

DETERMINATION UNDER THE TEACHING SERVICE ACT 1980

DETERMINATION NO. 7 OF 2016

MATERNITY LEAVE

I, Mark Scott, Secretary of the Department of Education make the following determination pursuant to section 13 of the *Teaching Service Act 1980*.

1. Application

- 1.1 This determination rescinds and replaces Determination Number No. 1 of 2007 Maternity Leave.
- 1.2 This determination will apply to permanent and temporary school teachers and related employees.
- 1.3 This determination does not apply to casual teachers or teachers employed at the Saturday School of Community Languages.
- 1.4 Definitions

“Anticipated date of birth” means a date specified by a medical practitioner to be the date on which the medical practitioner expects the teacher to give birth.

“Birth” for the purpose of this determination shall include stillbirth except where otherwise stated.

“Secretary” means the Secretary of the Department of Education.

“Department” means the Department of Education.

“Continuous service” includes:

- all periods of paid leave, previous adoption, parental and maternity leave without pay, sick leave without pay, school vacations, public holidays and up to a total of five days leave without pay;
- all periods of maternity leave taken not more than 9 weeks prior to the anticipated date of birth;
- full time and part time temporary service and full time casual service; and
- previous service with another government department which merges with employment as a teacher.

In regards to temporary teachers, continuous service will also include:

- paid student vacations;
- unpaid student vacations that occur during a temporary engagement;
- unpaid student vacations that occur between engagements where there are temporary engagements abutting the beginning and end of the vacation;
- the four week period prior to the anticipated date of birth regardless of whether a temporary engagement exists during this period or not.

While not included in the 40 weeks service, continuity of service will not be broken by:

- an absence of up to 21 calendar days at the beginning of the school year for temporary or casual teachers who were in service at the end of the preceding school year and are available for employment; or
- the period between early cessation of a temporary engagement and the end date of the original temporary engagement.

“Related employees” means education officers, senior education officers and principal education officers.

“Teacher” means permanent and temporary school teachers and related employees.

2. Maternity Leave

2.1 Entitlement

2.1.1 All teachers who become pregnant are entitled to unpaid maternity leave irrespective of their length of service (refer to 2.4 for paid leave where appropriate).

2.1.2 A teacher who is pregnant shall, subject to this determination, be entitled to be granted maternity leave as follows:

a) for a period up to nine weeks prior to the anticipated date of birth;
and

b) for a further period of up to 12 months after the actual date of birth.

2.1.3 A teacher may be granted unpaid maternity leave earlier than 9 weeks prior to the anticipated date of birth, however this will not extend the total amount of maternity leave available.

2.1.4 A teacher who becomes pregnant while on maternity leave can access further paid maternity leave without having to return to duty even if the anticipated date of birth is outside the maternity leave.

2.1.5 A teacher may take maternity leave as follows:

- a) as a period of leave on a full time basis totalling 12 months from the actual date of birth; or
- b) as a period of unpaid leave on a part time basis up to 24 months (equivalent of 12 months full time leave from the actual date of birth) at the discretion of the Secretary; or
- c) as a combination of full time and part time leave provided that the total period of maternity leave taken does not exceed the equivalent of 12 months full time leave from the actual date of birth.

2.1.6 Accrued extended leave may be taken concurrently with unpaid or half pay maternity leave. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with unpaid or half pay maternity leave.

2.1.7 The period of 12 months in respect of full time maternity leave or 24 months in respect of part time maternity leave may be extended to the end of the school vacation which next occurs after the maternity leave expires. This provision does not apply to related employees working administrative hours, except when a related employee is returning to a school based position.

2.1.8 Should a teacher not wish to return to duty on the expiration of the maximum period of maternity leave, the teacher may access additional maternity leave under right to request as per 2.2. Thereafter, leave without pay for personal reasons, or other leave to credit may be granted.

2.1.9 A further period of maternity leave may be granted if pregnancy occurs while on maternity leave. Any residual leave relevant to the initial period of maternity leave will be cancelled and maternity leave appropriate to the anticipated date of birth applies in respect of the subsequent pregnancy.

2.2 Right to Request

2.2.1 A teacher entitled to maternity leave may request the Department to allow the teacher:

- a) to extend the period of simultaneous maternity leave use up to a maximum of eight weeks¹;
- b) to extend the period of unpaid maternity leave for a further continuous period of leave not exceeding 12 months;
- c) to return from a period of maternity leave on a part-time basis until

¹ To be read in conjunction with Determination No.8 of 2016 Parental Leave

the child reaches school age;

to assist the teacher in reconciling work and parental responsibilities.

- 2.2.2 The Department shall consider the request having regard to the teacher's circumstances and, provided the request is genuinely based on the teacher's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Department's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- 2.2.3 The teacher's request and the Department's decision made under 2.2.1 b) and 2.2.1 c) must be recorded in writing.
- 2.2.4 Where a teacher wishes to make a request under 2.2.1 c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the teacher is due to return to work from maternity leave.

2.3 Communication During Maternity Leave

- 2.3.1 Where a teacher is on maternity leave and a definite decision has been made to introduce significant change at the workplace, the Department shall take reasonable steps to:
 - a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing maternity leave; and
 - b) provide an opportunity for the teacher to discuss any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing maternity leave.
- 2.3.2 The teacher shall take reasonable steps to inform the Department about any significant matter that will affect the teacher's decision regarding the duration of maternity leave to be taken, whether the teacher intends to return to work and whether the teacher intends to request to return to work on a part-time basis.
- 2.3.3 The teacher shall also notify the Department of changes of address or other contact details which might affect the Department's capacity to comply with 2.3.1.

2.4 Paid Maternity Leave

- 2.4.1 Payment for maternity leave is available to permanent teachers subject to completion of 40 weeks continuous service following employment or re-employment prior to the anticipated date of birth. Maternity leave for

permanent teachers taken not more than 9 weeks prior to the anticipated date of birth will count towards the 40 weeks continuous service.

- 2.4.2 Payment for maternity leave is available to temporary teachers subject to completion of 40 weeks. The 40 weeks continuous service must be completed within the two year period immediately preceding the anticipated date of birth. Maternity leave for temporary teachers taken not more than 9 weeks prior to the anticipated date of birth will count towards the 40 weeks continuous service.
- 2.4.3 Paid maternity leave is available to temporary teachers only when the anticipated date of birth falls within a period of temporary engagement. If the temporary engagement ceases during paid maternity leave, the remaining portion of the paid maternity leave will be paid as a gratuity.
- 2.4.4 Payment is made for a period not exceeding 14 weeks full time equivalent.
- 2.4.5 During the period of 24 months from the date of birth of a child, a pregnant teacher can access further paid maternity leave at their substantive full time equivalent immediately prior to taking leave regardless of whether they are currently on full time or part time leave.
- If maternity leave is extended beyond two years to the end of the next term the above position still applies.
- 2.4.6 Where a teacher has taken 24 months of maternity leave, then proceeds on full time leave without pay, for a subsequent pregnancy during this period of leave without pay following the 24 months of maternity leave:
- if the anticipated date of birth of the child falls in the period up to and including 40 weeks, following the conclusion of the initial maternity leave the subsequent maternity leave is paid at the teacher's substantive full time equivalent immediately prior to taking leave;
 - if the anticipated date of birth of the child falls outside 40 weeks following the conclusion of the initial maternity leave the subsequent maternity leave will be unpaid.
- 2.4.7 Where a teacher has taken maternity leave, then accesses their right to request a return to work on a part time basis (until the child reaches school age), for any subsequent maternity leave:
- the teacher is always paid at the substantive FULL TIME EQUIVALENT which applied immediately prior to taking leave regardless of the duration of the part time leave.
- 2.4.8 With the exception of higher duties allowance and locality allowances, all allowances will be paid to eligible teachers and related employees for the period of paid maternity leave. No allowances will be paid to teachers and

related employees during periods of no pay maternity leave.

2.5 Method of Payment

- 2.5.1 When completing an application for maternity leave a teacher may elect to be paid by normal fortnightly payments at full or half pay or by lump sum payment.
- 2.5.2 A teacher may apply for one combination of leave at full and half pay or vice versa.

2.6 Application and Variation of Leave

- 2.6.1 An application for maternity leave, accompanied by a medical certificate stating the anticipated date of birth should be submitted at least one month prior to the proposed first day of leave.
- 2.6.2 Maternity leave must commence no later than the anticipated date of birth.
- 2.6.3 An application for maternity leave should specify the number of weeks required at full pay and at half pay where appropriate.
- 2.6.4 The first and last date of leave must be stated on the application.
- 2.6.5 A teacher may vary the intended period of leave any number of times before it commences.
- 2.6.6 After leave commences, the period of leave may be varied once without approval and on any number of occasions with approval. However, resumption of duty must then coincide with the commencement of a school term.
- 2.6.7 Subject to approval, a teacher who has returned to full time duty after maternity leave, may, provided the teacher has a balance of maternity leave to credit, apply to revert to full time or part time maternity leave.

2.7 Notification of Birth

As soon as feasible after the birth, a teacher should send a copy of the child's birth certificate to the Department. A teacher may elect to provide an extract of the birth certificate indicating the details of mother and child only.

2.8 Miscarriage or Stillbirth

2.8.1 Miscarriage

In respect of a miscarriage, a teacher shall be granted sick leave or unpaid maternity leave for as long as a medical practitioner certifies to be necessary.

2.8.2 Stillbirth

In respect of a stillbirth, subject to an entitlement existing, a teacher shall have the option of taking paid or unpaid sick leave or maternity leave (including paid maternity leave where due).

2.8.3 Premature birth

In respect of a premature birth, where the teacher has not otherwise commenced maternity leave, maternity leave will commence no later than the actual date of giving birth.

2.9 Transfer to a Safe Job and Sick Leave

2.9.1 A teacher may use available sick leave with pay, sick leave without pay, extended leave or family and community service leave as appropriate, if, because of a complication associated with the pregnancy, including a history of miscarriage or other illnesses the teacher is unable to continue to work. In this instance leave granted must cease no later than the day prior to the anticipated date of birth.

2.9.2 Where a teacher's present work is, because of pregnancy or breastfeeding, a risk to her health or safety or to that of her unborn or newborn child:

- a) the teacher's working conditions or hours of work are to be temporarily adjusted to avoid exposure to the risk; or
- b) where the above adjustment is not possible or cannot reasonably be made, the teacher is to be temporarily transferred to other appropriate work that will avoid exposure to the risk and is, as nearly as possible, comparable in status and pay to that of her present work; or
- c) where the above transfer is not possible or cannot reasonably be made, the teacher is to be granted:
 - unpaid maternity leave for as long as a medical practitioner certifies to be necessary to avoid exposure to the risk. This applies regardless of whether the teacher has exhausted her unpaid maternity leave entitlement under paragraph 2.1.2; and the provisions of 2.1.3 will not apply in respect of unpaid maternity leave granted under this provision; or
 - paid sick leave as the teacher is entitled to, and for as long as a medical practitioner certifies to be necessary to avoid exposure to the risk.

2.10 Absent on Other Leave

2.10.1 If a teacher is absent on leave without pay and applies for maternity leave but does not resume duty, paid maternity leave may be granted as follows:

- if the anticipated date of birth is within 40 weeks of the commencement of the full time leave without pay maternity leave is paid at the substantive full time equivalent that applied immediately prior to taking leave.
- If the anticipated date of birth is more than 40 weeks after the commencement of full time leave without pay the maternity leave is unpaid.
- If the anticipated date of birth is more than 40 weeks after the commencement of part time leave without pay the maternity leave will be paid at the part time rate.

2.10.2 If a teacher is on leave without pay for personal reasons and the anticipated date of birth is to occur prior to the expiry date of the leave, then from the date the teacher advises of her pregnancy, the remainder of the approved leave without pay or a period of 12 months, whichever is less, will not be debited against a teacher's total entitlement for leave without pay for personal reasons.

2.11 Casual Teaching While on Maternity Leave

2.11.1 A teacher on unpaid maternity leave (including part time maternity leave without pay) or leave without pay following maternity leave may seek approval to work as a casual teacher while on such leave. No approval will be granted for a teacher to undertake casual teaching whilst on paid maternity leave.

2.11.2 Service as a casual teacher during leave without pay following maternity leave will count as service for incremental progression.

2.11.3 Service as a casual teacher will count as service for long service leave purposes except where the period of leave during which service is undertaken is itself creditable as service.

2.12 Right of Return

2.12.1 A permanent teacher's right of return to her substantive position is retained if she resumes duty 24 months (or earlier) after the actual date of birth of the child.

2.12.2 A teacher with right of return under 2.12.1 who becomes pregnant while on maternity leave may access a new period of maternity leave (for a subsequent pregnancy) and the right of return period will start again without the need for the teacher to return to work.

2.12.3 A temporary teacher's right of return to her position is retained for the duration of any maternity leave granted during a period(s) of a temporary engagement.

2.12.4 Where the end of 24 months falls during a school term, maternity leave and any subsequent leave may be extended to the end of the next school vacation and right of return to the substantive position is retained. This provision does not apply to related employees working administrative hours, except when a related employee is returning to a school based position.

2.13 Resumption of Duty

Except in the case of 2.2.1 c) where a minimum of seven weeks notice is required, a teacher must, no less than one month prior to the date on which the teacher is due to resume duty confirm in writing that she will be resuming duty, or where appropriate apply for an extension of leave, or submit a notice of resignation.

2.14 Resignation

The position of a teacher who submits notice of resignation when proceeding on maternity leave will be declared vacant. Resignation in this instance will not be accepted earlier than the last day of the paid maternity leave nor later than the last day of approved leave.

2.15 Superannuation

A teacher on maternity leave whether paid or unpaid, is not required to meet any payment of the employer's superannuation contributions to any NSW government superannuation fund.

2.16 Service Credits for Maternity Leave

2.16.1 All periods of full time and part time maternity leave count as service for incremental purposes.

2.16.2 Maternity leave without pay does not count as service for extended leave, except when a teacher has completed at least ten years paid service, then any period of maternity leave without pay of less than six months counts for the accrual of extended leave.

2.16.3 Paid maternity leave counts as service in respect of all categories of leave including annual leave loading.

2.16.4 Except where provided at 2.16.2, unpaid maternity leave does not count as service for any category of leave

2.16.5 These service credits apply equally to maternity leave and any additional

maternity leave approved under right to request provisions.

2.17 Part Time Maternity Leave

2.17.1 Eligibility

All teachers who give birth to a child may take maternity leave on a part time basis.

2.17.2 Application and Variation of Leave

- a) An application for part time maternity leave should be submitted at least seven weeks in advance of the date on which leave is to commence.
- b) Applications for part time maternity leave for between one and four days per week may be approved over a period of up to two years subject to the leave not exceeding the maximum entitlement provided in 2.1.5.
- c) A teacher may make application to vary the period of part time maternity leave and/or work arrangements provided that sufficient maternity leave is available.
- d) Subject to approval, a teacher who has returned to full time or substantive hours of duty after maternity leave may apply to revert to part time or full time maternity leave.
- e) Similarly, a teacher who has returned to duty on a part time basis may apply to revert to full time maternity leave and vice-versa.
- f) Where the maximum entitlement provided in 2.1.5 has been exhausted, a teacher may make application for additional maternity leave on a full time or part time basis in accordance with 2.2 Right to Request.

2.17.3 Duration of Leave

- a) The maximum period of part time maternity leave which may be initially be taken is up to 24 months (equivalent of 12 months full time leave from the actual date of birth). If this date falls during a term, leave may be extended to the end of the vacation which next occurs after the child's second birthday. A teacher may also request further part-time maternity leave as per 2.2.1 c). This provision does not apply to related employees working administrative hours, except when a related employee is returning to a school based position.
- b) Subject to the maximum period stated in a) above, the actual period

of part time maternity leave that a teacher may take will be determined by:

- i) the period of untaken full time maternity leave; and
 - ii) the number of days per week that the teacher works.
- c) A teacher may also request further part-time leave as per 2.2.1 c).

2.17.4 Right of Return

A teacher on part time maternity leave without pay will have right of return to her substantive position for the duration of the period of leave.

2.17.5 Salary and Incremental Progression

- a) The salary for teachers on part time maternity leave is calculated in accordance with the following formula:

$$\frac{\text{Appropriate annual salary}}{52.17857} \times \frac{\text{no of days worked on a part time basis}}{\text{no of days worked on a full time basis}} = \text{weekly salary}$$

- b) Allowances which are paid in recognition of duties undertaken during the part time leave arrangements are calculated in a similar manner.
- c) Teachers eligible to be paid a locality or climatic allowance shall be paid on a pro rata basis to a full time teachers' entitlement, calculated on the number of days actually worked.

2.17.6 Leave Conditions

- a) Vacation pay and Annual Leave Loading

Teachers on part time maternity leave accrue vacation pay and are eligible for annual leave loading on a pro rata basis.

Where a teacher's hours of work (full time equivalent) change during the school year, vacations are taken and paid at the full time equivalent which applies immediately prior to the vacation period.

- b) Leave Without Pay

Teachers on part time maternity may be granted short periods of leave without pay but if a teacher requires an extended period of leave without pay the part time maternity leave must be terminated.

- c) Accrued extended leave may be taken concurrently with part time maternity leave, provided the period of leave does not exceed the equivalent of 12 months full time. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with part time maternity leave.
- d) Teachers on part time maternity leave may be granted the following:
- Leave without pay
 - Extended leave
 - Sick leave
 - Vacation pay
 - Special leave
 - Family and community service leave

The following entitlements will accrue on a pro-rata basis

- Family and community service leave
- Sick leave
- Extended Leave
- Vacation pay
- Special leave

2.17.7 Other Employment

A teacher on part time maternity leave wishing to undertake outside employment, other than casual teaching in NSW Government schools, must obtain approval in accordance with the Department's Code of Conduct and Private and Secondary Employment Policy.

3. Date of Effect

- 3.1 The provisions of this Determination become effective from the date on which the Determination is made by the Secretary.
- 3.2 Implementation of the provisions of this Determination will be effected by administrative action at a future date to be determined in accordance with the Department's operational requirements.

- 3.3 Notwithstanding the provisions of sub-clause 3.1, the Department will continue to apply the provisions of the rescinded Determination 1 of 2007 until such time as the provisions of Determination 7 of 2016 are commenced by administrative action.

Signed:



Mark Scott
SECRETARY
DEPARTMENT OF EDUCATION

Date:  September 2016