

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 three (3) calendar months after completing 10 years of continuous service; and
- (b) for service after 10 years an additional nine (9) calendar days on completion of each subsequent year of continuous service.

Maximum credit

8.3 Subject to by-law 8.5, an employee is required to use a long service leave entitlement within three (3) years of:

- (a) the 10 year entitlement accruing; or
- (b) the 11 to 20 year entitlement accruing;

provided that the CEO and the employee may agree to temporarily defer the leave to meet special circumstances which will include, but not be limited to, agency and/or personal needs.

8.4 An employee who has not obtained approval from the CEO to delay the utilisation of his/her long service leave beyond the three (3) year limit specified in by-law 8.3 will:

- (a) be directed by the CEO to utilise the 10 year long service leave entitlement from a date which suits the needs of the agency; or
- (b) have the 10 year long service leave entitlement cashed out from the date determined in by-law 8.4(a).

8.5 Nothing in this section will require an employee:

- (a) to use his/her entitlement where the employee was aged 45 years, or over at 7 March 1999 and was then employed in the NTPS and remained in that employment; or
- (b) to use his/her entitlement where, on 7 March 1996, the employee has accrued 20 years of service; or
- (c) to use his/her accrued entitlement for the twenty-first and subsequent years of service.

Effect of leave on entitlement

8.6 The following types of leave without pay do not count as service for long service leave purposes:

- (a) personal 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.

8.7 Effect of workers compensation

- (a) An absence covered by workers' compensation will not break continuity of service but will not count as service for the purpose of accrual; and
- (b) an employee cannot take long service leave during a period of worker's compensation.

Full and part time service

8.8 Employees with a combination of separate periods of:

- (a) service rendered in a full time capacity; and
- (b) service rendered in less than a full time capacity;

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

8.9 Any service in a less than full time capacity which is concurrent with service in a full time capacity will be excluded.

Granting of long service leave

- 8.10 The CEO 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 will not exceed twice the entitlement available pursuant to by-law 8.10(a) provided that the leave taken is in multiples of three (3) calendar days and a minimum of seven (7) calendar days both of full time equivalent; or
 - (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.
- 8.11 Long service leave will be granted in months and tenths of a month provided that an employee will not be granted a period of leave of less than seven (7) calendar days;
- 8.12 Notwithstanding by-law 8.11, the CEO may grant an employee employed in a teaching capacity, or school based administrative capacity, long service leave for a period of less than seven (7) days.
- 8.13 An employee will not in separate applications apply for periods of long service leave that are separated by a Saturday, Sunday or public holiday.

Payment during leave

- 8.14 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 or Enterprise Agreement;
 - (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
- (f) “salary” will not include shift penalties or allowances paid in lieu of shift penalties as part of salary.

8.15 Payment of long service leave for an employee who has a long service leave entitlement based on:

- (a) only full time service, will be at the employee’s current rate of salary for his/her designation;
- (b) only less than the full time service, with:
 - (i) consistent hours of work per week will be the employee’s current rate of salary for his/her designation, reduced to an hourly rate, multiplied by the fixed hours of work per week;
 - (ii) varying hours of work per week will be at the employee’s current rate of salary for his/her designation, reduced to an hourly rate, multiplied by the average hours of work per week. The average weekly hours will be calculated over the period of service; or
- (c) a combination of by-law 8.15(a) full time credits, and bylaw 8.15(b)(b) less than full time credits, will be paid in accordance with the credit being used and the methods of payment prescribed in by-law 8.15(a) and/or by-law 8.15(b).

No additional days

8.16 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

8.17 Where an employee becomes ill or is injured during a period of long service leave and the illness or injury is supported by medical evidence:

- (a) the CEO may grant personal (sick) leave in accordance with by-law 7 or, where applicable the relevant enterprise agreement, and authorise the equivalent period of long service leave to be re-credited; and
- (b) where long service leave had previously been approved on half pay, any personal (sick) leave granted in lieu shall also be at half pay based on the employee’s ordinary hours of duty

(Note: Payment of a long service leave entitlement under by-law 8.15 at a different rate to the employee's contracted or agreed hours of duty does not change the employee's 'ordinary hours of duty' (i.e. full time or part time) referred to in by-law 8.17(b).)

Prior service

- 8.18 The CEO may recognise an employee's prior service with a recognised employer, as determined by the Commissioner, for long service leave purposes, after two (2) years' service with the Northern Territory Public Sector.
- 8.19 An employee may apply to the CEO 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 (2) months:
 - (i) the period of the break does not break the continuity of employment, but it does not count as service; and
 - (ii) after 10 years qualifying service within any continuous period of employment, the employee entitled to paid long service leave of three (3) calendar months; or
 - (b) where the break in service between the recognised employer(s) exceeds two (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 10 years qualifying service within any continuous period of employment, the employee is entitled to paid long service leave of nine (9) calendar days for each completed year of current service with the Northern Territory Public Sector only; and
 - (c) for employees covered by the Northern Territory Public Sector Teachers and Educators 2014 – 2017 Enterprise Agreement and its successor enterprise agreements, the two (2) month break in service referred to in by-law 8.19(a) and 8.19(b) above will not include any contiguous stand down/leave period.
- 8.20 Breaks in service between recognised employers of greater than 12 months will break continuity of employment for all purposes.
- 8.21 The Commissioner may, in special circumstances, treat prior service under by-law 8.19(b) as if it were prior service under by-law 8.19(a).
- 8.22 Subject to by-laws 8.19, 8.20 and 8.21:

- (a) prior service with recognised employer(s) will be credited at the rate of nine (9) calendar days 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 will be disregarded; or
- (b) where prior service with the Northern Territory Public Sector or its predecessor employers accrued at the rate of twelve calendar days per month, the period of prior service will be credited at the rate of twelve calendar days per month for each year of continuous prior service only.

8.23 An application under by-law 8.19 in relation to prior service with a recognised employer will be made in writing to the CEO and will 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.

8.24 An application under by-law 8.19 in relation to prior service with an employer other than a recognised employer will be made in writing to the CEO and will 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

8.25 Where an application is made under this by-law in relation to a period with respect to which records are not available, the application will be supported by:

- (a) a statement signed by the applicant; and
- (b) two (2) statements signed by each of two (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 by-law 8.25(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.

8.26 Normally the requirements specified in by-law 8.25 are minimum requirements but where an applicant cannot satisfy the requirements set out in that by-law, any other evidence such as taxation payment summaries or other independent documentary evidence may be submitted to assist in consideration of the application.

8.27 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.

8.28 Where the claim substantially conforms to the requirements of by-law 8.25 or where a claim does not conform to the requirements of by-laws 8.25 or 8.26, the claim will be determined by the CEO. Otherwise the application will be forwarded to the Commissioner together with the accompanying documents for consideration by the Commissioner.

Payment in lieu of prior service

8.29 Where the employee has received a lump sum payment in lieu of long service leave in relation to prior service the employee will 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

8.30 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

8.31 The CEO shall authorise payment in lieu of an accrued entitlement to an employee who has at least 10 years' service and is ceasing his/her employment.

8.32 An employee will be eligible for payment in lieu on cessation of employment, after one (1) year of service:

- (a) when retired under the provisions of section 48 of the Act;
- (b) when ceasing on or after attaining 55 years of age;
- (c) on redundancy; or
- (d) on death.

8.33 Where an employee dies or, after consideration of all the circumstances the Commissioner has directed that an employee will be presumed to have died on a particular date, the CEO may authorise payment in lieu of long service leave, calculated in accordance with by-law 8.35:

- (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 CEO's discretion.

8.34 Salary for calculation of any payment in lieu will not include:

- (a) shift penalties or allowances in lieu;
- (b) Northern Territory allowance; and
- (c) any allowance paid as a compensatory allowance.

8.35 The following formula will be used to calculate payment in lieu:

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

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

8.36 The following formula will be used to convert weekly wages to annual salary:

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

Payment on resignation or completion of contract - less than 10 years' service

(Note: this provision does not apply on termination of employment due to discipline, inability (other than medical) or unsatisfactory performance).

8.37 The CEO shall authorise a special entitlement to payment in lieu of long service leave to an employee on resignation or completion of contract of employment, as follows:

- (a) 22.5 calendar days after seven (7) completed years of service;
- (b) 45 calendar days after eight (8) completed years of service; or
- (c) 67.5 calendar days after nine (9) completed years of service.

Payment under this by-law will be calculated using the following formula:

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