that would occur during the long service leave if it were granted immediately upon cessation of duty.

Where cash payments are being made for recreation leave and long service leave, only one type of leave is to be adjusted for statutory holidays and payment in respect of any statutory holiday may be made only once. The longer period of leave is to be used for this purpose.