

HEALTH SERVICES UNION - WA HEALTH STATE INDUSTRIAL AGREEMENT 2006

*Implementation Guidelines
and
Explanatory Notes*

21 December 2006

INTRODUCTION

This document provides assistance in implementing the Health Services Union – WA Health State Industrial Agreement 2006 (the Agreement).

A copy of the Agreement can be accessed at www.health.wa.gov.au/awardsandagreements.

These implementation guidelines and explanatory notes should be read in conjunction with the Agreement, it is not intended to be a stand alone document.

This Agreement has incorporated all relevant conditions from the WA Health – HSU Award 2006. All conditions are now contained in the Agreement without need to refer to the Award providing a document that is easier to read and comprehend.

Definitions

“Agreement” means the Health Services Union – WA Health State Industrial Agreement 2006 (the Agreement).

“2004 Agreement” means the Health Services Union – Department of Health – Health Service Salaried Officers State Industrial Agreement 2004 PSAAG 4 of 2004.

EXPLANATORY NOTES

Health Services Union – WA Health State Industrial Agreement 2006

Clause 1. – Title

This clause specifies the title of the Agreement as the Health Services Union – WA Health State Industrial Agreement 2006, which replaces the Health Services Union – Department of Health – Health Service Salaried Officers State Industrial Agreement 2004 PSAAG 4 of 2004.

Clause 3. – Definitions

Comprehensive definitions have been included to clarify entitlements in the Agreement. Most significantly Base Pay and Full pay have been defined.

Clause 5. – Application and Parties Bound

This clause identifies the parties bound by the Agreement and the employees to whom the Agreement applies.

This Agreement operates to the exclusion of the WA Health – HSU Award 2006.

Clause 6. – Term of Agreement

The Agreement is effective from the date of registration of the Agreement.

The Western Australian Industrial Relations Commission 'registered' the Agreement on 14 December 2006 and the Agreement expires on 30 June 2008.

Certain provisions of the Agreement are effective from a date other than the date of registration i.e. Salaries, Personal Leave, Long Service Leave and Paid Parental Leave.

The parties agree to commence negotiations for a replacement agreement at least six months prior to the expiry of the Agreement.

Clause 7. – No Further Claims/Rights Reserved

The parties agree that there will be no further claims for salary increases or for matters contained in the Agreement for the term of the Agreement, except where specifically provided for.

Clause 10. – Contract of Service

The probationary period of employment is now at the discretion of the employer.

The employer is able to terminate the contract of service of any permanent or fixed-term employee by giving 4 week's notice or by providing payment in lieu of notice.

In addition to the previous requirements for termination the provisions from the Public Sector Management (General) Regulations 1994 related to the conviction of offences have been incorporated into subclause 10(5).

Certificate of Service

Upon the request of the employee at retirement, redundancy, resignation or where the contracts of service expire through the effluxion of time, the employer is required to provide a Certificate of Service outlining:

- Period of service;
- Nature of duties performed by the employee

Clause 11. – Working from Home

This is a facilitative clause for working from home, which is subject to employer discretion.

There has been a minor change to clarify the use of the “home” location. The home is not to be designated as the employee’s headquarters. Duties undertaken are those that would normally be performed at their headquarters.

Clause 14. – Casual Employees

Casual employees are now subject to a minimum engagement of 3 consecutive hours on any shift (unless written agreement is reached with the Union). If an employee is terminated whilst working a shift, the employee is still entitled to a minimum payment of 3 hours. Otherwise, the notice provisions for casuals applies.

Clause 16. – Overtime

The order of the Overtime clause has been amended to keep overtime and the on-call arrangements together.

Subclause (11) adopts the provisions of the Federal Reasonable Hours Test case. This subclause defines the circumstances in which employees may refuse to work overtime.

The on call allowance has been increased to 18.75% of 1/38 of the weekly base rate of pay for a Health Professional, Level 4/6.1.

The title of “Engineer” has been amended to “Campus Facilities Manager” or equivalent positions responsible for the management of the physical resources of health campuses.

Excess travel time has been introduced which provides the employee with an entitlement to time of in lieu of actual time spent travelling on official business outside normal working hours and away from the employee’s usual headquarters. Time off in lieu will not apply for periods of less than 30 minutes.

Clause 17. – Shiftwork

An employee who commences a shift after 12.00 midday and finishes at or before 6.00pm is not entitled to the afternoon shift loading of 12.5%. For example an employee who commences at 2.00pm and finishes at 6.00pm is not entitled to an afternoon shift penalty, an employee who commences at 2.00pm and finishes at 8.00pm is entitled to an afternoon shift penalty.

The Sunday shiftwork allowance of 75% has been extended for employees who commence work prior to Midnight on Sunday and continue to work after Midnight Sunday until 7am on the following Monday. Shifts that continue past 7am on Monday revert back to the appropriate night shift penalty (20%) for time worked past 7am.

Employees are not able to be rostered for duty until 10 hours have passed from the end of the employee's previous rostered shift ended. This requirement may be altered by agreement with the Union.

Employees are able to exchange shifts or days off with another employee, provided that the employer has approved the exchange of shifts or days in writing prior to the commencement of the arrangement. The employer will not pay overtime or incur any additional expense as a result of the exchange taking place.

The entitlement of casual employees required to work shift work has been clarified. The calculation is as follows:

Base rate of pay + casual loading + (shift loading calculated on the base rate of pay)
= casual shift loaded rate.

Clause 18. – Salaries and Payment

The Agreement provides for the following salary increases:

- (a) 4.5% commencing from 1 July 2006; and
- (b) 4.0% commencing from 1 July 2007.

Employees whose employment ceased prior to the date of registration are not entitled to retrospectivity of salaries and conditions under this Agreement.

Casual employment is by the hour, and there is no entitlement to salary arrears for employment that occurred prior to the date of registration. Casuals will have the entitlement to the increased salary from the applicable date of the administrative payment or the date of registration, whichever is earlier.

Clause 19. – Overpayments

Where an overpayment has occurred, the agreement between the employee and the employer to recover the overpayment should be documented.

Clause 20. – Underpayments

The provisions of this clause places a responsibility on the employer to act quickly to rectify employee underpayments as soon as practicable. This does not place a requirement on the employer to provide back pay as soon as practicable, but relates specifically to the underpayment of wages.

Clause 22. – Higher Duties

Higher duties allowance has been amended to give effect to the practice of recognising an employee's prior relevant acting service immediately preceding promotion or period/s of relevant acting service at level or a higher level within the preceding 18 month period of the date of promotion. This will count as qualifying

service towards annual increments of the position to which the employee has been promoted.

Clause 24. – Weekend Absence from Residence

This clause provides leave and other entitlements for employees who are absent from their normal headquarters over a weekend when on official business.

Clause 27. – Removal Allowance

The following changes apply:

- Increase in the cubic metres allowance from 35 to 45;
- Provides for the transportation of a second vehicle; and
- Provides for employers to make additional payments to assist with relocations, subject to employees undertaking to stay for at least 12 months, or repay a pro rata proportion of the additional assistance if they leave before 12 months.

Subclause 27(12) provides administrative authority to update rates in accordance with amendments in the Public Service Award 1992.

Clause 30. – District Allowance

The conditions contained in the District Allowance (Government Officers) General Agreement 2005 have been incorporated into the Agreement, to be amended by variation to the Public Service Award 1992 or if replaced by another general agreement.

This provides access to district allowance for casual employees on an hourly basis. As with other employees, documentary evidence is required to claim the appropriate full, double or partial allowance.

Clause 34. – Special Allowances

Includes provision of a Mortuary Staff Allowance payable to employees employed as Mortuary staff in PathWest Laboratory Medicine.

Clause 35. – Annual Leave

Annual Leave is available to be accessed in hours.

Purchased Leave 44/52 Salary Arrangement

The clause provides for the purchase of an additional 4 weeks leave per annum up to a total of 8 weeks and a reduced salary spread over the 52 weeks of the year by agreement between the employer and employee. The purchased leave must be taken in the calendar year in which it is purchased. Purchased leave not cleared in the accrued year that it is purchased will be paid out.

Access to purchased leave is subject to the employee having satisfied the employer's accrued leave management policy.

Accrued Annual Leave must be cleared prior to the clearance of any purchased leave.

Employers will assess each application on its merits and give consideration to the personal circumstances of the employee seeking purchased leave.

Where employees apply for purchased leave of between 5 and 8 weeks the employer is to give priority access to those employees with carer responsibilities.

Clause 37. – Public Holidays

Public Holidays has been amended to ensure consistent operation with Operational Circular 2005/05.

Clause 38. – Personal Leave

The introduction of personal leave is intended to consolidate a number of forms of leave and give employees and employers greater flexibility by providing paid leave for a variety of personal purposes.

Personal Leave replaces sick leave, carers leave and short leave.
Personal leave is not for circumstances normally met by other forms of leave.

Entitlement

The annual entitlement is 114 hours (15 days) of which 98.8 hours (13 days) is cumulative and 15.2 hours (2 days) is non cumulative.

The employee's current sick leave anniversary date will be maintained for the purposes of the personal leave entitlement.

Where employees access personal leave, it shall be deducted from their non-cumulative entitlement in the first instance. On completion of each year of accrual any unused personal leave from that year up to a maximum of 98.8 hours will be cumulative and added to personal leave accumulated from previous years. Unused non-cumulative personal leave will be lost on completion of each anniversary year.

Transition

This clause operates from the date of registration of the Agreement. (14 December 2006)

On commencement of the operation of this clause sick leave will cease to exist. All existing sick leave credits will be converted to cumulative personal leave and recorded in hours.

An additional 3.8 hours will be added to cumulative personal leave. An additional 15.2 hours will be added to non-cumulative personal leave.

An employee's existing anniversary date **will not** change as a result of these transition arrangements.

Reasons for Taking Personal Leave

Personal leave may be accessed in accordance with the provisions of clause 38(25) of the Agreement for illness or injury, to be the primary care giver, unanticipated matters or, in defined circumstances, planned matters.

Minimum Conditions of Employment Act 1993 Requirements to be Met

In accordance with the Minimum Conditions of Employment Act 1993, in an anniversary year employees are entitled to utilise up to 76 hours for the purposes of carer's leave.

The unused hours of personal leave credited each anniversary year and unused hours accumulated from previous years may be utilised.

Application for Leave

Employees must complete the necessary application and clearly identify which of the relevant circumstances in Agreement subclause (25) and (26) apply to their personal leave request. Leave forms are required to reflect the reason for the leave.

Each application for personal leave should be considered on its own merits. The form of evidence to satisfy a reasonable person of the entitlement will depend upon the circumstances. For example, for leave for illness or injury evidence to satisfy a reasonable person could be in the usual form of an appropriate medical certificate detailed as unfit for duty or with the nature of the illness. Alternatively, by way of example, written advice from a physiotherapist or dentist may be sufficient. A medical certificate may not necessarily be required if the employer is satisfied that the employee was ill or injured.

In general, supporting evidence is not required for single or two consecutive day absences. In addition, the previous 2004 Agreement requirement for a medical certificate after an aggregate of 5 days sick leave in a credit year generally no longer applies. However, where the employer has good reason to believe that the absence may not be reasonable or legitimate, the employer may request evidence be provided. The employer must provide the employee with reasons for requesting the evidence. The leave shall not be granted where the absence is not reasonable or legitimate.

Supporting evidence provided to the employer must be retained in accordance with the record keeping plan.

An application for personal leave exceeding 2 consecutive working days shall be supported by evidence that would satisfy a reasonable person of the entitlement.

The evidence must cover the entire period of the absence.

Personal Leave on Half Pay and Without Pay

In exceptional circumstances, the employer may approve the conversion of an employee's personal leave credits to half pay to cover an absence on personal leave due to illness or injury. Employees have responsibility to clarify the financial implications of such an action on their personal circumstances.

Employees who have exhausted all personal leave entitlements and are ill or injured may apply for personal leave without pay. Employees are required to complete the necessary application and produce medical evidence to the satisfaction of the employer. To determine the effect on salary and leave entitlements of personal leave

without pay, apply "Sick Leave Without Pay" as outlined in Administrative Instruction 610 – *Effect on Grants of Leave and Period of Suspension on Salary and Leave Entitlements*.

Employees who have exhausted all of their personal leave entitlements and are seeking leave for circumstances outlined in subclause (25)(b), (c) or (d) of the Agreement cannot access personal leave without pay. However, other forms of leave including leave without pay may be available.

Effect on Grants of Leave on Personal Leave Entitlements

To determine the effect on personal leave entitlements of various types of leave granted, instead of "Sick Leave Credits" read "Personal Leave Credits" in Administrative Instruction 610 – *Effect on Grants of Leave and Period of Suspension on Salary and Leave Entitlements*.

Travelling Time for Regional Employees

Eligible regional employees have an entitlement to be paid for travelling time up to 38 hours per twelve month period to attend a medical facility where the travel occurs during their ordinary working hours, and where the medical facility is located 240 km or more from their headquarters.

Payment is at the ordinary time rate that would have applied had the employee been at work and includes any higher duties and district allowance. Overtime and shift penalties are not included as part of the travelling time rate. The travelling time is treated as service for all purposes, ie similar to actual working time.

There is no prior qualifying time required for regional employees to access this travelling time, ie the full 38 hours are accessible from the date of commencement in the region.

Travelling time in excess of the prescribed 38 hours per twelve months may be approved by an employer, on a case-by-case basis, and in the context of fair and equitable application of the provision.

All travelling time is subject to the evidentiary requirements outlined in clause 38 subclauses (29) to (33) of the Agreement.

Employees transferring within or between regions without any break of service (as applied in awards generally) retain their original regional anniversary date for the purpose of establishing their travelling time entitlements.

The 240 km minimum is the radius from the employee's headquarters, not the actual road, sea or air travel distance undertaken. This is consistent with the principle and application of the metropolitan 50 km radius.

Travelling time must not be debited against personal leave entitlements. WA Health will separately identify the utilisation of travelling time, ie create a separate pay/leave code for this provision.

Part time and "less than 12 months" fixed term contract employees may access this entitlement on a pro rata basis.

Employees **not** eligible for this travelling time entitlement include:

- (a) casual employees;
- (b) employees on any form of leave without pay including sick leave without pay;
- (c) employees on workers compensation; or
- (d) metropolitan based employees attending medical facilities in regional areas.

Clause 39. – Leave Without Pay

Leave Without Pay replaces Special Personal Leave from the 2004 Agreement. This places conditions on the Leave Without Pay approval process that the employers work is not inconvenienced and that the employee has utilised all other leave credits. Subject to these conditions being met, Leave Without Pay may be granted.

Leave Without Pay may also be utilised to access full time study and Australian Institute of Sport Scholarships.

Clause 40. – Bereavement Leave

Travelling Time for Regional Employees

This provision provides for the payment of normal salary for travel time undertaken in ordinary working hours where the distance from the work location to the destination is equal to or greater than a radius of 240 kilometres.

The provision applies to eligible regional employees for travel within Western Australia only and is not available for travel interstate or overseas.

Travelling time must not be debited against bereavement leave entitlements. WA Health will separately identify the utilisation of travelling time, ie create a separate pay/leave code for this provision.

The provision applies to each bereavement, rather than per annum, with a maximum of 15 hours (2 days) travel time for each bereavement.

The 240 km minimum distance relates to the radius from the employees work location, not the actual road, sea or air travel distance undertaken, consistent with the principle and application of the metropolitan 50 km radius.

There is no prior qualifying time to access regional travel time ie the provision is accessible from the date of commencement in the region.

The standard evidentiary requirements as detailed in Clause 40(4) also apply to additional travel time requests.

Part time and “less than 12 months” fixed term contract employees are entitled to travelling time on a pro rata basis.

Access to “additional” travel time is at the discretion of the employer.

Casual employees can access this provision for the hours that they had previously been advised were expected to be worked. This can be by way of an indicative roster, determined pre agreed hours; or subject to employer confirmation, hours that the employee would reasonably have been expected to work.

The provision is not available for:

- (a) employees on any form of paid or unpaid leave, including sick leave without pay or workers compensation; and
- (b) metropolitan based employees to travel to regional areas.

Clause 41. – Long Service Leave

Employees are able to access long service leave entitlements in single days. A full entitlement of 13 weeks long service leave equates to the payment of 65 days when the full entitlement is taken. The employer approves when and how the leave is taken.

Access to pro rata long service leave is an ageing workforce initiative. It is available, in the case of an employee accruing long service leave on a 7 year basis at the rate of 9.28 days per completed 12 month period of continuous service and for employees accruing long service leave on a 10 year basis at the rate of 6.5 days per completed 12 month period, regardless of the length of prior service, for employees within 7 years of preservation age under Western Australian Government superannuation arrangements. Pro rata long service leave can only be taken as paid leave and there is no capacity for payment in lieu of leave.

Employees can only access the 6.5 or 9.28 days from their next anniversary date after the date of registration of the Agreement (14 December 2006). The following examples illustrate how pro rata long service leave may be accessed by an employee who is accruing long service leave on a **7 year** basis and who meets the requirements of subclause 41(6):

- (a) If the employee's anniversary date is 10 December 2007, 9.28 days may be accessed from that date;
- (b) If the employees accrued long service leave entitlement became due on 10 December 2003, then only 9.28 days may be accessed from 10 December 2007 (not 9.28 days x 4 years = 37.12 days). This assumes the anniversary date has not changed e.g. by leave without pay or other leave that does not count towards qualifying service;
- (c) If the employee does not take any of the 9.28 days available from 10 December 2007 then on 10 December 2008 the employee can access 18.56 days (9.28 days x 2 years), assuming the anniversary date has not changed; and
- (d) If the employee takes 2 days during the period from 10 December 2007 to 9 December 2008, then from 10 December 2008 the employee can access 16.56 days (7.28 + 9.28 days).

The following examples illustrate how pro rata long service leave may be accessed by an employee who is accruing long service leave on a **10 year** basis and who meets the requirements of subclause 41(6):

- (e) If the employee's anniversary date is 10 December 2007, 6.5 days may be accessed from that date;
- (f) If the employees accrued long service leave entitlement became due on 10 December 2003, then only 6.5 days may be accessed from 10 December 2007 (not 6.5 days x 4 years = 26 days). This assumes the anniversary date has not changed e.g. by leave without pay or other leave that does not count towards qualifying service;
- (g) If the employee does not take any of the 6.5 days available from 10 December 2007 then on 10 December 2008 the employee can access 13 days (6.5 days x 2 years), assuming the anniversary date has not changed; and
- (h) If the employee takes 2 days during the period from 10 December 2007 to 9 December 2008, then from 10 December 2008 the employee can access 11 days (4.5 + 6.5 days).

Employees who take pro rata long service leave and resign prior to age 55 are not required to pay back the monetary equivalent of the leave taken.

Pro rata long service leave taken under this clause of the Agreement is deducted from any pro rata long service leave taken from any pro rata long service leave that is paid as a lump sum as per Clause 41 subclause (10) of the Agreement.

Information required concerning preservation age under Western Australian Government Superannuation arrangements can be obtained from GESB.

Clause 42. – Parental Leave

Paid parental leave has been increased to:

- 10 weeks paid parental leave (commencing on and from) 1 July 2006
- 12 weeks paid parental leave (commencing on and from) 1 July 2007
- 14 weeks paid parental leave (commencing on and from) 1 July 2008

Changes have also occurred to other components of the parental leave clause including:

- extending unpaid parental leave provisions relating to eligible casuals;
- enhanced provision in relation to transferring to a safe job;
- improved return to work entitlements after parental leave is taken; and
- enhanced communication requirements affecting both the employer and employee's.

For further information regarding parental leave entitlements the current circular can be accessed at <http://intranet.health.wa.gov.au/circularsnew/index.cfm>.

Clause 43. – Donor Leave

In addition to Blood or Plasma donation, six weeks paid leave at the base rate of pay has been provided to support an employee donating organs or tissue. If six weeks leave is not sufficient an employee (upon production of a medical certificate) may access their accrued leave entitlements in order to cover their absence.

Clause 46. – Defence Force Reserves Leave

Defence force reserves leave has been amended in accordance with changes to the *Defence Reserve Service (Protection) Act 2001*.

Clause 48. – Witness and Jury Service

Witness and jury service have been clarified to ensure that payment for this type of leave is at the full rate of pay for shift employees.

Clause 49. – Cultural/Ceremonial Leave

Cultural/Ceremonial leave is leave to meet employee's customs, traditional law and to participate in cultural and ceremonial activities.

Cultural/Ceremonial leave does not provide employee's with additional leave entitlements, the leave is taken from the employees annual leave, long service leave or accrued time off.

Leave can be taken and deducted from long service leave but this is limited to full days only.

Clause 53. – Consultation/Introduction of Change

This clause has been amended to provide for a mechanism of consultation via "Change Liaison Groups" which may be established from time to time to provide a forum for consultation. These groups are not decision-making bodies. Decisions will continue to be made by the employer who is responsible and accountable for the effective and efficient operation of the area.

The Change Liaison Groups will determine their own operating procedures.