

Health Services Union - Award Changes - Memorandum of Understanding - Old Part-time Employees

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Summary To give effect to the further MOU increases of 1 July 05, 1 July 06, and 1 July 07, on 16 December 2005 HAC consented to new awards being made for all awards that HSU has coverage over. These will remain in force until 30 June 2008, which is when the MOU expires. HAC has also issued a Determination flowing on the enhanced conditions of the MOU to HSU employees who receive an adjusted hourly rate and are commonly given the appellation of "old part-timers".

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, Public Health Units, Public Hospitals

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CHANGES TO AWARDS COVERED BY THE HEALTH SERVICES UNION (HSU) AS A RESULT OF THE MEMORANDUM OF UNDERSTANDING AND THE FLOW ON OF ENTITLEMENTS TO "OLD PART-TIME EMPLOYEES"

A Memorandum of Understanding (MOU) was signed between the HSU and the Health Administration Corporation (HAC) on 24 December 2004 that set new rates of pay and enhanced entitlements for employees of the NSW Health Service and the NSW Ambulance Service covered by HSU.

As advised in Departmental Policy Directive 2005/417, the MOU prescribed enhancements to certain leave conditions with effect from 1 January 2005. These are outlined below and became available to employees who had an entitlement to commence the relevant form of leave on or after 1 January 2005.

- The introduction of a new entitlement of 1 week of paid parental leave;
- Increasing paid maternity leave and paid adoption leave from the previous 9 weeks at full pay to 14 weeks at full pay or 28 weeks at half pay;
- Permitting access to pro-rata extended leave after 7 years of service, in contrast to the previous arrangements where access was usually granted after 10 years;
- Allowing employees to take a period of extended leave at double pay, i.e. an employee may use their entitlement to 2 months of extended leave by taking 1 month's leave and receiving 2 month's pay for this leave; and
- Public holidays that fall while an employee is on a period of extended leave to be paid and not debited from an employee's leave entitlement.

Along with the enhanced conditions of employment, the MOU prescribed a 4% increase to rates of pay and allowances for staff covered by HSU Awards effective from the first pay period to commence on or after 1 July 2004. It also prescribed a further 4% increase on 1 July 2005, 1 July 2006 and 1 July 2007.

HSU Awards were formally varied on 31 October 2005 to incorporate the first 4% increase of 1 July 2004 and the enhanced conditions that were effective from 1 January 2005.

To give effect to the further MOU increases of 1 July 05, 1 July 06 and 1 July 07, and considering all HSU awards had nominally expired, on 16 December 2005 HAC consented to new awards being made for all awards that HSU has coverage over. These will remain in force until 30 June 2008, which is when the MOU expires.

These awards can be viewed on the Department's Internet site at: -

<http://www.health.nsw.gov.au/jobs/emprcond/classifications.html>

HAC has also issued a Determination flowing on the enhanced conditions of the MOU to HSU employees who receive an adjusted hourly rate and are commonly given the appellation of "old part-timers". This Determination is attached for you information and appropriate action.

Any enquiries concerning this Information Bulletin should be directed to the relevant Human Resource personnel in the Area Health Service. Only Human Resource personnel from Health Services are to contact the NSW Health Department direct.

Robyn Kruk
Director-General

Title: Changes to Awards Covered by the Health Services Union (HSU) as a Result of the Memorandum Of Understanding and the Flow On of Entitlements to "Old Part-Time Employees"

NSW HEALTH

DETERMINATION NO 15 OF 2005

In accordance with the provisions of section 115 of the *Health Services Act 1997* and Delegation S117 of the NSW Department of Health Delegations Manual, I, Trevor Craft, Assistant Director, Employee Relations of the Department of Health, in recognition that a Memorandum of Understanding dated 24 December 2004 has been entered into between the Health Administration Corporation and the Health Services Union for the period 1 July 2004 to 30 June 2008, and the subsequent award variations that give effect to the Memorandum of Understanding heard before Boland J on 31 October 2005, do hereby determine that part-time employees covered by the Health Services Union who receive an adjusted hourly rate and are commonly given the appellation of "old part-timers" are eligible to receive the entitlements detailed below. Parental and Long Service Leave entitlements for this category of employee have traditionally been based on legislative, rather than award, prescription.

1. PARENTAL LEAVE

(i) Eligibility

To be eligible for parental leave an employee must have completed at least 40 weeks continuous service prior to the expected date of birth or to the date of taking custody of the child.

An employee who has once met the conditions for paid parental leave will not be required to again work the 40 weeks continuous service in order to qualify for a further period of paid parental leave, unless-

- (a) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement, or after their services have been otherwise dispensed with; or
- (b) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987*.

(ii) Portability of Service for Paid Parental Leave

Portability of service for paid parental leave involves the recognition of service in public sector organisations for the purpose of determining an employee's eligibility to receive paid parental leave. For example, where an employee moves between a Public Sector Department and a public hospital, previous continuous service will be counted towards the service prerequisite for paid parental leave.

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When determining an employee's eligibility for paid parental leave, continuous service with New South Wales public sector organisations which are included in the schedule of the Transferred Officers Extended Leave Act, 1961, will be recognised, provided that:

- (a) the service with those public sector organisations, was on a full-time or permanent part-time basis;
- (b) cessation of service with the former employer was not by reason of dismissal on any ground, except retrenchment or reduction of work;
- (c) the employee commences duty with the new employer on the next working day after ceasing employment with the former employer (there may be a break in service of up to two months before commencing duty with the new employer provided that the new position was secured before ceasing duty with the former employer. However, such a break in service will not be counted as service for the purpose of calculating any prior service prerequisite for paid parental leave.)

(iii) Entitlements

Eligible employees whose spouse or partner (including a same sex partner) is pregnant or is taking custody of a child, are entitled to a period of leave not exceeding 52 weeks, which includes one week of paid leave, and may be taken as follows:

- (a) an unbroken period of up to one week at the time of the birth of the child, taking custody of the child or other termination of the pregnancy (short parental leave); and
- (b) a further unbroken period in order to be the primary caregiver of the child (extended parental leave).
- (c) The entitlement of one week's paid leave may be taken at any time within the 52 week period and shall be paid:
 - at the employee's ordinary rate of pay for a period not exceeding one week on full pay; or
 - two weeks at half pay or the period of parental leave taken, whichever is the lesser period.

Annual and/or long service leave credits can be combined with periods of parental leave on half pay to enable an employee to remain on full pay for that period.

(iv) Applications

An employee who intends to proceed on parental leave should formally notify their employer of such intention as early as possible, so that arrangements associated with their absence can be made.

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- (a) In the case of extended parental leave, the employee should give written notice of the intention to take the leave.
- (b) The employee must, at least four weeks before proceeding on leave, give written notice of the dates on which they propose to start and end the period of leave, although it is recognised in situations of taking custody of a child, little or no notice may be provided to the employee. In such an instance, the employee should notify the employer as early as practicable.
- (c) The employee must, before the start of leave, provide a certificate from a medical practitioner confirming that their spouse or partner is pregnant and the expected date of birth, or in the case of an adoption, an official form or notification on taking custody of the child.
- (d) In the case of extended parental leave, the employee must, before the start of leave, provide a statutory declaration by the employee stating:
 - (i) if applicable, the period of any maternity leave sought or taken by his spouse; and
 - (ii) that they are seeking the period of extended parental leave to become the primary care giver of the child.
- (v) Variation after Commencement of Leave -

After commencing parental leave, an employee may vary the period of her/his parental leave, once without the consent of the employer and otherwise with the consent of the employer. A minimum of fourteen days' notice must be given, although an employer may accept less notice if convenient.

- (vi) Effect of Parental Leave on Accrual of Leave, Increments etc.

When the employee has resumed duties, any period of full pay parental leave is counted in full for the accrual of annual leave and any period of parental leave on half pay is taken into account to the extent of one half thereof when determining the accrual of annual leave.

Except in the case of employees who have completed ten years' service the period of parental leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of parental leave without pay shall count as service provided such leave does not exceed six months.

Parental leave without pay does not count as service for incremental purposes. Periods of parental leave at full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.

Where public holidays occur during the period of paid parental leave, payment is at the rate of parental leave received i.e., public holidays occurring in a period of full pay parental leave are paid at full rate and those occurring during a period of half pay leave are paid at half rate.

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(vii) Right to Return to Previous Position

In accordance with the obligations set out in Section 66 of the *Industrial Relations Act 1996*, an employee returning from parental leave has the right to resume his/her former position.

Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of his/her former position and to which the employee is capable or qualified.

NOTE:

Liability for Superannuation Contributions

During a period of unpaid maternity, adoption or parental leave, the employee will not be required to meet the employer's superannuation liability.

2. LONG SERVICE LEAVE

- (i) (a) Each employee shall be entitled to two months long service leave on full pay after ten years of service; thereafter additional long service shall accrue on the basis of one month long service leave on full pay for each additional 5 years service thereafter.

Employees with at least seven years service and less than 10 years service are entitled, proportionate to his or her length of service, to proceed on a proportionate period of long service leave on the basis of two months long service leave for 10 years service on full pay.

- (b) Where the services of an employee with at least five years service and less than seven years service are terminated by the employer for any reason other than the employee's serious and wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' service.

Where the services of an employee with at least seven years and less than 10 years service are terminated by the employer or by the employee, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months long service leave for 10 years service. Where the services of an employee with at least 10 years service are terminated by the employer or by the employee, he/she shall be entitled to be paid on the basis of one month long service leave for each additional 5 years service.

- (ii) For the purposes of subclause (i) of this clause:

- (a) service shall mean continuous service in one or more hospitals. For the purpose of this paragraph, continuous service shall have the same meaning as in the *Transferred Officers' Extended Leave Act, 1961*.

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- (b) Broken periods of service in one or more hospitals shall count as service.
- (c) Service shall not include -
 - any period of leave without pay, except in the case of employees who have completed at least 10 years service (any period of absence without pay being excluded there from), in which case service shall include any period of leave without pay, not exceeding six months, taken after 1 January, 1973.
- (iii) An employee with an entitlement to long service leave may elect to access such entitlement:
 - (a) on full pay;
 - (b) on half pay; or
 - (c) on double pay.
- (iv) When an employee takes long service leave, the leave entitlement will be deducted on the following basis:
 - (a) a period of leave on full pay - the number of days so taken;
 - (b) a period of leave on half pay - half the number of days so taken; or
 - (c) a period of leave on double pay - twice the number of days so taken.
- (v) When taking long service leave and an employee would otherwise have had a rostered shift fall on a public holiday during that period, the amount of long service leave to be deducted is to be reduced by one day for the public holiday

Signed at Sydney this 31st day of October 2005.

[signed]

Trevor Craft
Assistant Director, Employee Relations
NSW Health Department