

DETERMINATION UNDER THE TEACHING SERVICE ACT 1980

DETERMINATION NO. 8 OF 2016

PARENTAL 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 will apply to permanent and temporary school teachers and related employees and rescinds and replaces Determination No: 2 of 2007.

1.2 This determination does not apply to casual teachers or teachers employed at the Saturday School of Community Languages.

1.3 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;
- 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. Parental Leave

2.1 Entitlement and Payment

2.1.1 Unpaid Leave

- a) Unpaid parental leave is available to teachers for whom maternity or adoption leave does not apply, for the birth of the child or other termination of the spouse’s pregnancy or, in the case of adoption, from the date of taking custody, irrespective of their length of service. (refer to 2.1.5 for paid leave where appropriate)
- b) A teacher is entitled to parental leave, which is not taken simultaneously with the partner’s maternity leave or adoption leave, as follows:
 - i) a period of unpaid leave on a full time basis totalling 12 months; or
 - ii) a period of unpaid leave on a part time basis totalling 24 months at the discretion of the Department; or
 - iii) a combination of full time and part time leave provided that the total period of parental leave taken does not exceed the equivalent of 12 months full time leave.
- c) Accrued extended leave may be taken concurrently with unpaid or half pay parental leave. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with unpaid or half pay parental leave.
- d) The period of 12 months in respect of full time parental leave or 24 months in respect of part time parental leave may be extended to the end of the school vacation which next occurs after the parental 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.

- e) Extended parental leave applied for but not commenced, will be cancelled in cases of miscarriage or stillbirth.
- f) All periods of full time and part time paid parental leave count as service for incremental purposes.

2.1.2 Simultaneous Leave

- a) A teacher may take simultaneous maternity/adoption leave and parental leave when:
 - i) a teacher is taking paid parental leave and the teacher's partner is taking maternity or adoption leave.
 - ii) both partners are sharing child caring duties on a part time basis on separate days.

2.1.3 Right to Request

- a) A teacher entitled to parental leave may request the Department to allow the teacher:
 - i) to extend the period of simultaneous 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 teacher in reconciling work and parental responsibilities.
- b) 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.
- c) The teacher's request and the Department's decision made under 2.1.3 a)(ii) and 2.1.3 a)(iii) must be recorded in writing.
- d) Where a teacher wishes to make a request under 2.1.3 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 teacher is due to return to work from parental leave.

2.1.4 Communication During Parental Leave

- a) Where a teacher is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Department 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 teacher held before commencing parental leave; and
 - ii) 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 parental leave.
- b) 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 parental 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.
- c) The teacher shall also notify the employer of changes of address or other contact details which might affect the Department's capacity to comply with 2.1.3 a).

2.1.5 Paid Parental Leave

- a) Payment for parental leave is available to teachers subject to completion of 40 weeks continuous service prior to the anticipated date of birth or date of taking custody.
- b) Payment is at the rate of one week full pay or two weeks half pay. This may be taken simultaneously with a partner's maternity leave. Any additional simultaneous leave will be unpaid.
- c) Payment to temporary teachers is available subject to the completion of 40 weeks continuous service in the 2 years prior to the anticipated date of birth or date of taking custody. Paid parental leave is only available to temporary teachers when the anticipated date of birth or the date of taking custody falls within a period of a temporary engagement.
- d) During the period of 24 months from the date of birth or the date of taking custody, a teacher can access further paid parental leave at their substantive FTE immediately prior to taking leave regardless of whether they are currently on full time or part time leave.

If parental leave is extended beyond two years to the end of the next term the above position still applies.
- e) Where a teacher has taken 24 months of parental leave, then proceeds

on full time leave without pay (LWOP), for subsequent parental leave during this period of LWOP following the 24 months of parental 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 parental leave the subsequent parental leave is paid at the teacher's substantive FTE immediately prior to taking leave;
 - if the anticipated date of birth of the child falls outside 40 weeks following the conclusion of the initial parental leave the subsequent parental leave will be unpaid.
- f) Where a teacher has taken parental 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 parental leave:
- the teacher is always paid at their substantive FTE immediately prior to taking leave regardless of the duration of the part time work.
- g) With the exception of higher duties allowance and locality allowance, all allowances will be paid to eligible teachers and related employees for the period of paid parental leave. No allowances will be paid to teachers and related employees during periods of unpaid parental leave.

2.2 Application and Variation of Leave

- 2.2.1 The teacher is required to make an application for parental leave at least one month prior to the proposed first day of leave.
- 2.2.2 An application for parental leave must be accompanied by a medical certificate which includes the anticipated date of birth of the child or in the case of an adopted child, documentation from the authority indicating the expected date of taking custody should be submitted.
- 2.2.3 The first and last date of leave must be stated on the application.
- 2.2.4 Teachers eligible for extended leave may apply to use extended leave to supplement a period of half pay or unpaid parental leave.
- 2.2.5 A teacher may vary the intended period of leave any number of times before it commences.
- 2.2.6 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.
- 2.2.7 Subject to approval, a teacher who has returned to full time duty after parental leave, may, provided the teacher has a balance of parental leave to credit, apply to revert to full time or part time parental leave.

2.3 Right of Return

- 2.3.1 A permanent teacher's right of return to their substantive position is retained if the total period of parental leave and any other leave is 24 months (or less).
- 2.3.2 A temporary teacher's right of return to their substantive position is retained if the total period of parental leave and any other leave is 24 months (or less) and the temporary engagement is ongoing.
- 2.3.3 If a teacher takes a new period of parental leave (ie: for a subsequent birth or adoption) the right of return period starts again.
- 2.3.4 Except in the case of related employees working administrative hours, if the end of 24 months falls during a school term, parental 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.

2.4 Casual Teaching While on Parental Leave

- 2.4.1 A teacher on unpaid parental leave (including part time parental leave without pay) or leave without pay following parental 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 parental leave.
- 2.4.2 Service as a casual teacher during leave without pay following parental leave will count as service for incremental progression.
- 2.4.3 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.

2.5 Part Time Parental Leave

- 2.5.1 Applications for part time parental leave for between one and four days per week may be approved over a period of up to two years.
- 2.5.2 During part time parental leave the right of return to the teacher's position is maintained.
- 2.5.3 The provisions of permanent part time employment will apply for all service undertaken during the period of part time parental leave.
- 2.5.4 Accrued extended leave may be taken concurrently with part time parental leave, provided the period of parental leave does not exceed the equivalent of 12 months full time leave. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with part time parental leave.

2.6 Other Employment

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

2.7 Resignation

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

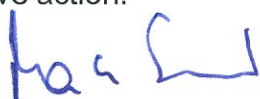
2.8 Superannuation

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

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 2 of 2007 until such time as the provisions of Determination 8 of 2016 are commenced by administrative action.

Signed:



Mark Scott
SECRETARY
DEPARTMENT OF EDUCATION

Date:

19 September 2016