

LANDCOM (CONDITIONS OF EMPLOYMENT 2004) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Public Employment Office.

(No. IRC 370 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in clause 1 Arrangement, of the award published 3 June 2005 (351 I.G. 528) the following new Appendix A.

Appendix A

2. Delete subclause (4) Leave of clause 13A. Casual Employment and insert in lieu thereof the following:

(4) Leave

- (a) Except as provided under this clause, Casual employees are not entitled to any other paid or unpaid leave.
- (b) As set out in subclause (2) (c) of this clause, casual employees will be paid a 1/12th of the ordinary hourly rate of pay additional payment in lieu of annual leave.
- (c) Casual employees will be entitled to Long Service Leave in accordance with the provisions of the *Long Service Leave Act 1955*.
- (d) Casual employees are entitled to unpaid parental leave in accordance with Appendix A.
- (e) Personal Carers entitlement for casual employees
 - (1) Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in sub clause 39 (iv) of this Award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in (4), and the notice requirements set out in (5).
 - (2) The Department Head and the casual employee shall agree on the period for which the employee will 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 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (3) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
 - (4) The casual employee shall, if required,
 - (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or

- (ii) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (5) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

(f) Bereavement entitlements for casual employees

- (1) Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the employer).
- (2) The Department Head and the casual employee shall agree on the period for which the employee will 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 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) A Department Head must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (4) The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the employer of their inability to attend for duty. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the employee will inform the employer within 24 hours of the absence.

3. Insert after subclause (7) of clause 40 Maternity Leave, the following new subclause (8):

- (8) Employees entitled to maternity leave shall also have an additional entitlement as set out in Appendix A.

4. Insert after subclause (6) of clause 41 Parental Leave, the following new subclause (7):

- (7) Employees entitled to parental leave shall also have an additional entitlement as set out in Appendix A."

5. Insert after subclause (7) of clause 42 the following new subclause (8)

- (8) Employees entitled to adoption leave shall also have an additional entitlement as set out in Appendix A.

6. Insert after clause 71, Monetary Rates Table the following new Appendix A:

APPENDIX A

- (1) Refer to the *Industrial Relations Act 1996 (NSW)*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*

(2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and reengagement of casual employees are not affected, other than in accordance with this clause.

(3) Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).
7. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J , *President*

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