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CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 13 OF 2006

**MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993 – 2006 AMENDMENTS AND  
APPLICATION TO PUBLIC SECTOR EMPLOYMENT CONDITIONS**

The *Labour Relations Amendment Act 2006* was proclaimed on 4 July 2006 and has amended the *Minimum Conditions of Employment Act 1993*.

**Attachment A** to this Circular identifies provisions in the *Minimum Conditions of Employment Act* that are additional or superior to existing public sector employment conditions. The provisions of the *Minimum Conditions of Employment Act* are to be applied where they are in excess of those provided by public sector awards and agreements. Awards and agreements that provide more beneficial entitlements will continue to prevail in respect of those provisions.

The Government has committed to amending relevant public sector statutory, industrial and other instruments to reflect any superior and/or additional provisions in the *Minimum Conditions of Employment Act*. Cross-sector awards and agreements will be updated by DOCEP at the next available opportunity.

DOCEP agency labour relations advisers are available to discuss or provide further explanation on the changes.

**SUSAN BARRERA  
EXECUTIVE DIRECTOR  
LABOUR RELATIONS**

16 October 2006

## MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993 – 2006 AMENDMENTS

### REASONABLE HOURS OF WORK

#### *Minimum Condition*

In 2002 the Australian Industrial Relations Commission handed down a decision known as the Reasonable Hours Test Case. The outcome of this decision has been incorporated in the *Minimum Conditions of Employment Act 1993*. The new changes provide clarification of what constitutes ordinary hours and reasonable overtime.

The changes provide that employers may require employees to work reasonable overtime. However, an employee may refuse to work overtime if such overtime would be unreasonable. To assist in determining if additional hours are reasonable the *Minimum Conditions of Employment Act* now details a range of factors to be considered.

In addition, to clarify when the protection against unreasonable overtime comes into operation, the *Minimum Conditions of Employment Act* specifies the maximum hours of work for employees. Maximum ordinary hours are as specified in the relevant employment instrument or where there is no relevant employment instrument, as 38 hours per week.

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#### *Implications for the public sector*

Agencies are to consider the “relevant factors” where employees work overtime. The “relevant factors” are prescribed by Section (9) B of the *Minimum Conditions of Employment Act* and include, but are not limited to:

- occupational health and safety considerations;
- an employee’s personal circumstances, including family responsibilities;
- whether the additional hours are on a public holiday; and/or
- the conduct of agency business.

### FAIRER MINIMUM CONDITIONS - LEAVE

A variety of changes have been made to minimum leave entitlements for employees in the *Minimum Conditions of Employment Act*. As minimum conditions of employment, these leave entitlements will apply to all employees in the State system and become an implied term of all State awards and agreements and employment contracts. Award and agreement provisions will continue to apply where they are more favourable than the minimum condition.

## SICK LEAVE

### *Minimum Condition*

An employee's entitlement to sick leave under the *Minimum Conditions of Employment Act* is now cumulative, with any portion not used in a given year being carried forward to subsequent years.

### *Implications for the public sector*

Sick leave is already cumulative in the public sector.

## PAID CARER'S LEAVE

### *Minimum Condition*

An employee can use an entire year's entitlement to sick leave as paid carer's leave. For a full time employee, this means 10 days is now available as carer's leave rather than the previous five days. Carer's leave is not cumulative, and no more than a year's entitlement can be used in any one year.

A new definition of carer's leave has been included in the *Minimum Conditions of Employment Act*, which extends this type of leave to cover situations in which there is an unexpected emergency affecting a member of the employee's family or household, as well as an injury or illness. A new broader definition of 'a member of an employee's family or household' has also been included, so it is clear that employees can take carer's leave for grandparents and siblings.

### *Implications for the public sector*

*Personal leave has replaced sick, carer's and where applicable short leave in public sector agreements. Full-time employees are entitled, in the anniversary year, to utilise up to five days of their personal leave for the purposes of carer's leave. This entitlement has been increased to 10 days in the anniversary year, through the changes to the Minimum Conditions of Employment Act.*

*Public sector agreements provide that access to carer's leave is not limited to up to 10 days per anniversary year, where an employee has accumulated personal leave in excess of 10 days.*

*Part-time employees are entitled to the same personal leave credits, on a pro-rata basis according to the number of hours worked per fortnight.*

*Carer's leave is now defined in the Minimum Conditions of Employment Act as leave taken by an employee to provide care or support to a member of the employee's family or household who requires care and support because of an illness or injury of the member or an unexpected emergency affecting the member.*

*The amendment provides for expanded reasons for access to carer's leave and to whom this care may be provided. Many awards and agreements will be inconsistent with the Minimum Conditions of Employment Act, which will prevail over these instruments.*

*Personal leave may be taken in minimum periods of one hour.*

## UNPAID CARER'S LEAVE

### *Minimum Condition*

Unpaid carer's leave is a new entitlement for all employees, including casual employees. An employee is entitled to up to two days unpaid leave on any occasion that the employee needs to take carer's leave due to an illness or injury or unexpected emergency of the employee's family or household member. This unpaid leave can be taken by casual employees, or when an employee has used all paid carer's leave entitlement.

### *Implications for the public sector*

*The entitlement to unpaid carer's leave for casual employees is a new entitlement in the public sector.*

*Public Sector employers will need to refer to both the Minimum Conditions of Employment Act and their award and/or agreement when employees request unpaid carer's leave.*

*Employees, other than casual employees, must utilise paid leave entitlements first. Where employees have exhausted paid leave entitlements, paid entitlements may be anticipated by agreement or alternatively the unpaid entitlement can be requested.*

*The amendment provides for expanded reasons for access to carer's leave and to whom this care may be provided. Many awards and agreements will be inconsistent with the Minimum Conditions of Employment Act, which will prevail over these instruments.*

## BEREAVEMENT LEAVE

### *Minimum Condition*

A new broader definition of 'a member of an employee's family or household' has been included in the *Minimum Conditions of Employment Act*, so that employees can take bereavement leave for the death of a grandparent or sibling as well as other family members.

### *Implications for the public sector*

*Public sector awards and agreements generally have not been amended as yet to reflect the broader definition and employers will need to apply the broader definition of family when considering requests for bereavement leave.*

*Member of the employee's family or household means any of the following persons:*

- (a) the employee's spouse or de facto partner;*
- (b) a child, step-child or grandchild of the employee (including an adult child, step-child or grandchild);*
- (c) a parent, step-parent or grandparent of the employee;*
- (d) a sibling of the employee; and*

(e) any other person who, at or immediately before the relevant time for assessing the employee's eligibility to take leave, lived with the employee as a member of the employee's household.

## **PARENTAL LEAVE**

### ***Minimum Condition***

An unpaid parental leave entitlement has been extended to casual employees who have been employed on a regular a systematic basis for 12 months or more, and who have a reasonable expectation of ongoing employment.

Parents can now request to take concurrent parental leave of up to eight weeks, to allow both parents to be home together for a longer period immediately after the birth of the child.

Employees on parental leave have the ability to request an extension of their parental leave by an extra 52 weeks, making a total of two years' unpaid leave.

Employees returning to work after parental leave now have the right to request a return on a 'modified basis', which includes working part-time, working fewer days and/or fewer hours or working different days and/or at different times than the employee was working before parental leave.

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Employers must agree to such requests unless there are reasonable grounds not to agree. Clarification on what are reasonable grounds for refusal is provided in the *Minimum Conditions of Employment Act*.

### ***Implications for the public sector***

*Amendments made to the Minimum Conditions of Employment Act have been incorporated into a new model parental leave clause that applies to all public sector employees. Circular to Departments and Authorities No. 12 of 2006 – Parental Leave includes the model clause and is available from DOCEP's website at [www.docep.wa.gov.au](http://www.docep.wa.gov.au).*

## **ANNUAL LEAVE**

### ***Minimum Condition***

The annual leave provisions in the *Minimum Conditions of Employment Act* remain substantially unchanged. The provisions relating to cashing out of annual leave have been amended, to clarify that an employee can only cash-out of annual leave at the end of the year in which it accrued. Employees will still only be able to contract out 50% of their annual leave entitlement in any given year.

A new provision will specifically prohibit employers from requiring or unduly pressuring employees to contract out of annual leave. The Industrial Magistrates Court can fine employers if it is found that they have pressured employees to contract-out of annual leave.

***Implications for the public sector***

*The provision is facilitative only. If the relevant award or agreement does not provide for cashing out of annual leave, this provision of the Minimum Conditions of Employment Act has no application.*

**Further information**

For more detailed information on the provisions of the *Labour Relations Legislation Amendment Act* and the amendments made to the *Minimum Conditions of Employment Act* please contact your DOCEP labour relations adviser.

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