

DIRECTIVE 05/20

Supersedes: 17/18

Minister for Industrial Relations Directive: Paid Parental Leave

This text box does not form part of the directive

Under the *Human Rights Act 2019* decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this directive, to give proper consideration to human rights.

1. Purpose:

To prescribe the entitlement to paid parental leave including maternity, adoption, surrogacy, long spousal, short spousal, pre-natal, pre-adoption and pre-surrogacy leave.

2. Effective date: 18 September 2020

3. Legislative authority:

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

The provisions in the Schedules may be varied in accordance with certified agreements made under the *Industrial Relations Act 2016* or decisions of an industrial tribunal of competent jurisdiction.

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. For industrial instruments made under the *Fair Work Act 2009* (Commonwealth) that Act applies to the extent of the inconsistency between federal and state statutes, awards or agreements.

4. Application:

This directive applies to:

- public service officers;
- 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
- long term casual employees, as defined in section 15 of the *Industrial Relations Act 2016* and employed under sections 147(2)(b) or 148(2)(b) of the *Public Service Act 2008*.

5. Previous references:

- Ministerial Directive 17/18: "Paid Parental Leave"
- Ministerial Directive 06/17: "Paid Parental Leave"
- Ministerial Directive 26/10: "Paid Parental Leave"
- Ministerial Directive 18/05: "Paid Parental Leave"
- Ministerial Directive 3/01: "Parental Leave"
- Paid Parental Leave Documentation to support Directive 3/01 "Parental Leave"

- Circular 3/96

6. Related information:

- Ministerial Directive: “Long Service Leave”;
- Ministerial Directive: “Leave without Salary Credited as Service”;
- Ministerial Directive: “Recognition of Previous Service”.

DIRECTIVE

7. Eligibility

7.1 Eligible employees (that is public service employees excluding casual employees other than long term casual employees) covered by this directive and who meet the qualifying service period are entitled to access the paid parental leave entitlements on the conditions in this directive.

7.2 Exceptions:

- The qualifying period is nullified where there is a break in service.
- Casual employment is not recognised as contributing towards the qualifying service period except where the employment is on a casual long-term basis as defined in section 15 of the *Industrial Relations Act 2016*.

7.3 Employees, who are ineligible, are those who:

- are short term casual employees and do not accrue an entitlement to paid sick leave; or
- are solely remunerated by fees, allowances or commission; or
- are on unauthorised absence immediately before the start of the minimum period of maternity leave; or
- do not have a period of unbroken 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.

7.4 Part time and long-term casual employees are entitled to the provisions of this directive on a pro rata basis.

8. Definitions

Except where otherwise defined, terms in this directive are consistent with their meanings in the *Industrial Relations Act 2016*.

8.1 “**Confinement**” is the birth of a child, or the ending of the pregnancy in other circumstances, that occurs no earlier than 20 weeks before the expected date of birth.

8.2 “**Long spousal leave**” means leave taken under this directive by an employee, whose spouse has given birth to a child, to enable the employee to be the primary caregiver for the child.

8.3 “**Long term casual employee**” shall be in accordance with the definition provided in section 15 of the *Industrial Relations Act 2016*, 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”.

8.4 “**Parental leave**” shall mean maternity, long spousal, adoption, surrogacy or short spousal leave.

8.5 “**Primary caregiver**” means a person who assumes the principal role of providing care and attention to a child. Only one person can assume the role of primary caregiver at any one time.

8.6 **“Qualifying service period”** for the purposes of paid leave in this directive means at least 12 months service in any one or more Queensland government departments or Queensland public service offices.

This service:

- is to be unbroken; or
- may be inclusive of paid and unpaid leave*; or
- may be inclusive of service recognised under the Recognition of Previous Service Directive.

*The first 3 months only of any unpaid leave is to be credited towards the qualifying service period.

8.6.1 The qualifying service period need only be met once in an employee’s period of continuous service.

8.6.2 In determining the qualifying 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 |

8.7 **“Short spousal leave”** means leave taken under this directive by an employee who is responsible for the care of a child in connection with the birth of the child of the employee’s spouse, other than pre-natal leave or long spousal leave.

8.8 **“Spouse”** of an employee includes –

- a former spouse; and
- a de facto spouse, including a spouse of the same sex as the employee.

9 Entitlement

9.1 Maternity Leave

9.1.1 An eligible employee whose expected date of confinement has been confirmed in writing by a medical practitioner will be entitled to fourteen (14) weeks paid maternity leave. The paid maternity leave is to be taken as the initial absence on the approved maternity leave period.

9.1.2 This 14 week period of paid leave is inclusive of any public holidays arising within that time.

9.1.3 The period of paid maternity leave can be extended by the employee taking the leave on a half pay basis or by taking sick leave while on paid maternity leave.

9.1.4 In cases of financial hardship or other exceptional circumstances the employee may ask, and the chief executive may exercise discretion in paying the full maternity leave entitlement in advance.

9.1.5 The employee will be entitled to access a further period of unpaid leave in accordance with the provisions of the Industrial Relations Act 2016. An employee shall confirm their intention of

returning to work by notice in writing to the employer, giving not less than four weeks' notice prior to the expiration of the period of maternity leave.

9.1.6 Long spousal leave

- (a) An eligible employee whose spouse has given birth can access any of the entitlement to paid maternity leave under clause 9.1 of this directive, which has not been used by that employee's spouse, as paid long spousal leave. This is the case whether or not the employee's spouse has an entitlement to such paid maternity leave. Long spousal leave is subject to:
 - (i) the employee meeting the eligibility requirement prior to the date of birth of the child;
 - (ii) the employee being the primary caregiver for the child at the time the leave is taken; and
 - (iii) the leave being taken during their approved long birth-related leave period prior to the child's first birthday.
- (b) Long spousal leave is paid at the rate of pay the employee was receiving immediately before taking the leave.
- (c) The conditions to maternity leave under clause 9.1 of this directive apply to long spousal leave except the requirement for long spousal leave to be the "initial absence" on the approved long spousal leave period.
- (d) 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 the primary caregiver for the relevant period of the paid leave and the amount (if any) of the paid maternity leave entitlement used by the employee's spouse.

9.2 Pre-natal Leave

- (a) In addition to the paid maternity leave provisions above, an eligible employee who presents a medical certificate from a doctor stating that she is pregnant will have access to paid pre-natal leave up to a total of either 36.25 or 38 hours (based on the average number of ordinary hours worked in a week) per pregnancy to attend medical appointments prior to the birth of a child.
- (b) A written application shall be submitted for every absence for which pre-natal leave is sought. Each absence on pre-natal leave must be supported by documentary evidence relating to the medical appointment to the satisfaction of the Chief Executive (e.g. a medical certificate).
- (c) The work unit should be flexible enough to allow such employees the ability to leave work and return on the same day.

9.3 Short Spousal Leave

9.3.1 An eligible employee who produces a certificate from a medical practitioner which states their spouse's expected date of confinement, will be entitled to one week's paid short spousal leave in connection with the birth of a child for whom that employee has accepted responsibility. This period of paid short spousal leave will be taken as the initial absence on parental leave and is inclusive of any public holidays arising within that time. The period of paid short spousal leave cannot be extended other than by the employee taking the leave on a half-pay basis.

9.3.2 The period of short spousal leave taken shall be the "initial" absence. The exact timing of such leave shall be at the employee's discretion. For example:

- an employee may seek to take the short spousal leave immediately after the birth, or
- an employee may prefer to continue working for the duration of the mother's stay in hospital and take the first week the mother and child are home.

9.3.3 The employee will be entitled to access a further period of unpaid parental leave in accordance with the provisions of the *Industrial Relations Act 2016*. If an employee has accessed the further period of unpaid parental leave, they shall confirm their intention of returning to work by notice in writing to the employer, giving not less than 4 weeks' notice prior to the expiration of the period of spousal leave.

9.3.4 In cases of financial hardship or other exceptional circumstances the employee may ask, and the chief executive may exercise discretion in paying the full short spousal leave entitlement in advance.

9.4 Pre-natal Leave

(a) In addition to the paid short spousal leave provisions above, an eligible employee who presents a medical certificate from a doctor stating that their spouse is pregnant will have access to paid pre-natal leave up to a total of either 7.25 or 7.6 hours (based on the average number of ordinary hours worked in a day) per pregnancy to attend related medical appointments prior to the birth of a child.

(b) A written application shall be submitted for every absence for which pre-natal leave is sought. Each absence on pre-natal leave must be supported by documentary evidence relating to the medical appointment to the satisfaction of the Chief Executive (e.g. a medical certificate).

(c) The work unit should be flexible enough to allow such employees the ability to leave work and return on the same day.

9.5 Adoption Leave

9.5.1 An eligible employee who presents documentation from the Director-General of the relevant Queensland Government department administering adoptions confirming that an adoption order or interim adoption order has been made for the relevant child, will be entitled to fourteen (14) week's paid adoption leave at the time of placement or taking custody if he or she is the primary caregiver, or one week's paid adoption leave if he or she is the secondary caregiver. The 14 week period or one week period of paid leave is inclusive of any public holidays arising within that time. The period of paid adoption leave can be extended by the employee taking the leave on a half-pay basis or by taking sick leave while on paid adoption leave.

9.5.2 In cases of financial hardship or other exceptional circumstances the employee may ask, and the chief executive may exercise discretion in paying the full adoption leave entitlement in advance.

9.5.3 Applications for adoption leave will be in accordance with the *Industrial Relations Act 2016*.

9.5.4 If the employee is the primary caregiver, that employee will be entitled to access a further period of unpaid parental leave in accordance with the provisions of the *Industrial Relations Act 2016*. If an employee has accessed the further period of unpaid parental leave, they shall confirm their intention of returning to work by notice in writing to the employer, giving not less than 4 weeks prior to the expiration of the period of adoption leave.

9.5.5 Pre-adoption Leave

(a) In addition to the adoption leave provisions above, an employee who will be the primary caregiver and who presents a letter from the Director-General of the relevant Queensland Government department administering adoptions, confirming the employee's status as a prospective adopter, will have access to paid leave up to a total of either 36.25 or 38 hours (based on the average number of ordinary hours worked in a week) per adoption to attend related interviews prior to the adoption of a child.

(b) An employee who will be the secondary caregiver at the time of placement and who presents a letter from the Director-General of the relevant Queensland Government

department administering adoptions confirming that the employee is a prospective adopter, will have access to paid leave up to a total of either 7.25 or 7.6 hours (based on the average number of ordinary hours worked in a day) per adoption to attend related interviews prior to the adoption of a child.

- (c) A written application shall be submitted for every absence for which pre-adoption leave is sought. Applications shall be supported by evidence to the satisfaction of the chief executive.
- (d) The work unit should be flexible enough to allow such employees the ability to leave work and return on the same day.
- (e) An employee cannot be deemed to be both the primary and secondary caregiver and therefore cannot access both entitlements to pre-adoption leave (i.e. 1 week and 1 day).

9.6 Surrogacy Leave

9.6.1 An eligible employee who presents a statutory declaration that the employee is an intended parent under a surrogacy arrangement will be entitled to fourteen (14) week's paid surrogacy leave when a child born as a result of a surrogacy arrangement is expected to start residing with the employee if he or she is the primary caregiver, or one week's paid surrogacy leave if he or she is the secondary caregiver. The 14 week period or one week period of paid leave is inclusive of any public holidays arising within that time. The period of paid surrogacy leave can be extended by the employee taking the leave on a half-pay basis or by taking sick leave while on paid surrogacy leave.

9.6.2 In cases of financial hardship or other exceptional circumstances the employee may ask, and the chief executive may exercise discretion in paying the full surrogacy leave entitlement in advance.

9.6.3 Applications for surrogacy leave will be in accordance with the *Industrial Relations Act 2016*.

9.6.4 If the employee is the primary caregiver, that employee will be entitled to access a further period of unpaid parental leave in accordance with the provisions of the *Industrial Relations Act 2016*. If an employee has accessed the further period of unpaid parental leave, they shall confirm their intention of returning to work by notice in writing to the employer, giving not less than 4 weeks prior to the expiration of the period of surrogacy leave.

9.6.5 Pre-surrogacy Leave

- (a) In addition to the surrogacy leave provisions above, an employee who will be the primary caregiver and who presents a statutory declaration that the employee is an intended parent under a surrogacy arrangement, will have access to paid leave up to a total of either 36.25 or 38 hours (based on the average number of ordinary hours worked in a week) per surrogacy to attend related interviews and court hearings prior to the surrogacy of a child.
- (b) An employee who will be the secondary caregiver at the time of placement and who presents a statutory declaration that the employee is an intended parent under a surrogacy arrangement, will have access to paid leave up to a total of either 7.25 or 7.6 hours (based on the average number of ordinary hours worked in a day) per surrogacy to attend related interviews and court hearings prior to the surrogacy of a child.
- (c) A written application shall be submitted for every absence for which pre-surrogacy leave is sought. Applications shall be supported by evidence to the satisfaction of the chief executive.
- (d) The work unit should be flexible enough to allow such employees the ability to leave work and return on the same day.

- (e) An employee cannot be deemed to be both the primary and secondary caregiver and therefore cannot access both entitlements to pre-surrogacy leave (i.e. 1 week and 1 day).

9.7 Conversion to an Hourly Basis

9.7.1 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:

9.7.2 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:

$$LE \text{ (weeks)} = 14 \times 36.25 = 507.5 \text{ hours full entitlement}$$

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

9.8.1 A part-time or long-term casual employee's entitlement to 14 weeks paid maternity, long spousal, adoption or surrogacy leave is to be calculated as follows:

Number of hours x working days of entitlement

Where number of hours =

$$\frac{\text{total ordinary hours worked over the last 12 months}}{\text{total ordinary hours of a full-time employee over previous 12 months}} \times 70 \text{ days}$$

9.8.2 A part-time or long-term casual employee's entitlement to 1 week's paid short spousal or pre-natal leave is to be calculated as follows:

Number of hours x working days of entitlement

Where number of hours =

$$\frac{\text{total ordinary hours worked over the last 12 months}}{\text{total ordinary hours of a full-time employee over previous 12 months}} \times 5 \text{ days}$$

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

- 9.8.3 A part-time or long-term casual employee's entitlement to 1 day's pre-natal 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

- 9.8.4 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 |

10. General Conditions

10.1 Notice

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

10.2 Parental Leave and Access to Other Leave

- 10.2.1 Except where specifically provided under this directive, the provisions of the relevant industrial instrument shall apply.

10.2.2 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 Directives.
- (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 Directives.

10.2.3 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:
- an employee 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 three (3) working days.

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

10.2.4 An employee can only be on one form of approved leave at any one time.

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

10.3 Access to a Subsequent Period of Parental Leave

10.3.1 An employee:

- who becomes pregnant while on parental leave; or
- whose spouse becomes pregnant while that employee is on parental leave; or
- who is to adopt a child while on parental leave; or
- who is an intended parent under a surrogacy arrangement while on parental leave; is eligible, without resuming duty, for a subsequent period of parental leave in accordance with the provisions of this directive.

10.4 Less than the standard Parental Leave taken

10.4.1 Except as provided by clause 9.1.6, 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.

10.5 Special Maternity Leave

10.5.1 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 maternity leave, the employee shall notify the chief executive of the changed circumstances as soon as practicable.

10.5.2 Where, after the first twenty weeks, a pregnancy ends in other than the birth of a living child or where the child dies during the period of paid maternity leave, the employee shall continue to be entitled to 14 weeks paid leave.

10.6 Recognition of Service

10.6.1 **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").

10.6.2 **Paid Leave Counted as Service:** Periods of paid leave during parental leave count as service for all purposes.

10.7 Extension of Paid Parental Leave on a Half-Pay Basis

10.7.1 An employee may request, and an employer may agree to extend the amount of paid maternity, adoption, surrogacy or spousal leave for which the employee qualifies by the employee taking the leave on half-pay i.e.

- 14 weeks paid maternity, long spousal, adoption and surrogacy leave may be extended to 28 weeks at half-pay
- 1 week paid short spousal leave may be extended to 2 weeks at half-pay

10.7.2 An employee cannot take pre-natal, pre-adoption or pre-surrogacy leave on half-pay.

10.7.3 The employee may choose to combine a period of full and half-pay but this option should be made before the commencement of the 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.

- 10.7.4 The minimum period of 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.
- 10.7.5 Granting of the parental leave on a half-pay basis is subject to departmental convenience however requests for leave should not be unreasonably refused.
- 10.7.6 *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.
- 10.7.7 *Leave Debit:* Periods of half-pay parental leave will be debited on a full-time equivalent basis e.g. half-pay maternity, long spousal, adoption or surrogacy leave for a period of 28 weeks will attract a debit of 14 weeks from full pay credits; half-pay short spousal leave for a period of 2 weeks will attract a debit of 1 week from full pay credits.
- 10.7.8 *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.
- 10.7.9 *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.

10.8 Promotion

- 10.8.1 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.
- 10.8.2 An employee cannot be denied promotion because they are unavailable to take up duty before the completion of the paid or unpaid parental leave.

10.9 Professional Development

- 10.9.1 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.

10.10 Higher Duties Allowance While on Paid Parental Leave

- 10.10.1 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.

10.11 Recall to Duty

- 10.11.1 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 *Industrial Relations Act 2016*. 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.

10.11.2 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.

10.11.3 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.

10.12 Access to Flexible Work Practices

10.12.1 On return to work from parental leave, flexible work practices (e.g. part-time employment) may be utilised in accordance with section 27 and/or 74 of the *Industrial Relations Act 2016* where suitable to both the employer and employee.

10.12.2 Information in relation to Flexible Work Practices is available on the Public Service Commission website at <http://www.forgov.qld.gov.au/flexible-work>.

10.13 Complaints Procedure

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