

INFECTIOUS DISEASE

7. (16) Where an employee produces medical evidence that -
- (a) he or she is infected or has been in contact with an infectious disease as defined under the Public Health Act; and
 - (b) by reason of any law of the Territory or any State or Territory of the Commonwealth is required to be isolated from other persons,
- the Chief Executive Officer may grant -
- (c) sick leave in relation to any period during which the employee actually suffers from illness;
 - (d) recreation leave in relation to any period during which the employee does not actually suffer from illness.

WAR SERVICE

7. (17) Notwithstanding anything contained in this By-law, where satisfactory medical evidence is produced that absence from duty was on account of illness which originated from war service, the Commissioner shall determine the conditions under which sick leave may be granted.

By-law 8 - Long Service Leave

INTERPRETATION

8. (1) For the purposes of this By-law -
- “month” means
- (a) when calculating or using a whole month, a calendar month; or
 - (b) when calculating or using a fraction of a month, 30 calendar days;
- “recognised employer” means an employer who is determined by the Commissioner to be a recognised employer.
- “qualifying service” means the period of actual service with the Northern Territory Public Sector and/or a recognised employer.

ENTITLEMENT

8. (2) An employee is entitled to paid long service leave -
- (a) of 3 calendar months after completing 10 years of continuous service; and
 - (b) for service after 10 years an additional 3 tenths of a month on completion of each subsequent year of continuous service.

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MAXIMUM CREDIT

8. (2A) An employee is required to use a long service leave entitlement within three years of;
- (a) the ten year entitlement accruing;
 - (b) the eleven to twenty year entitlement accruing; or
 - (c) within three years from the 7 March 1996;

whichever is the later, provided that the Chief Executive Officer and the employee may agree to temporarily defer the leave to meet special circumstances which shall include, but not be limited to, agency and/or personal needs.

8. (2B) Nothing in this section shall require an employee:
- (a) to use their entitlement where the employee is within ten years of the minimum retirement age under the Act; or
 - (b) to use their entitlement where, on 7 March 1996, the employee has accrued 20 years of service; or
 - (c) to use their accrued entitlement for the twenty-first and subsequent years of service.

EFFECT OF LEAVE ON ENTITLEMENT

8. (3) The following types of leave without pay do not count as service for long service leave purposes:
- (a) sick leave not covered by medical evidence;
 - (b) full time union duties with an employee organisation representing Northern Territory Public Sector employees;
 - (c) any other forms of leave specified in these By-laws as not counting as service,

but do not break continuity of service, unless the Commissioner determines otherwise.

8. (4) An absence covered by workers' compensation shall not break continuity of service but shall not count as service for the purpose of accrual.

FULL AND PART TIME SERVICE

8. (5) Employees with a combination of separate periods of -
- (a) service rendered in a full time capacity; and

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(b) service rendered in less than a full time capacity,

shall have their long service leave entitlement recorded separately for each period of service, but shall be entitled to utilise long service leave after completing 10 years of combined service.

8. (6) Any service in a less than full time capacity which is concurrent with service in a full time capacity shall be excluded.

GRANTING OF LONG SERVICE LEAVE

8. (7) The Chief Executive Officer may, upon application and subject to Agency requirements, grant an employee long service leave on either -
- (a) full pay, to the extent of available entitlements at the time of commencing leave; or
 - (b) half pay, provided that the leave shall not exceed twice the entitlement available pursuant to paragraph (a).
 - (c) full pay, providing at least half the entitlement applied for is to be utilised as leave, with the balance of the amount applied for to be paid out in lieu.
8. (8) Long service leave shall be granted in periods of months and tenths of a month provided that an employee shall not be granted a period of leave of less than one half of one month (15 calendar days).
8. (9) Notwithstanding clause (8), the Chief Executive Officer may grant an employee employed in a teaching capacity, or school based administrative capacity, long service leave for a period of less than 15 days.
8. (10) An employee shall not in separate applications apply for periods of long service leave that are separated by a Saturday, Sunday or public holiday.

PAYMENT DURING LEAVE

8. (11) An employee who is on long service leave is entitled to be paid the ordinary salary payable in relation to his or her designation and in this context "salary" includes -
- (a) qualifications allowances;
 - (b) allowances expressed as all purpose allowances under the relevant Award;
 - (c) higher duties allowance in so far as the allowance would have been paid but for the employee's absence;
 - (d) Northern Territory allowance where the employee, or a recognised dependent of the employee, remains in the Northern Territory; and
 - (e) any other allowance determined by the Commissioner to form salary for the purposes of long service leave,

but "salary" shall not include shift penalties or allowances paid in lieu of shift penalties as part of salary.

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8. (12) Payment of long service leave for an employee who has a long service leave entitlement based on -
- (a) only full time service, shall be at the employee's current rate of salary for their designation;
 - (b) only less than the full time service, with:
 - (i) consistent hours of work per week shall be the employee's current rate of salary for their designation, reduced to an hourly rate, multiplied by the fixed hours of work per week.
 - (ii) varying hours of work per week shall be at the employee's current rate of salary for their designation, reduced to an hourly rate, multiplied by the average hours of work per week. The average weekly hours shall be calculated over the period of service; or
 - (c) a combination of paragraph (a) full time credits, and paragraph (b) less than full time credits, shall be paid in accordance with the credit being used and the methods of payment prescribed in paragraph (a) and/or paragraph (b).

NO ADDITIONAL DAYS

8. (13) Weekends, public holidays, programmed days off and rostered days off are a part of long service leave and do not extend the period of leave.

ILLNESS DURING LEAVE

8. (14) Where an employee becomes ill during a period of long service leave and the illness is supported by medical evidence, the Chief Executive Officer may grant sick leave in accordance with By-law 7 and authorise the equivalent period of long service leave to be re-credited.

PRIOR SERVICE

8. (15) An employee may apply to the Chief Executive Officer for his/her service with a recognised employer(s) to be counted as service for the purpose of this By-law provided that:
- (a) where the break in service between the recognised employer(s) does not exceed two months-
 - (i) the period of the break does not break the continuity of employment, but it does not count as service; and
 - (ii) after ten years qualifying service within any continuous period of employment, the employee entitled to paid long service leave of 3 calendar months; or
 - (b) where the break in service between the recognised employer(s) exceeds 2 months, but does not exceed 12 months-
 - (i) the period of the break does not break the continuity of employment, but does not count as service; and

- (ii) after ten years qualifying service within any continuous period of employment, the employee is entitled to paid long service leave of 3/10ths of a month for each completed year of service with the Northern Territory Public Sector only; and
 - (c) for employees covered by the Northern Territory Public Sector Teachers and Educators Certified Agreement 1997, the 2 month break in service referred to in (a) and (b) above shall not include any contiguous stand down/leave period.
- 8. (15A) Breaks in service between recognised employers of greater than 12 months shall break continuity of employment for all purposes.
- 8. (15B) The Commissioner may, in special circumstances, treat prior service under 15(b) as if it were prior service under 15(a).
- 8. (15C) Subject to (15), (15A) and (15B) -
 - (a) prior service with recognised employer(s) shall be credited at the rate of 3/10ths of a month for each year of service, less any long service leave utilised or payment made in lieu, unless payments from a recognised employer exceed Northern Territory Public Sector calculations, in which case the excess shall be disregarded; or
 - (b) where prior service with the Northern Territory Public Sector or its predecessor employers accrued at the rate of 4/10ths of a month, the period of prior service shall be credited at the rate of 4/10ths of a month for each year of continuous prior service only.
- 8. (16) An application under clause (15) in relation to prior service with a recognised employer shall be made in writing to the Chief Executive Officer and shall be accompanied by a statement signed by or on behalf of the recognised employer setting out -
 - (a) the date of commencement of the prior service and date of cessation of employment;
 - (b) the nature of the prior service (eg full time, part time or casual);
 - (c) the hours for each period of employment;
 - (d) the period of service in relation to which long service leave has been taken or for which a lump sum payment in lieu has been paid, including gratuity payments based on length of service; and
 - (e) details of periods which did not count as service.
- 8. (17) An application under clause (15) in relation to prior service with an employer other than a recognised employer shall be made in writing to the Chief Executive Officer and shall be accompanied by a statement setting out -
 - (a) the proper name of the employer;
 - (b) reference to the authority (either an Act or Regulation) under which the employer is or was constituted;

- (c) the designation, classification or description of the position held by the applicant;
- (d) the applicant's date of commencement and cessation of duty;
- (e) the nature of the employment (eg full time, part time or casual);
- (f) the hours of work for each period of employment;
- (g) the period of service (if any) for which long service leave has been taken by the employee or in relation to which a lump sum payment has been made to the employee including gratuity payments based on length of service; and
- (h) details of periods which did not count as service.

UNRECORDED PRIOR SERVICE

8. (18) Where an application is made under this By-law in relation to a period with respect to which records are not available, the application shall be supported by -
- (a) a statement signed by the applicant; and
 - (b) 2 statements signed by each of 2 other persons who were associated with the applicant during the relevant period or periods,
- setting out as precisely as possible details of the applicant's employment in relation to the period or periods in question and in particular -
- (c) individual periods of service (month to month);
 - (d) the nature and location of service (and if more than one each one);
 - (e) the person who supervised the employee;
 - (f) the association between the employee and the persons who provide the statements referred to in paragraph (b);
 - (g) the period of service (if any) for which long service leave has been taken by the employee or in relation to which a lump sum payment has been made to the employee including gratuity payments based on length of service;
 - (h) details of periods which did not count as service; and
 - (i) any other relevant information.
8. (19) Normally the requirements specified in clause (18) are minimum requirements but where an applicant cannot satisfy the requirements set out in that clause, any other evidence such as taxation group certificates or other independent documentary evidence may be submitted to assist in consideration of the application.
8. (20) Where specific dates are not provided, unrecorded prior service will be calculated from the fifteenth day of a month and/or to the fifteenth day of a month.

8. (21) Where the claim substantially conforms to the requirements of clause (18)(c) or where a claim does not conform to the requirements of clause (18)(c) or (18)(d), the claim shall be determined by the Chief Executive Officer. Otherwise application shall be forwarded to the Commissioner together with the accompanying documents for consideration by the Commissioner.

PAYMENT IN LIEU OF PRIOR SERVICE

8. (22) Where the employee has received a lump sum payment in lieu of long service leave in relation to prior service the employee shall not be permitted to pay the amount so received or any portion of the amount to the Territory for the purposes of obtaining an entitlement to long service leave from the Territory.

ENTITLEMENT RESTRICTED TO ONE EMPLOYER

8. (23) Where an employee has prior service with more than one recognised employer at the same time, the employee may aggregate the time served so long as the time claimed for the purposes of service for long service leave does not exceed the total weekly hours normally applicable in relation to work of the kind in question.

PAYMENT IN LIEU

8. (24) The Chief Executive Officer may authorise payment in lieu of an accrued entitlement to an employee who has at least 10 years service and is ceasing their employment.
8. (25) An employee shall be eligible for payment in lieu on cessation of employment, after one year of service:
- (a) when retired under the provisions of section 48 of the *Public Sector Employment and Management Act*;
 - (b) when retiring on or after attaining fifty-five years of age;
 - (c) on redundancy; or
 - (d) on death.
8. (26) Where an employee dies or, after consideration of all the circumstances the Commissioner has directed that an employee shall be presumed to have died on a particular date, the Chief Executive Officer may authorise payment in lieu of long service leave, calculated in accordance with clause (28)-
- (a) to the employee's legal personal representative; or
 - (b) when authorised by the employee's legal personal representative, to another person or persons at the Chief Executive Officer's discretion.
8. (27) Salary for calculation of any payment in lieu shall not include:
- (a) shift penalties or allowances in lieu;
 - (b) Northern Territory allowance; and

(c) any allowance paid as a compensatory allowance

8. (28) The following formula shall be used to calculate payment in lieu:

$$(A \times 0.3) \text{ minus } B \quad \times \quad \frac{C}{12}$$

where

A = completed years and months of service expressed as a fraction

B = any leave granted and/or previous payments made in lieu

C = Annual Salary

8. (29) The following formula shall be used to convert weekly wages to annual salary:

$$\text{weekly wage} \quad \times \quad \frac{313}{6}$$

PAYMENT ON RESIGNATION - LESS THAN 10 YEARS SERVICE

8. (30) The Chief Executive Officer may authorise a special entitlement to payment in lieu of long service leave on resignation of employment, as follows:

(a) 22.5 calendar days after 7 completed years of service;

(b) 45 calendar days after 8 completed years of service;

(c) 67.5 calendar days after 9 completed years of service.

Payment under this clause shall be calculated using the following formula:

$$\frac{\text{calendar days}}{30} \quad \times \quad \frac{\text{annual salary}}{12}$$

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