

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

The Minister administering the State Service Act 2000

(T13986 of 2012)

NURSES (TASMANIAN PUBLIC SECTOR) AWARD 2005

PRESIDENT TIM ABEY

**Award variation – new family violence provision in Personal Leave clause –
consent matter – o/d 19/11/12**

ORDER BY CONSENT

No. 5 of 2012

THE **NURSES (TASMANIAN PUBLIC SECTOR) AWARD 2005** IS AMENDED BY INSERTING A NEW PERSONAL LEAVE CLAUSE 3 IN PART VIII – LEVEL AND HOLIDAYS WITH PAY AS FOLLOWS:

3. PERSONAL LEAVE

The provisions of subclauses (a) to (o) apply to permanent and fixed-term employees but do not apply to casuals and part time employees in receipt of a loading, unless otherwise specified. The entitlements of casual employees and part time employees in receipt of a loading are set out in subclause (p).

(a) Definitions

- (i) **An employee experiencing family violence** means a person against whom family violence is directed
- (ii) **Family Violence** means conduct as defined by S.7 of the *Family Violence Act 2004*.
- (iii) **'Health Practitioner'** means a registered health practitioner registered or licensed as a health practitioner under an appropriate law of the State of Tasmania.
- (iv) **'Household'** in respect of an employee means any person or persons who usually reside with the employee.
- (v) **'Immediate family'** in respect of an employee includes:
 - (1) spouse (including a former spouse) of the employee. Spouse means a person who is married or a person who is in a significant relationship within the meaning of the *Relationships Act 2003*.

A significant relationship is a relationship between two adult persons who:

 - (A) have a relationship as a couple; and
 - (B) are not married to one another or related by family.
 - (2) child or an adult child (including an adopted child, a step child or an exnuptial child), parent (including foster parent step parent or legal guardian), grandparent, grandchild, sibling or step sibling, of the employee or employee's spouse.
- (vi) **'Medical Certificate'** issued by a registered health practitioner is taken to be a medical certificate for the purpose of this clause if it is issued in respect of the area of practice in which the practitioner is registered or licensed under an appropriate law of the State of Tasmania that provides for the registration or licensing of health practitioners.
- (vii) **'Personal Leave'** means leave provided for:
 - (1) personal illness or injury; or

- (2) to care for members of their immediate family or household who are sick and require care and support; or
- (3) to care for members of their immediate family or household who require care due to an unexpected emergency; or
- (4) an employee who is experiencing family violence to attend to health issues or legal, financial, housing, child care or other issues arising from family violence

(b) Amount of Personal Leave

(i) Personal leave is available to an employee, when the employee is absent:

- (1) due to personal illness or injury; or
- (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency; or
- (3) due to the employee experiencing family violence in which case the employee may access personal leave entitlements to attend to any of the following matters:
 - Attend medical/counselling appointments
 - Maintain safe housing
 - Access Police service
 - Attend court hearings
 - Access legal advice
 - Organise child care or education matters
 - Attend to financial matters
 - Maintain support networks with children, family and others; and
 - Undertake other related activities

(ii) Personal leave accrues according to length of service. Part-time employees are entitled to the same personal leave credits as a full-time employee but on a pro-rata basis according to the number of hours worked compared to full time employees. Payment for personal leave will only be made for those hours that would normally have been worked had the employee not been on personal leave.

(c) Personal Leave for Permanent Employees

An employee is entitled to a maximum accrual of 152 hours in each personal leave year

A part-time employee who works between 20 – 30 hours per week is entitled to a maximum accrual of 114 hours in each personal leave year. A part-time employee who works 30 hours or more per week is entitled to a maximum accrual of 152 hours in each personal leave year.

- (i) Payment for personal leave will only be made for those hours that would normally have been worked had the employee not been on personal leave.
 - (ii) An employee is entitled to leave on full pay (excluding shift or weekend allowances, overtime or penalties) where their application complies with this provision.
 - (iii) If the period during which an employee takes paid personal leave includes a day or part-day that is a public holiday, the employee is not on paid personal leave on that public holiday.
- (d) Accumulation of Personal Leave
- (i) Personal leave accrues progressively during a year of service according to the employee's ordinary hours of work.
 - (ii) If the full period of personal leave as prescribed in subclause (b) of this clause is not taken in any personal leave year, the proportion that is not taken is cumulative from year to year without limitation.
- (e) Personal Leave Entitlement for Fixed Term Employees
- The entitlement to personal leave for an employee who is employed on a full-time fixed term basis is credited in advance after 20 working days of service and:
- (i) provides for 5.65 hours leave for each completed fortnight of service up to 152 hours for each completed full year of service;
 - (ii) unused personal leave credits accumulate and carry forward each year;
 - (iii) if in any personal leave year personal leave with full pay is exhausted personal leave without pay is available provided the absences are appropriately certified by a registered health practitioner consistent with subclause (k) of this clause;
 - (iv) a period of personal leave does not extend the period of employment;
 - (v) for employees employed for less than 12 months personal leave is credited in direct proportion of their employment compared to full-time equivalent employment.
 - (vi) A fixed term employee who has completed:
 - (1) 12 months continuous service and is to complete further continuous service is entitled to personal leave according to subclause (c), as if that employee was a permanent employee. (f) change from Fixed Term Employment to Permanent Employment Status
 - (2) A fixed-term employee who becomes a permanent employee is entitled to personal leave according to subclause (c), as if the employee had been appointed as a permanent employee on the first day of continuous service and calculations of entitlements are to be made accordingly.

(g) The Effect of Workers Compensation

An employee is not entitled to take paid personal leave for a period during which the employee is receiving workers' compensation.

(h) Personal Leave for Personal Injury or Illness

An employee is entitled to use the full amount of their personal leave entitlement for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(i) Personal Leave to Care for an Immediate Family or Household Member

(1) An employee is entitled to use personal leave each year to care for members of their immediate family or household who are ill and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

(2) Leave may be taken for part of a single day.

(j) Sole Person Accessing Leave

In normal circumstances an employee is not to take leave for caring purposes where another person has taken leave to care for the same person.

(k) Employee Must Give Notice

An employee is required to provide notice in writing for leave to be approved.

(i) As far as practicable an employee absent on personal leave for personal injury or illness (except in exceptional circumstances) must inform the employer of the employee's inability to attend for duty within two hours of commencement time of normal duty on the day of the personal leave absence;

The employee is to state:

(1) the nature of the injury or illness and;

(2) the estimated duration of the absence.

(ii) As far as practicable an employee taking personal leave to care for members of their immediate family or household who are ill and require care and support, or who require care due to an unexpected emergency is to give the employer:

(1) notice prior to the absence of the intention to take leave;

(2) the name of the person requiring care and their relationship to the employee;

(3) the reasons for taking such leave; and

- (4) the estimated length of absence.
- (iii) As far as practicable and taking into consideration appropriate confidentiality requirements an employee experiencing family violence who is taking personal leave to attend to matters associated with family violence is to give the employer:
 - (1) notice prior to the absence of the intention to take leave;
 - (2) the reasons for taking such leave; and
 - (3) the estimated length of absence.
 - (iv) If it is not practicable for the employee to give prior notice of the absence, the employee must notify the employer at the earliest opportunity on any day leave is required and provide an estimation of the length of leave required.
- (l) Evidence Supporting Claim

Subject to subclause (m) when taking personal leave the employee is to prove to the satisfaction of the employer that the employee was unable to attend duty on the day or days on which personal leave is claimed.

- (i) Where evidence is required and where reasonably practicable to do so;
 - (1) An employee absent on account of personal injury or illness is to provide a medical certificate from a registered health practitioner
 - (2) Where taking leave to care for members of immediate family or household who are sick and require care and support the employee is to provide a medical certificate from a registered health practitioner stating the illness of the person concerned and that such illness requires care by the employee
 - (3) Where taking leave to care for members of immediate family or household who require care due to an unexpected emergency, the employee is to provide documentation acceptable to a reasonable person stating the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.
 - (4) When an employee experiencing family violence is taking leave to attend to matters relating to family violence the employee is to provide documentation acceptable to a reasonable person. Documentary information or contact information (with an appropriate authority from the employee) from any of the services/professional support services listed below is considered acceptable:
 - Safe at Home Service provider (Police, Court Support and Liaison Service, Family Violence Counselling and Support Service, Legal Aid, Magistrates Court);
 - Employee Assistance Program (EAP) provider;
 - Specialist counselling or women's refuge service;
 - Legal service or
 - Medical/Health practitioner.

- (ii) If it is not reasonably practicable for the employee to give the employer a medical certificate as prescribed in paragraphs (1) and (2) or other acceptable documentation as prescribed in paragraph (3) and (4), a statutory declaration made by the employee, stating the circumstances and the reasons for which leave is required is to be provided.
- (n) Days Without Medical Certificate for Personal Injury or Illness
- (i) Where leave is granted under this clause for personal leave for personal illness or injury for a period of three or more consecutive working days, the third and subsequent days are without pay unless the leave is supported by a medical certificate from a registered health practitioner.
 - (ii) A medical certificate is required for each personal leave absence for personal illness or injury after the employee has taken an aggregate of thirty eight hours without a medical certificate in any personal leave year.
 - (iii) If an employee is absent on personal leave on the day immediately preceding or immediately following the leisure day off, the employee is to provide a medical certificate from a registered health practitioner in support of the absence taken.
- (o) Calculation of Personal Leave Year
- (i) A personal leave year for the purpose of this clause means 12 months of continuous paid employment from the commencement of employment including periods of paid leave.
 - (ii) For any period of leave without pay, excluding personal leave without pay, taken by an employee of more than 20 working days in aggregate in any personal leave year the whole of that period is not to count as service for the purpose of calculating the personal leave accrual date.
- (p) Verification of Illness
- Personal leave on account of personal illness or injury will not be granted to an employee who is suspected of being absent from duty without sufficient cause, and in order to satisfy the employer that there was or was not sufficient cause, the employer may direct an employee to undergo a medical examination by a registered health practitioner selected and paid for by the employer at any reasonable time and place and with reasonable notice.
- (q) Unpaid Personal Leave
- Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are ill and require care and support or who require care due to an unexpected emergency. The employer and the employee are to agree on the period. In the absence of agreement, the employee is entitled to take up to two working days per occasion, provided the requirements of subclauses (k) and (l) are met.

(r) Casual Employees and Part Time Employees in Receipt of a Loading

- (i) Subject to the evidentiary and notice requirements in subclauses (k) and (l) casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are ill and require care and support, or who require care due to an unexpected emergency.
- (ii) Casual employees who are experiencing family violence are entitled to not be available to attend work, or to leave work in accordance with the provisions of this sub-clause.
- (iii) The employer and the employee are to agree on the period for which the employee is to be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to two working days per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (iv) An employer must not fail to re-engage a casual employee because the employee accessed the entitlement provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected."

OPERATIVE DATE

This variation shall come into operation from 19 November 2012.

Tim Abey
PRESIDENT