

Changes to Payment of Higher Duties on Annual Leave

Changes to Higher Duties

The following circular is to provide general guidance and information to Departments and agencies on recent changes to annual leave entitlements for certain employees receiving higher duties payments.

The changes will come into effect for certain employees at different times; applying from the commencement of the following instruments (whichever date is the earliest);

- A modern award that applies to the employee;
- The State Government Entities Certified Agreement 2015, if it applies to the employee; or
- Directive 18/16 – Higher Duties, if it applies to the employee.

Background

Previously, where public service employees (engaged within the meaning of section 9 of the *Public Service Act 2008 (Qld)*) assumed the duties and responsibilities of a higher classification level (known as “higher duties”), they had to continuously perform such higher duties for a minimum period of 12 months before the higher duties amount was paid on the taking of annual leave. This was commonly called the “minimum period requirement”. If employees had not satisfied the minimum period requirement, payment for annual leave was at the employee’s substantive rate. These conditions were contained in the Higher Duties Directive.

The *Industrial Relations Act 1999 (Qld)* also contemplates the payment rate for annual leave at section 13 (Pre-Modernisation Employment Conditions) and section 71EE (Modern Employment Conditions - Queensland Employment Standards.) Largely identical wording is used over both sets of provisions.

Modern Awards and Higher Duties

As modern awards start to apply, the way annual leave is paid for employees receiving higher duties payments will change. ¹

Most modern awards now state that annual leave is to be paid at “an amount equal to the salary level being paid to the employee immediately before the employee takes the leave”. There is no reference to a minimum period requirement. This means that an employee who is in receipt of a higher duties payment immediately before taking annual leave, will receive the higher duties payment while on leave.

Following consultation, the policy position taken by Public Sector Industrial Relations is that new Modern Award wording should not be displaced by a directive or any other industrial instrument.

The “Core” Certified Agreement 2015 and Higher Duties

The *State Government Entities Certified Agreement 2015* (known as the “Core Agreement”) was certified by the Queensland Industrial Relations Commission on 1 June 2016. From that date, modern awards will start to apply to employees covered by the Core Agreement.

This means that employees covered by the Core Agreement will not be subject to the minimum period requirement from 1 June 2016.

Directive 18/16 and Higher Duties

Directive 18/16: Higher Duties was issued on 10 June 2016, with effect from that same date, to reflect the wording in the modern awards. It wholly replaces Directive 4/11: Higher Duties.

Clause 13.1 of the directive provides that *“An employee on higher duties who is proceeding on recreation leave is entitled to be paid for the full period of such leave at the higher duties rate being paid to the employee immediately before the employee takes the leave.”*

This clarifies the operation of the modern award wording, that where an employee is receiving higher duties immediately prior to taking annual leave, they are paid for the entirety of their annual leave at the higher duties rate.²

The application of the Directive was not changed, so it only affects employees and employers who were bound by the predecessor Directive. Any employee covered by the directive (whether or not they are also covered by a modern award or certified agreement – e.g. Senior Officers) will receive higher duties on annual leave from commencement of the directive on 10 June 2016.

Transitional arrangements

Any leave taken from the date a modern award or the new higher duties directive applies will be subject to the new rules. If the award or directive starts to apply during a period of leave, the new rules only apply to that portion of the leave that falls after the award or directive started to apply.

Annual leave following paid parental leave

Maternity leave is the unbroken period of up to 52 weeks (or greater by agreement) that may be available to employees in connection with the birth of a child. This leave may involve a combination of paid and unpaid leave types. For employees entitled to paid parental leave under the relevant directive, the directive requires the paid parental leave period to be the initial absence. It may then be the case that an employee elects to take annual leave immediately after a period of paid parental leave.

Annual leave is paid at the rate being paid to the employee immediately before the employee takes that annual leave. Therefore, an employee proceeding directly to annual leave after taking paid parental leave will have that annual leave paid at:

- the higher duties rate, if the paid parental leave was paid at the higher duties rate; or
- the substantive rate, if the paid parental leave was paid at the substantive rate.

Further Questions?

The above is meant to be a general guideline, relevant to most public service employers.

In the event a department or agency is concerned or unclear as to when the above changes may apply to certain cohorts of employees, please consult your usual contact within Public Sector Industrial Relations, Office of Industrial Relations for advice and assistance.

¹ Although “made”, in accordance with the operation of section 824 of the *Industrial Relations Act 1999* such Modern Awards will only start to apply to employees who were covered by a certified agreement at the time of the award is made when that certified agreement is replaced by a new certified agreement.

² Note this Higher Duties Directive also contemplates how Long Service Leave should be treated.