

**PARENTAL LEAVE DOCUMENTATION**  
**TO SUPPORT DIRECTIVE 3/01 “PARENTAL LEAVE”**  
**(As at 23 April 2002)**

**1. Purpose**

This document has been designed to support the Parental Leave Directive and guide departments and agencies in its implementation. This document restates the provisions of the Parental Leave Directive and where necessary, provides further detail to assist agencies. It also needs to be read in conjunction with the *Family Leave Award – Queensland Public Sector*.

**2. Entitlement**

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 parental leave entitlements on the conditions in this Schedule.

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 s. 15A of the *Industrial Relations Act 1999*.

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.

**3. Definitions**

“**Child**” shall be in accordance with the definition provided in the *Family Leave Award – Queensland Public Sector*.

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

“**Long term casual employee**” shall be in accordance with the definition provided in section 15A of the *Industrial Relations Act 1999*, as amended from 3 December 2001, ie  
“a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under this part.”

“**Parental leave**” shall mean maternity, spousal or adoption leave.

“**Primary care giver**” means a person who assumes the principal role of providing care and attention to a child/children.

“**Qualifying service period**” for the purposes of paid leave, means at least 12 months service in any government department or public service office.

This service:

- is to be unbroken; or
- may be inclusive of paid and unpaid leave which is credited towards service.

**Example 1:**

<b>6 months</b>	<b>3 months</b>	<b>3 months</b>	<b>12 months</b>
Normal working period	Paid leave recognised as service	Normal working period	= qualifying period

**Example 2:**

<b>6 months</b>	<b>3 months</b>	<b>3 months</b>	<b>12 months</b>
Normal working period	Paid and unpaid leave recognised as service	Normal working period	= qualifying period

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.

“**Spouse**” shall be in accordance with the definition provided in Schedule 5 (Dictionary) of the *Industrial Relations Act 1999* ie

“*spouse of an employee includes –*

- (a) *a former spouse; and*
- (b) *a de facto spouse, including a spouse of the same sex as the employee”.*

#### **4. Conditions**

##### **Maternity Leave**

An eligible employee whose expected date of confinement has been confirmed in writing by a medical practitioner, will be entitled to 6 weeks paid maternity leave, to be taken as the initial absence on such leave. This six-week period of paid leave is inclusive of any public holidays arising within that time. The period of paid leave cannot be extended other than by the employee taking the leave on a half-pay basis.

The employee will be entitled to access a further period of leave in accordance with the provisions of the *Family Leave Award – Queensland Public Sector*. An employee shall confirm her 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 maternity leave.

##### **Pre natal Leave**

In addition to the maternity leave provisions above, an employee who presents a medical certificate from a doctor stating that she is pregnant 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 pregnancy to attend medical appointments prior to the birth of a child/children.

A written application shall be submitted for every absence for which pre natal leave is sought. Each absence in relation to an employee’s pregnancy must be covered by a medical certificate.

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

##### **Spousal Leave**

An eligible employee who produces a certificate from a medical practitioner which states their spouse's expected date of confinement, will be entitled to 1 weeks paid spousal leave in connection with the birth of a child/children for whom that employee has accepted responsibility. This period of paid leave will be taken as the initial absence on spousal leave and is inclusive of any public holidays arising within that time. The period of paid leave cannot be extended other than by the employee taking the leave on a half-pay basis.

The employee will be entitled to access a further period of leave in accordance with the provisions of the *Family Leave Award – Queensland Public Sector*. An employee 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 spousal leave.

The period of leave taken shall be the “initial” absence, however the exact timing of such leave shall be at the employer's discretion. For example:

- an employee may seek to take the 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.

### **Pre natal Leave**

In addition to the spousal leave provisions above, an employee who presents a medical certificate from a doctor stating that their spouse is pregnant 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 pregnancy to attend related medical appointments prior to the birth of a child/children.

A written application shall be submitted for every absence for which pre natal leave is sought. Each absence must be covered by a medical certificate.

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

### **Adoption Leave**

An eligible employee who presents a letter from the Director-General, Department of Families, confirming that an adoption order has been made for the relevant child/children, will be entitled to 6 weeks paid adoption leave at the time of adoption of a child/children if he or she is the primary care giver, or 1 weeks paid adoption leave if he or she is the secondary care giver. This period of paid leave is inclusive of any public holidays arising within that time. The period of paid leave cannot be extended other than by the employee taking the leave on a half-pay basis.

Applications for adoption leave will be in accordance with the *Family Leave Award – Queensland Public Sector*.

If the employee is the primary care giver, that employee will be entitled to access a further period of leave in accordance with the provisions of the *Family Leave Award – Queensland Public Sector*. An employee 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.

### **Pre-adoption Leave**

In addition to the adoption leave provisions above, an employee who will be the primary care giver and who presents a letter from the Department of Families, 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/children.

An employee who will be the secondary care giver and who presents a letter from the Department of Families, confirming that the employee is a prospective adopter; will have access to paid leave under this sub-clause 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/children.

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.

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

An employee cannot be deemed to be both the primary and secondary care giver and therefore cannot access both entitlements to pre-adoption leave (ie 1 week and 1 day).

## **5. General Conditions**

### **Timely Notice**

An application for maternity or spousal leave is to be submitted at least 10 weeks before the expected birth of the child/children or, if the employee proposes to commence leave before that time, 10 weeks before the date at which leave is to commence.

An application for adoption leave is to be submitted as soon as possible before the proposed period of leave.

### **Conversion to an Hourly Basis**

Leave prescribed in this directive may be converted to an hourly basis for the purpose of accrual, granting and recording of leave on the following basis:

If an employee's 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 6 weeks leave:

$$\text{LE (weeks)} = 6 \times 36.25 = 217.50 \text{ hours full entitlement}$$

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

- (a) A part-time or long-term casual employee's entitlement to 6 weeks paid parental leave is to be calculated as follows:

Number of hours x working days of entitlement

$$\text{Where number of hours} = \frac{\text{total ordinary hours worked over the last 12 months}}{\text{total ordinary hours of a full time employee over previous 12 months}} \times 30 \text{ days}$$

- (b) A part-time or long-term casual employee's entitlement to 1 weeks paid parental leave is to be calculated as follows:

Number of hours x working days of entitlement

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

## Temporary Employment

A temporary employee, except one that meets the definition of a long-term casual employee in this directive, cannot be granted leave of any kind beyond the date on which the temporary employment terminates.

An employee's past, present or likely pregnancy must not influence a decision on the renewal of a temporary employee's contract.

## Parental Leave and Access to Other Leave

Except where specifically provided under this directive, the provisions of the relevant industrial instrument eg the *Family Leave Award – Queensland Public Sector* shall apply.

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

Any unused portion of the period of paid parental leave cannot be banked or preserved in any way.

Where there is an entitlement, employees may use recreation and long service leave during the period of parental leave that would otherwise be unpaid.

Employees are entitled to *pro-rata* long service leave after 7 years of service for purposes of parental leave. To qualify for long service leave during this period see the conditions applying in the Ministerial Directive: "*Long Service Leave*". Long service leave under this provision is additional to any paid parental leave entitlement.

Employees, who have an entitlement, may apply for paid sick leave during unpaid parental leave under the terms provided for in the relevant award or directive (eg Ministerial Directive: "*Sick Leave*").

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/children while on parental leave;
- is eligible, without resuming duty, for a second period of parental leave in accordance with the provisions of this directive.

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

---

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

### **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.

Paid sick leave is not available to an employee on paid parental leave. An entitlement to paid sick leave may be established during periods of recreation leave and long service leave. See the relevant Ministerial Directives for details.

### **Special Maternity Leave**

Where a pregnancy terminates in other than the birth of a living child, the employee shall notify the chief executive of the changed circumstances as soon as practicable.

Where, after the first twenty weeks, a pregnancy terminates 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 six weeks paid leave.

### **Recognition of Service**

*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 (eg Ministerial Directive: “*Leave Credited as Service*”).

*Paid Leave Counted as Service:* Periods of paid leave during parental leave count as service for all purposes except as time served for probation.

For employees with less than 12 months qualifying service, the first 12 weeks of parental leave (even though it is without pay) counts as service for all purposes except as time served for probation. (This does not extend the time period allowed for probation in the relevant industrial instruments).

### **Extension of Paid Parental Leave on a Half-Pay Basis**

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

Paid maternity and adoption leave	12 weeks
Paid spousal leave	2 weeks

An employee cannot take pre natal/pre-adoption leave on half-pay.

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.

Granting of the parental leave on a half-pay basis is subject to departmental convenience however requests for leave should not be unreasonably refused.

*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, ie accrual of sick leave, recreation 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.

*Leave Debit:* Periods of half-pay parental leave will be debited on a full-time equivalent basis eg. half-pay maternity or adoption leave for a period of 12 weeks will attract a debit of 6 weeks from full pay credits; half-pay spousal leave for a period of 2 weeks will attract a debit of 1 week from full pay credits.

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

*Minimum Period of Parental Leave on Half-Pay:* 2 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.

*Public Holidays Falling Within a Period of Parental Leave Taken at Half-Pay:* Public holidays falling within periods of half-pay are at the half-pay rate. Where a public holiday falls at the end of a period of half paid leave, and is immediately followed by a period of unpaid leave, the public holiday shall be paid at the half-pay rate.

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

## **Promotion**

An employee on 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.

An employee cannot be denied promotion because they are unavailable to take up duty before the completion of the parental leave.

## **Professional Development**

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.

## **Higher Duties Allowance While on Paid Parental Leave**

A public service officer (as defined in section 8 of the *Public Service Act 1996*) on parental leave who, before taking the leave had been directed to assume higher duties and responsibilities for the previous 12 months, is to continue to receive the higher duties amount while on leave where salary is payable and the leave is credited as service. Such employees taking half-pay leave options are not to be disadvantaged by this provision.

## **Cancellation of Leave/Recall to Duty**

Subject to agreement between the employee and the employer, or provisions of any industrial instrument/legislation, the employee may be temporarily recalled to duty. This recall does not extend the period of this leave.

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.

## **Access to Flexible Work Practices**

On return to work from parental leave, flexible work practices (eg part-time employment) might be utilised where suitable to both the employer and employee.

A copy of the Flexible Work Practices - Framework and Options Kit (as part of the Attraction and Retention Series) is available on the Department of Industrial Relations website at <http://www.psier.qld.gov.au/publications.htm>.

## **Grievance Procedure**

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

Superseded