

Recognition of continuous casual service - Health Employees' Conditions of Employment (State) Award

Summary This Information Bulletin provides information on the long service leave entitlements for employees with a period of continuous casual employment that merges without break with permanent /temporary full-time and permanent /temporary part-time employment under the Health Employees' (Conditions of Employment) (State) Award. It also provides example scenarios of how long service leave should be determined.

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RECOGNITION OF CONTINUOUS CASUAL SERVICE HEALTH EMPLOYEES' CONDITIONS OF EMPLOYMENT (STATE) AWARD

PURPOSE

This Information Bulletin only applies to permanent / temporary full-time and permanent / temporary part-time employees employed under the Health Employees' Conditions of Employment (State) Award who have previous continuous casual service.

This Information Bulletin provides information on the long service leave entitlements for employees with a period of continuous casual employment that merges without break with permanent /temporary full-time and permanent /temporary part-time employment under the Health Employees' (Conditions of Employment) (State) Award. It also provides example scenarios of how long service leave should be determined.

KEY INFORMATION

1 Background

On 30 November 2017 Justice Schmidt of the Supreme Court gave a decision about long service leave for casual employees ([Health Services Union NSW v Health Secretary \[2017\] NSWSC 1661](#)).

The decision is summarised as follows:

- 1.1 Casual employees with continuous service as defined in s4(11) of the *Long Service Leave Act* may be entitled to the Long Service Leave provisions under the Long Service Leave Act, not the Health Employees' Conditions of Employment (State) Award (the Award).
- 1.2 Employees who have a period of continuous casual employment which merges immediately and without break with permanent full-time or permanent part-time employment will have the period of continuous casual service counted as service for the purposes of clause 17 of the Health Employees' Conditions of Employment (State) Award, provided the continuous casual employment merges immediately and without a break with the permanent full-time or permanent part-time employment.
- 1.3 In evaluating whether these provisions apply, consideration needs to be given to the facts and circumstances of each case, including consideration of whether any casual service is 'continuous'.

2 Entitlement to Long Service Leave

2.1 Casual Employees

Casual employees employed in continuous employment ('continuous casual service' as defined in paragraph 3. below) are entitled to long service leave provided the provisions of the *Long Service Leave Act* (LSL Act) are met.

2.2 Permanent/Temporary Full-time and Permanent/Temporary Part-Time Employees with previous continuous casual service

Employees who have a period of continuous casual employment which merges immediately and without break with permanent full-time or permanent part-time employment will have the period of continuous casual service counted as service under clause 17 of the Health Employees' Conditions of Employment Award, provided the continuous casual employment merges immediately and without a break with the permanent full-time or permanent part-time employment.

3 The Meaning of Continuous Service under the Long Service Leave Act

Continuous service means uninterrupted or unbroken employment.

Section 4(11)(a) provides that service of a worker with an employer means continuous service, whether on a permanent, casual, part-time or any other basis, under one or more contracts of employment.

Section 4(11)(a1) of the Long Service Leave Act (as varied or replaced from time to time), provides the scenarios in which an employee's absence will deem their employment to be continuous (notwithstanding the absence or that there may be multiple employment contracts with the employer). It currently provides that a break in a worker's service will not affect the continuity of service in the following circumstances:

- i. The absence of the worker is under the terms of the employee's employment;
- ii. The absence of the worker on account of illness or injury;
- iii. Made by the employer with the intention of avoiding any obligation imposed on the employer by the Act;
- iv. Absences arising from an industrial dispute;
- v. Made by the employer by reason of slackness of trade;
- vi. Absences due to authorised leave; or
- vii. Caused by the employer (other than iii – v above)-where the worker returns to the service of, or is re-employed by, the employer within 2 months of the date on which the service was interrupted, other than resignation by the worker.

Provided that the absences including those referred to in iii to vii above shall not be taken into account in calculating the period of service.

Public Health organisations would therefore need to consider any breaks in the casual employment period, including the reason for the break, when determining whether such period is continuous.

This is a different consideration to when considering government service under Schedule 2 of the *Government Sector Employment Regulation 2014* (GSE Regulation). Continuous service in the GSE Regulation relates to staff mobility for government sector employees.

The hours worked by casual employees are not to be averaged over a period of time, as it will not be a true record of the actual periods of employment that are necessary to be identified when considering the definition of continuous service.

4 Example Scenarios of long service leave entitlements

4.1 Scenario One - Where a casual employee works a period of continuous casual service over an 11 year period and the casual employment is terminated by the employer.

The casual employee provides casual relief comprising 8 hour shifts x 1 day per week over an 11 year period. The only absences are caused on account of illness. The casual service is terminated by the employer after 11 years.

Outcome:

The casual employee may be recognised for long service leave under the *Long Service Leave Act 1955* provided the provisions of s4(11)(a) of the LSL Act are met.

4.2 Scenario Two - Where a permanent full-time or part-time employee has previous continuous casual service which merges immediately and without a break with the full-time or part-time employment in the same public health organisation.

The casual employee works two periods of casual service over approximately 2 years which is followed without a break by permanent employment in the same position in the same LHD. The periods of casual service are as follows:

- a. From 26 August 1998 – Provided casual relief at short notice. This occurred occasionally, was not consistent, ad hoc days.
- b. From 29 November 1998 to 24 August 2000 – Worked a period of 1 year 8 months and 27 days which was on a regular roster where they employed continuously for at least 20 hours per week.
- c. On 24 August 2000 – Employee offered and accepted permanent part-time employment.

Outcome:

The second period of casual service (ie 29 November 1998 to 24 August 2000) is recognised under the Health Employees' Conditions of Employment Award, as it is a consistent pattern of regular ongoing employment and is continuous and merges without a break with current permanent part-time employment.

If however the employee did not commence in permanent employment until, for example December 2000, then the second period of casual service would not be counted.

The first period of casual relief is not recognised under the Long Service Leave Act or the Health Employees' Conditions of Employment Award as there is not a consistent or regular pattern of work, and was to provide occasional last minute relief.

This Information applies to permanent / temporary full-time and permanent / temporary part-time employees employed under the Health Employees' Conditions of Employment (State) Award only. Consideration will be given to other NSW Health Awards covered by the Health Services Union in relation to flow on of the long service leave provisions of this Information Bulletin.

Enquiries concerning this Information Bulletin should be directed in the first instance to relevant human resources personnel within the public health organisation. Only human resources personnel are to contact the NSW Ministry of Health.