

Managing Long Service Leave (LSL) entitlements



Member Assist has received a high volume of calls from members concerning the Department of Education's recent directives about taking accrued LSL entitlements.

On 8 December 2015 the union raised this matter directly with the Director General and the Executive Director, Workforce. The department advised that if employees who have been asked to take LSL within two years do not take it before 31 December 2016 the employer will exercise the power provided under clause 38 (8) of the Teachers (Public Sector Primary and Secondary) Award 1993 to direct employees to take it.

Clause 38 (8) says, 'The Director General may direct an employee to take accrued long service leave and may determine the date on which such leave commences'.

Members should be cautious about the option of cashing out LSL in the context of using LSL pay for leave without pay (LWOP) at a later date.

The union is aware that the employer is encouraging the cashing out of long service leave. Please note that this can only occur if the employee and the employer agree to a cashed out LSL arrangement under Award clause 38 (12) (a). You cannot be forced into this option.

Award clause 38 (12) (c) states that 'employees should seek financial advice at their own cost with regard to the effects on taxable income and/or superannuation arrangements prior to making a request for cashing out of accrued LSL.' The union strongly encourages all members considering this option to do this. Member Assist is unable to provide financial advice.

Award clause 36 concerns LWOP. It is important to note that members have no automatic entitlement to access LWOP, which is at the employer's discretion. On this basis it is strongly recommended that if you are seeking the option of cashing out your LSL and depositing the monies in a bank account to finance LWOP at a later date, that you request this and negotiate the cashing out of LSL at the same time that you seek approval for LWOP as part of an agreed leave package to exhaust your accrued LSL. This should be confirmed in writing and you should keep a record of this agreement. This is likely to mean that you have to set the date for taking LWOP in advance (just like you would with LSL), to accommodate both school and personal planning.

Further, in regard to LWOP take note that:

- You should apply for LWOP one year at a time, but can have up to two years as LWOP (Award clause 36 (1)).
- If you are a fixed term contract employee with LSL accrued, be mindful that the award prevents you being granted LWOP beyond the period of your current contract (Award clause 36 (2)).
- Award clause 36 (3) provides that all applications for LWOP are considered on their merits and may be granted provided that the work of the department is not inconvenienced (this means you have no automatic entitlement to take LWOP per se).
- If you are denied LWOP you have a right to receive the reasons for this decision in writing (Award clause 36 (4)).
- LWOP does not break continuous service, but does not count for the purposes of calculating entitlements. This means that LWOP will not sever your continuity of employment if taken in accordance with the Award clause 36 (5); however, the time you spend away from employment will not count towards the accrual of further entitlements (such as 'service' for the purposes of a further accumulation of a LSL entitlement or accumulation of further sick leave entitlements).
- LWOP can only be granted if all other paid leave credits have been exhausted ((Award clause 36 (6)). This does not include sick leave.

It is the SSTUWA's view that members should develop a plan to take long service leave as a matter of priority. This will ensure that people are not put in the situation of being (legally) directed to take leave at a time which may not suit them.



Authorised by Mary Franklyn, General Secretary, The State School Teachers' Union of W.A.

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