

PART 2 - LEAVE

By-law 4 - Recreation Leave

INTERPRETATION

4. (1) For the purposes of this By-law -

“additional recreation leave credit” means an additional credit determined by the Commissioner under clause (2);

“annual credit” means a period equal to an employee's ordinary hours of duty during a period of 4 weeks plus any additional recreation leave credit;

“completed month” means a period of 22 working days inclusive of any public holidays;

“month” means a calendar month;

“year” means a calendar year.

DETERMINATION OF ADDITIONAL RECREATION LEAVE CREDITS

4. (2) Without affecting the operation of By-law 6, the Commissioner may, by determination, grant an additional recreation leave credit to employees whose normal place of employment is in the Northern Territory and under any condition the Commissioner determines, so long as the total annual credit does not exceed 6 weeks.

ACCRUAL OF ANNUAL CREDIT

4. (3) Except as provided at clause (4), there accrues to an employee on 1 January of every year an annual credit based on the previous year of service, provided that where an employee has not completed the full year, they shall accrue the annual credit on a pro rata basis.
4. (4) OMITTED

Issued 7 October 1998

GRANT OF RECREATION LEAVE

4. (5) An employee employed in a teaching capacity shall, unless otherwise directed, be deemed to be on recreation leave on and from the first working day succeeding the last day on which the employee's school is open in a calendar year, and the period of leave shall be to the limit of available credits or to the day preceding the first day on which the school is open in the next calendar year.
4. (6) The Chief Executive Officer may, on application in writing by an employee, other than one to whom clause (5) applies, and subject to the Agency's requirements, grant leave for recreation purposes -
 - (a) to the extent of the employee's available annual credits; and
 - (b) on a pro rata basis calculated to provide 1/12th of the annual credit for each completed month of service in the uncompleted year up until the date the employee proposes to utilise the leave.
4. (7) The Chief Executive Officer shall not grant pro rata recreation leave in respect of any month where leave without pay that does not count as service is in excess of 5 days.
4. (8) Where an employee is granted pro rata recreation leave, the next annual credit accruing shall be reduced by the amount of pro rata recreation leave utilised in the previous year.

ILLNESS DURING LEAVE

4. (9) Where an employee becomes ill during a period of recreation 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 recreation leave to be re-credited.

ANNUAL CREDIT REDUCED BY LEAVE WITHOUT PAY

4. (10) Where:
 - (a) an employee has been on leave without pay for 22 working days or more in a year; and
 - (b) the period of absence on leave without pay does not count as service,the next annual credit that accrues in relation to the employee shall be reduced by one twelfth of the period of the annual credit that would otherwise accrue for each 22 working days on which the employee was so absent.

MAXIMUM ANNUAL CREDIT, &c.

4. (11) An employee who is not employed in a teaching capacity may accumulate a maximum of 2 years annual credit.
4. (12) An employee employed in a teaching capacity is not entitled to accumulate accrued recreation leave beyond the end of the following year without the approval of the Chief Executive Officer.
4. (13) An employee, whose annual credits will be in excess of the allowable maximum in accordance with clause (11) at the date on which the next annual credit is due and who does not commence utilising the whole of the portion of the credit that will be in excess before that date, shall forfeit the portion of the annual credit that is in excess of the maximum.

RESTORATION OF FORFEITED LEAVE

4. (14) Where the Chief Executive Officer is satisfied, having regard to the special circumstances of the case in question which led to the forfeiture of recreation leave under clause (13), the Chief Executive Officer may approve the restoration of any period so forfeited on the following conditions -
 - (a) the restored credit shall not exceed the forfeited credit;
 - (b) the employee commences utilisation of the whole of the restored credit within a maximum period of 6 months; and
 - (c) any of the restored credit not utilised within the limitations referred to in paragraph (a) or (b) shall be forfeited and shall not be subject to a further restoration.

PAYMENT IN LIEU

4. (15) Where an employee ceases employment, other than by death, he or she is entitled to payment in lieu of any remaining annual credit and, in addition, payment of pro rata leave for each completed month of service since the last accrual.
4. (16) Any part months of service in respect of the first and last month of employment, previously unaccounted for in respect of pro rata or annual credits, shall be added to the employee's final year of service for the purpose of calculating payment in lieu of leave.

PAYMENT IN CASE OF DEATH

4. (17) 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 recreation leave, calculated in accordance with clauses (15) and (16) -

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- (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.

PUBLIC HOLIDAYS

- 4. (18) Where a public holiday occurs during recreation leave -
 - (a) an employee shall be paid at the same rate as the rate allowed for the period of leave; and
 - (b) the public holidays shall not be debited from the employee's annual credit.

By-law 5 - Recreation Leave Loading

ENTITLEMENT

- 5. (1) An employee shall be entitled to a recreation leave loading as follows:
 - (a) a sum of seventeen and one half percent of the value of the recreation leave credit based on their salary (including any allowances in the nature of salary) as at 1 January in the year in which the recreation leave accrued; or
 - (b) to a maximum payment advised by the Commissioner, of the equivalent of the average weekly earnings of Northern Territory males ascertained from the Australian Statistician for the quarter ended 31 August of the year preceding the year in which the date of accrual occurs;whichever is the lesser; or
 - (c) where the employee is a shift worker as defined in By-law 39, payment of the greater of either shift penalties to which they would have been entitled but for proceeding on leave or the recreation leave loading as per paragraph (a) and (b).

MINIMUM PERIOD OF LEAVE

- 5. (2) An employee is not entitled to be paid a recreation leave loading unless an application is approved for use of at least one week of recreation leave.

Issued 7 October 1998

CESSATION OF EMPLOYMENT

5. (3) On cessation of employment an employee shall be entitled to payment in lieu of any unpaid recreation leave loading, and pro rata payment of a recreation leave loading calculated on the basis of one twelfth of the recreation leave loading entitlement at 1 January last, for each completed month of service in the year of cessation.
5. (4) Where an employee commenced and ceased duty in the same year, salary for the purposes of clause (3) shall be the salary which would have been payable to them had they been employed on 1 January of that year.

FORMULA

5. (5) The following formula is to be used in the calculation of the recreation leave loading:

$$A \times B \times 0.175 \times \frac{6}{313}$$

where:

A = annual salary at 1 January including any allowances in the nature of salary payable.

B = number of weeks recreation leave accrued at 1 January.

0.175 = seventeen and one half percent

$\frac{6}{313}$ = factor to convert annual salary to a weekly wage.

By-law 6 - Additional Recreation Leave - 7 day Shift Worker

INTERPRETATION

6. (1) For the purpose of this By-law -

“7 day shift worker” means an employee who is rostered to work regularly on any of the 7 days of the week, which includes regular rostered duty on Sundays.

Issued 7 October 1998

ACCRUAL OF ADDITIONAL LEAVE

6. (2) A 7 day shift worker shall accrue on 1 January of every year, in conjunction with their annual credit for recreation leave:
- (a) an additional leave credit of 1 week; or
 - (b) where rostered to perform duty on less than 10 Sundays during a year an additional leave credit at the rate of 1/2 day in respect of each Sunday rostered.
6. (3) Additional leave accrued under this By Law is not available to an employee for utilisation on a pro rata basis.
6. (4) For the purposes of this By-law -
- (a) A rostered Sunday overtime shift of less than 3 hours shall not be included in reckoning an employee's eligibility to be regarded as a 7 day shift worker;
 - (b) subject to paragraph (a), a rostered overtime shift which commences on a Saturday and extends into Sunday or commences on a Sunday and extends into Monday shall be deemed to be a Sunday overtime shift.

RECREATION LEAVE BY-LAW TO APPLY

6. (5) The additional leave accrued under this By-law shall also be subject to the provisions of By-law 4, provided that (2)(b) above shall apply for the purpose of calculating payment in lieu for the final year of service.

By-law 7 - Sick Leave

INTERPRETATION

7. (1) For the purposes of this By-law -
- “full pay” means salary as defined under the Act;
 - “half pay” means one half of full pay;
 - “illness” means an illness, injury or disease of the employee;
 - “family member”, for the purposes of clause (6A) means, a member of the employee's immediate family or household for whom the employee is responsible for care and support;
 - “sick leave year” means 12 months service from the anniversary of commencement or 12 months service since the last sick leave accrual;
 - “medical evidence” means:
 - (a) a medical certificate provided by a registered medical practitioner;
 - (b) a report provided by a medical officer approved by the Commissioner for the purpose; or

- (c) certification of illness provided by a person or class of persons approved by the Commissioner eligible to provide certification, provided that the medical evidence states the period of the illness and wherever possible the nature of the illness.

ACCRUAL OF SICK LEAVE

- 7. (2) A permanent employee is credited -
 - (a) on commencement of his or her employment, with 3 weeks sick leave on full pay; and
 - (b) on completion of each 12 months of continuous service, with 3 weeks sick leave on full pay,and such leave is to be cumulative.

- 7. (3) A temporary employee shall, subject to this By-law -
 - (a) not be credited with sick leave on commencement, but shall be entitled to apply for sick leave of up to one week for each period of two months service provided that the total leave does not exceed 3 weeks at full pay within the first 12 months of service;
 - (b) on completion of 12 months service, be credited with 6 weeks sick leave on full pay less any leave granted under paragraph (a);
 - (c) on completion of each period of 12 months of continuous service thereafter, accrue 3 weeks sick leave on full pay;and such leave is to be cumulative.

- 7. (4) Where an employee is permanently appointed to the Public Sector and that employment is consecutive with a period of temporary employment, sick leave may be credited in accordance with clause (2), but shall be subject to reduction by the period of sick leave granted during the period of temporary employment.

DEFERRAL OF SICK LEAVE CREDIT

- 7. (5) A sick leave credit referred to in this By-law shall be deferred by the equivalent number of calendar days where an employee has been absent from duty in the preceding sick leave year and that absence has been -
 - (a) leave on account of illness where the absence is without pay and not covered by medical evidence;
 - (b) an unauthorised absence;
 - (c) leave without pay that does not count as service.

GRANT OF SICK LEAVE

7. (6) In the case of illness of an employee the Chief Executive Officer may grant sick leave -
- (a) on production of satisfactory medical evidence to the extent of sick leave credits:
 - (i) at full pay, or
 - (ii) on the employee's request, at half pay, where the period of absence required is one day or more, or
 - (b) without production of medical evidence, in any sick leave year, to the extent of 5 working days or the equivalent number of hours of duty provided that no more than 3 of those days may be consecutive working days or the equivalent number of hours of duty.
- (6A) Access to sick leave credits in accordance with 7 (6) (a) and (b) can also be used to care for sick family members for up to 10 days in any sick leave year.
7. (7) Where an employee has exhausted all available sick leave credits the Chief Executive Officer may, after considering all the relevant circumstances and where satisfactory medical evidence is provided -
- (a) grant sick leave without pay, or
 - (b) grant additional sick leave on half pay, which is not subject to conversion to full pay.
 - (c) grant access to Recreation Leave in accordance with By-law 4 where an extended period of absence is involved, provided that where Recreation Leave is used it shall be deemed to be Sick Leave for all other purposes under the provisions of this By-law.
7. (8) In no case shall a permanent employee be entitled to sick leave extending beyond the day immediately preceding their prescribed maximum retiring age.

MAXIMUM AMOUNT OF SICK LEAVE

7. (9) The maximum period of absence allowable in respect of any continuous period of absence due to illness shall be:
- (a) 52 weeks in respect of paid leave, and
 - (b) 78 weeks in respect of combined paid and unpaid leave.

SICK LEAVE WHILE ON OTHER LEAVE

7. (10) An employee who has been granted leave other than recreation leave, long service leave or maternity leave, shall not be granted sick leave under the provisions of this By-law during such period of that leave.

Issued 7 October 1998

MEDICAL EXAMINATION

7. (11) The Chief Executive Officer may direct an employee to attend an examination by a medical practitioner approved by the Commissioner where -
- (a) an employee has been absent, or is likely to be absent, through illness continuously for an extended period;
 - (b) it is considered that an employee's efficiency may be affected due to illness;
 - (c) there is reason to believe that an employee's state of health renders them a danger to themselves, other employees or the public; or
 - (d) in accordance with Part 7 of the Act.
7. (12) Subject to clause (9) an employee directed to attend an examination in accordance with clause (11), who is -
- (a) absent on approved sick leave covered by medical evidence, shall be entitled to continue on sick leave until the findings of the medical examination are known;
 - (b) an employee other than one to which paragraph (a) refers, shall be deemed to be on duty from the time of the direction until the findings of the examination are known,
- and the grant of sick leave after the date of examination or the employee's return to duty shall be subject to the findings of the medical officer.
7. (13) The Chief Executive Officer shall not grant leave -
- (a) where the employee failed to attend a medical examination under clause (11) without reasonable cause; or
 - (b) where illness is caused through misconduct; and
- the Chief Executive Officer may instigate action under Part 8 of the Act.

CONFLICT OF MEDICAL EVIDENCE

7. (14) Where an employee has been directed to attend an examination under clause (11) and the view of the medical practitioner conflicts with that of the employee's medical practitioner (or providers recognised by clause (1)(c)), the case is to be referred to the Northern Territory Medical Adviser for consultation and resolution with the Chief Medical Officer.
7. (15) The Northern Territory Medical Adviser or the Chief Medical Officer may, at his or her discretion, arrange for a further examination by another medical officer, private practitioner or specialist and any associated costs will be borne by the referring Agency.

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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.

Issued 7 October 1998

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:

$$\text{weekly wage} \quad \times \quad \frac{52}{6}$$

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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By-law 9 - Maternity Leave - General

ELECTION BY EMPLOYEES

9. (1) An employee who was compulsorily transferred to the Public Service of the Northern Territory before 28 November 1978 shall elect to choose the application of By-law 11 or By-law 53.
9. (2) An employee who was compulsorily transferred to the Public Service of the Northern Territory on or after 28 November 1978 but on or before 1 July 1981, has no entitlement to the application of By-law 53, but shall elect to choose the application of By-law 10 or By-law 11.
9. (3) An employee other than one referred to in clause (1) or clause (2) shall elect to choose the application of By-law 10 or By-law 11.
9. (4) An election made in respect of this By-law cannot be varied, but an election made in respect of a subsequent application for maternity or parental leave may vary from a previous election.

DAYS INCLUDED AS PART OF LEAVE

9. (5) Weekends, public holidays, programmed days off and rostered days off are part of maternity leave and do not extend the period of leave.

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By Law-10 - Maternity Leave - 12 Month Option

PERIOD OF MATERNITY LEAVE

10. (1) The Chief Executive Officer shall grant to an employee who is pregnant, subject to clause (2) and clause (22), a period of leave for maternity purposes not exceeding 52 weeks.
10. (2) Where an employee is eligible for maternity leave the Chief Executive Officer may grant leave but shall not grant leave beyond a date which, but for the grant of leave, would have been the employee's cessation date or end of tenure.
10. (3) Subject to clause (4), an employee referred to in clause (1) or (2) shall commence the absence on leave 6 weeks before the expected date of birth and the absence shall extend 8 weeks after the actual date of birth.
10. (3A) With exception of the provision contained in clause (4) the commencement date of maternity leave may not be deferred under any circumstance and once commenced the paid maternity leave period cannot be interrupted by any other form of leave.
10. (4) The Chief Executive Officer may permit the employee referred to in clause (1) or (2) to commence leave closer to the expected date of birth or return to duty less than 8 weeks after the date of birth where -
 - (a) the employee produces to the Chief Executive Officer medical evidence of the employee's fitness to continue or resume duty; and
 - (b) the Chief Executive Officer approves the employee's continuance on duty or return to duty.

DOCUMENTS IN SUPPORT OF APPLICATION

10. (5) An employee shall furnish to the Chief Executive Officer the following documents in support of an application for maternity leave:
 - (a) not less than 3 months before the commencement of leave, medical evidence stating the estimated date of confinement to establish the commencement date of the leave; and
 - (b) the child's birth certificate or extract of birth as soon as it is available.

PAYMENT DURING MATERNITY LEAVE

10. (6) Where an employee has been employed continuously in the Public Sector for 12 months before commencing leave in accordance with clause (1), (2) or (3), the first 14 weeks of the employee's absence from duty will be with pay.
10. (7) Where an employee's qualifying period of 12 months' service referred to in clause (6) ends during the 14 week period commencing 6 weeks before the estimated date of confinement, payment shall be made only for that part of the 14 week period occurring after the end of the qualifying period.

Issued 1 December 2004

UTILISATION OF LEAVE CREDITS

10. (8) Within a total period of 52 weeks after the employee commences maternity leave and after the first 14 weeks of maternity leave, whether paid or unpaid, the Chief Executive Officer shall, on application by an employee, approve -
- (a) the use of accrued recreation leave or long service leave or both; or
 - (b) the employee's absence on leave without pay, provided that paid leave is utilised prior to commencing leave without pay.
10. (9) An employee shall not be granted sick leave in respect of breast feeding or for similar child care purposes but an employee may utilise accrued sick leave entitlements after furnishing to the Chief Executive Officer medical evidence in accordance with By-law 7 (1).

EMPLOYMENT WHILE ON MATERNITY LEAVE

10. (10) Subject to the Chief Executive Officer's approval, an employee on maternity leave without pay may return to duty for any period with the Agency, or another Agency.
10. (11) An employee on maternity leave without pay may engage in outside employment in accordance with section 61 of the Act.
10. (12) Employment under clauses (10) and (11) shall -
- (a) not prevent the employee from recommencing maternity leave; and
 - (b) not extend the maximum period of maternity leave prescribed under clause (1); and
 - (c) be undertaken during the period prescribed under clause (3) only where the employee produces to the Chief Executive Officer medical evidence of the employee's fitness to undertake employment.

EFFECT OF LEAVE ON SERVICE

10. (14) The whole of the period of paid maternity leave under this By-law shall count as service for all purposes.
10. (15) Subject to clause (15B), unpaid leave granted under this By-law shall not count as service for any purpose.
10. (15B) With the exception of any period during which the employee is engaged in outside employment during normal working hours, unpaid leave resulting from the application of clause (7) shall count as service for all purposes.

PREMATURE BIRTH, TERMINATION OF PREGNANCY, STILLBIRTH AND DEATH

10. (16) Where an employee's child is born prematurely after the commencement of maternity leave, the entitlement to and period of paid and unpaid leave remain unchanged.

10. (17) Where an employee's child is born prematurely before the scheduled commencement of maternity leave, the leave shall be deemed to have commenced on the date of the child's birth.
10. (18) Where an employee's pregnancy is terminated before the scheduled commencement of maternity leave but not more than 20 weeks before the estimated date of confinement, maternity leave shall be deemed to have commenced on the date of termination and may continue subject to this By-law.
10. (19) Where an employee's pregnancy is terminated more than 20 weeks before the estimated date of confinement, the employee shall have no eligibility for maternity leave and any leave required as a result of the termination may be granted under the normal provisions applying to the type of leave applied for.
10. (20) Where an employee's child is stillborn less than 20 weeks before the estimated date of confinement or after that date, or dies during the period of maternity leave, leave in accordance with this By-law continues unless the employee elects to resume duty before the expiration of 52 weeks maternity leave.
10. (21) The return to duty by an employee referred to in clauses (16) to (20) shall be subject to the provisions of clause (4).

EFFECT OF LEAVE WITHOUT PAY

10. (22) Where an employee has -
 - (a) applied for leave without pay for a period exceeding 6 weeks;
 - (b) been granted approval for the leave; and
 - (c) utilised at least 6 weeks of the leave,

the employee shall not be entitled to apply for maternity leave under this By-law until the approved period of leave without pay has expired.
10. (23) Where an employee's period of leave without pay ends during the 14 week period commencing 6 weeks before the estimated date of confinement, payment shall only be made for the part of the 14 week period occurring after the end of the leave without pay.

By-Law 11 Maternity Leave - 6 Year Option

PERIOD OF MATERNITY LEAVE

11. (1) The Chief Executive Officer may grant maternity leave under this By-law to an employee who is pregnant where the employee has completed not less than 12 months service before commencing the leave.
11. (2) Subject to clause (3), an employee who is pregnant shall cease duty and commence maternity leave not later than 6 weeks before the estimated date of confinement and shall remain absent from duty on maternity leave for a period of 14 weeks which shall be unpaid leave except to the extent that clause (7) applies.

Issued 1 December 2004

11. (2A) With exception of the provision contained in clause (3) the commencement date of maternity leave may not be deferred under any circumstance.
11. (3) The Chief Executive Officer may permit the employee referred to in clause (2) to commence leave closer to the expected date of birth or return to duty less than 8 weeks after the date of birth where -
 - (a) the employee produces to the Chief Executive Officer medical evidence of the employee's fitness to continue or resume duty; and
 - (b) the Chief Executive Officer approves the employee's continuance on duty or return to duty.
11. (4) Where an employee is eligible for maternity leave the Chief Executive Officer may grant leave but shall not grant leave beyond a date which, but for the grant of leave, would have been the employee's cessation date or end of tenure.

ELIGIBILITY FOR PARENTAL LEAVE

11. (5) An employee who elects to use maternity leave in accordance with this By-law shall be entitled to parental leave in accordance with By-law 12.

EMPLOYMENT WHILE ON MATERNITY LEAVE

11. (5A) Subject to the Chief Executive Officer's approval, an employee on maternity leave without pay may return to duty for any period with the Agency, or another Agency.
11. (5B) An employee on leave without pay may engage in outside employment in accordance with section 61 of the Act.
11. (5C) Employment under clause (5A) or (5B) shall -
 - (a) not prevent the employee from recommencing maternity leave; and
 - (b) not extend the period of maternity leave prescribed under clause (2); and
 - (c) only be undertaken during the period prescribed under clause (2) where the employee provides to the Chief Executive Officer medical evidence of the employee's fitness to undertake employment.

DOCUMENTS IN SUPPORT OF APPLICATION

11. (6) An employee shall furnish to the Chief Executive Officer the following documents in support of an application for maternity leave:
 - (a) not less than 3 months before the commencement of leave, medical evidence stating the estimated date of confinement to establish the commencement date of the leave; and
 - (b) the child's birth certificate or extract of birth as soon as it is available.

Issued 1 December 2004

PAYMENT DURING THE PERIOD OF MATERNITY LEAVE

11. (7) An employee is not entitled to pay during the period of maternity leave unless the employee utilises accrued sick leave credits during the period.
11. (8) An employee may elect to cease duty up to 20 weeks before the estimated date of confinement and use leave without pay, or leave with pay under another By-law during this period.
11. (9) An employee may only utilise sick leave credits under normal sick leave provisions, except during the period of maternity leave.

EFFECT OF LEAVE ON SERVICE

11. (10) Subject to clause (11), the period of maternity leave shall, whether the period is with or without pay or utilising sick leave credits, count as service for all purposes.
11. (11) Unpaid leave granted under clause (2) shall not count as service for any period where the employee is engaged in outside employment during normal working hours.

PREMATURE BIRTH, TERMINATION OF PREGNANCY, STILLBIRTH AND DEATH

11. (12) Where an employee's child is born prematurely after the commencement of maternity leave, the period of the leave remains unchanged.
11. (13) Where an employee's child is born prematurely before the scheduled commencement of maternity leave, the leave shall be deemed to have commenced on the day of the child's birth and shall extend for a minimum of 6 weeks or a maximum of 14 weeks after that date.
11. (14) Where an employee's pregnancy is terminated before the scheduled commencement of maternity leave but not more than 20 weeks before the estimated date of confinement, the period of maternity leave shall be deemed to have commenced on the day of termination of pregnancy and shall extend for a minimum of 6 weeks or a maximum of 14 weeks after that date.
11. (15) Where an employee's pregnancy is terminated more than 20 weeks before the estimated date of confinement, the employee shall have no eligibility for maternity leave and any leave taken as a result of the termination may be granted under the normal provisions applying to the type of leave applied for.
11. (16) Where an employee's child is stillborn not more than 20 weeks before the estimated date of confinement or after that date, or dies during the period of maternity leave, the employee shall be entitled to the period of maternity leave only and any additional leave shall be granted under the normal provisions applying to the type of leave applied for.
11. (17) The return to duty by an employee referred to in clauses (12) and (16) shall be subject to the provisions of sub-clauses (3)(a) and (3)(b).

By-Law 12 - Parental Leave

ELIGIBILITY FOR PARENTAL LEAVE

12. (1) The Chief Executive Officer shall grant to a female employee who has used maternity leave under By-law 11, parental leave without pay for any period commencing at the expiration of the period of maternity leave granted under By-law 11(2), up to the child's sixth birthday.
12. (2) Subject to clause (3), an employee who is adopting a child under 6 years of age may apply for parental leave without pay for any period commencing 2 weeks before the date of adoption, up to the adopted child's sixth birthday.
12. (3) Where both adopting parents are employees, they shall not both be eligible for parental leave without pay under this By-law during the same period, but may utilise parental leave in accordance with clause (5).
12. (4) Where both parents are employees and the female employee utilises maternity leave under By-law 11, the male employee shall be eligible to apply for parental leave without pay under this By-law, subject to approval by the Chief Executive Officer.
12. (5) Where both parents are eligible for parental leave, they may apply for alternating periods of leave where the first interchange may be made at any time and subsequent interchanges shall be for a period not less than 12 months unless otherwise approved by the Chief Executive Officer.
12. (6) Except where granted under clause (23), when the continuity of parental leave is broken by both parents resuming duty neither parent shall be eligible to recommence parental leave in respect of the child.

DOCUMENTS IN SUPPORT OF ADOPTION

12. (7) An employee shall furnish to the Chief Executive Officer the following documents in support of an application for parental leave in respect of adoption as soon as they become available
 - (a) the adoption papers as proof of eligibility; and
 - (b) the child's birth certificate or extract to determine the maximum extent of leave under this By-law.

INFANT DEATH

12. (8) Where an employee's child dies during the period of parental leave granted in accordance with this By-law, the leave shall cease on the date of the child's death and the employee shall be deemed to be on leave without pay.

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- 12. (9) Leave without pay referred to in clause (8) does not count as service for any purpose.
- 12. (10) An employee may, within one month after the child's death, apply for unpaid or other available paid leave to apply from the date of the child's death which may be granted to commence retrospectively.
- 12. (11) Where an employee on parental leave at the time of the child's death does not apply for leave under clause 10, the employee shall resume duty one month after the date of the death.

EXTENSION OF LEAVE ON PREGNANCY

- 12. (12) Where an employee again becomes pregnant during a period of parental leave, the period may be extended until the sixth birthday of the child of the subsequent pregnancy.
- 12. (13) Where an employee becomes pregnant during a period of parental leave, being a period of duty as a result of interchange, and the other parent is utilising the interchange provisions away from duty, the parental leave entitlement for the male employee, in respect of the first child, ceases immediately the female employee commences maternity leave in respect of the subsequent pregnancy.

NOTIFICATION OF INTENTION TO APPLY FOR LEAVE OR RETURN TO DUTY

- 12. (14) An employee shall give to the Chief Executive Officer notification in writing of his or her intention to apply for leave under this By-law not less than 3 months before the commencement of leave or, in respect of adoption, as soon as the date of adoption is known.
- 12. (15) Where an employee intends to return to duty prior to the expiration of the leave originally approved, the employee shall give the Chief Executive Officer, within a period determined by the Chief Executive Officer, notification of the intention to return to duty.
- 12. (15A) Any return to duty under clause (15) is at the discretion of the Chief Executive Officer.

EFFECT OF PARENTAL LEAVE ON SERVICE

- 12. (16) Parental leave without pay shall not count as service for any purpose but shall not constitute a break in continuity of service.

USE OF OTHER LEAVE DURING PARENTAL LEAVE

- 12. (17) An employee may utilise -
 - (a) accrued and pro rata recreation leave; and
 - (b) long service leave available,
 at the commencement of a period of parental leave under normal conditions relevant to the leave utilised.
- 12. (18) Where an employee utilises pro rata recreation leave, it shall be calculated to the end of the period of paid leave (including recreation and long service leave if applicable) to include all completed months of service at that time.

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12. (19) For the purposes of clause (18), service in respect of any period of leave without pay which counts as service shall be included in the calculation.

CONDITIONS OF CERTAIN LEAVE WITHOUT PAY

12. (20) An employee who has commenced parental leave without pay shall not be entitled to break the period of leave without pay with periods of paid leave including sick leave.
12. (21) Where an employee does not utilise his or her accrued leave credits before commencing parental leave without pay, the credits shall be frozen until such time as the employee resumes duty either on an interchange basis or at the expiration of parental leave, ceases to be an employee of the Public Sector.

CONDITIONS ON RESUMPTION OF DUTY

12. (22) An employee who has resumed duty under the interchange provisions may utilise recreation leave, including pro rata recreation leave, sick leave and/or long service leave at any time during that period of duty or following that period in accordance with the provisions that apply to the type of leave utilised, notwithstanding that the other parent may be on parental leave without pay at the same time.

EMPLOYMENT WHILE ON PARENTAL LEAVE

12. (23) Subject to the Chief Executive Officer's approval, an employee on parental leave may return to duty for any period with the Agency, or another Agency.
12. (24) An employee on parental leave may engage in outside employment in accordance with section 61 of the Act.
12. (25) Employment under clause (23) or (24) shall -
- (a) not prevent the employee from recommencing parental leave; and
 - (b) not extend the maximum prescribed period of parental leave under clauses (1) or (2).
12. (26) Omitted

RETURN TO DUTY - EMPLOYER'S RESPONSIBILITY

12. (27) The Chief Executive Officer shall, in writing, advise an employee of this By-law before the employee commences parental leave.
12. (28) Where an employee returns to duty after parental leave he or she shall, subject to clause (29), be reinstated in the Public Sector at the level held by the employee before he or she commenced maternity or parental leave.

12. (29) Where an employee cannot be placed in a permanent vacancy at the level held by the employee before commencing maternity or parental leave because of the non availability of vacancies, lack of retention of skills or for any other reason, the Chief Executive Officer may take action under the relevant redeployment procedures.

By-law 13 - Bereavement Leave

ENTITLEMENT

13. (1) The Chief Executive Officer may grant to an employee paid leave for a maximum of 3 days on the occasion of the death of an immediate family member or other person approved by the Chief Executive Officer.
13. (2) For the purposes of this By-law, "immediate family member" in relation to an employee means the spouse, parent, brother, sister or child, and includes the child or parent of the employee's spouse or de facto spouse.

By-law 14 - Defence Force Leave

ENTITLEMENT

14. (1) Subject to this By-law, the Chief Executive Officer may grant an employee not more than 4 weeks paid leave each year to engage in or undertake training in the Australian Defence Forces.
14. (2) The Chief Executive Officer shall not grant leave under this By-law unless the employee produces to the satisfaction of the Chief Executive Officer, advice of the requirement for his or her attendance and the dates of the attendance
14. (3) The whole of the period of leave under clause (1) shall count as service for all purposes.

READY RESERVE SCHEME - FULL TIME SERVICE

14. (4) An employee who has been accepted as a member of the Ready Reserve Scheme of the Commonwealth may apply for leave to their Chief Executive Officer who may grant leave without pay for the period of full time military duty applicable to the Scheme.
14. (5) During the period of duty referred to in clause (4), an employee shall not have access to any accrued entitlements or conditions of service.
14. (6) The whole of the period of leave without pay to engage in full time training granted under clause (4) shall count as service for the purpose of long service leave only.

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READY RESERVE SCHEME - PART-TIME SERVICE

14. (7) After returning to duty after leave granted under clause (4), an employee may apply for leave to undertake the part time component of the Ready Reserve Scheme and leave may be approved as if it were leave granted under clause (1).
14. (8) Additional leave required in respect of the Ready Reserve Scheme part-time component under clause (7) may be granted as unpaid leave and will count as service for all purposes.

NO LIABILITY FOR INJURY DURING DEFENCE FORCE LEAVE

14. (9) Where an employee has a claim for compensation for injury or illness as a result of leave granted under this By-law, the claim shall not be recognised by the Territory and the employee shall submit any claim to the Australian Department of Defence.

By-law 15 - Emergency Leave

ENTITLEMENT

15. (1) The Chief Executive Officer may, if satisfied that there is sufficient cause, grant to an employee leave on full pay not exceeding 3 days in any year without deduction from recreation leave credits.
15. (2) For the purposes of this By-law -
“sufficient cause” means an emergency of which the employee could not reasonably be expected to have prior knowledge;
“any year” means a period equivalent to an employee’s annual sick leave accrual period.

By-law 16 - Special Leave Without Pay

ENTITLEMENT

16. (1) Subject to this By-law, the Chief Executive Officer may, if satisfied that there is sufficient cause, grant leave without pay to an employee.
16. (2) Leave granted under clause (1) shall not count as service for any purpose.
16. (3) An employee shall not be granted leave under clause (1) for the purposes of -
 - (a) engaging in employment outside the Public Sector except where appropriate approval has been granted under section 61 of the Act; or
 - (b) study.

Issued 7 October 1998

16. (4) An employee who is granted leave under this By-law shall not be permitted access to accrued entitlements or any condition of service during leave without pay.

By-law 17 - Leave to Attend Arbitration Business

ENTITLEMENT

17. (1) The Chief Executive Officer may grant leave to an employee required to attend an arbitration proceeding as a member of a claimant organisation on the following conditions:
- (a) leave shall not be granted to more than 2 employees who are representatives of an organisation at the one time in respect of any one such proceeding;
 - (b) leave to conduct a case shall be with full pay;
 - (c) leave for preparation of a case shall be without pay and shall not exceed 3 months in any 12 months.
17. (2) Leave with pay granted under clause (1) (a) and (b) shall count as service for all purposes.
17. (3) Unpaid leave granted under clause (1) (c) shall not count as service but does not break continuity of service for long service leave purposes.

By-law 18 - Miscellaneous Leave

ENTITLEMENT

18. (1) The Chief Executive Officer may grant leave with pay to an employee -
- (a) to allow the employee to donate blood;
 - (b) where the employee who is a member of a volunteer emergency service unit or fire brigade is required to -
 - (i) attend operational exercises conducted by the Northern Territory Emergency Service within the meaning of the Disasters Act, the Bushfires Council or a Regional Committee within the meaning of the Bushfires Act or the auxiliary or volunteer fire brigades within the meaning of the Fire Service Act; or
 - (ii) participate in an emergency operation as a member of one of the organisations referred to in sub-paragraph (i); or

- (c) where the employee engages in community service necessarily rendered following a natural disaster, subject to any limitations imposed by the Chief Executive Officer.
 - (d) for any other purpose approved by the Commissioner.
18. (2) Leave granted under this By-law shall count as service for all purposes.

By-law 19 - Release to Participate in Sporting Events

ENTITLEMENT

19. Where an employee applies for leave to participate in a sporting event the Chief Executive Officer may, at his or her discretion and subject to any limitation imposed, approve recreation leave, leave without pay or grant leave on a make up basis.

By-law 20 - Release for Jury Service

ENTITLEMENT

20. (1) The Chief Executive Officer may release an employee, who produces proof of being summoned as a juror, without deductions from pay or leave credits.
20. (2) An employee who is on paid leave and is summoned as a juror may have a period equal to the time required to attend as juror credited to the employee's leave entitlement.
20. (3) The Chief Executive Officer shall determine the extent of a fee in respect of attendance as a juror that the employee may retain.

By-law 21 - Release to Attend as a Witness

ENTITLEMENT

21. (1) Where an employee is subpoenaed or called as a witness for the Crown to give evidence under a law of the Commonwealth or the Territory, the Chief Executive Officer shall release the employee from duty, without deduction from pay or leave credits, during the period necessary to attend.
21. (1A) Where an employee is subpoenaed to give evidence in relation to his or her duties or former duties in the Northern Territory Public Sector, the Chief Executive Officer shall release the employee from duty and may grant such release without deduction from pay or leave credits during the period necessary to attend.
21. (2) Where an employee is subpoenaed or called as a witness in circumstances other than those referred to in clause (1), the employee shall be granted -
- (a) leave without pay, or
 - (b) recreation leave,
- and any fees or allowances received as a result of the attendance may be retained by the employee.

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