

ATTORNEY-GENERAL AND MINISTER FOR INDUSTRIAL RELATIONS

- 1. TITLE:** **The Retrenchment of Temporary Employees Engaged on a Full Time or Part Time Basis**
- 2. PURPOSE:** To detail the conditions applying to temporary employees whose work is determined to be surplus to requirements.
- 3. LEGISLATIVE PROVISIONS:** Sections 54, 147(4) and 148(4) of the *Public Service Act 2008*.
- 4. APPLICATION:** This directive applies to employees engaged on a temporary basis under sections 147(2)(A) and 148(2)(A) of the *Public Service Act 2008* who can reasonably be regarded as being employed on an on-going basis.

This Directive **does not apply** to tenured or casual employees or to temporary employees genuinely engaged for a specific period or specific task.
- 5. STANDARD:** The conditions and entitlements prescribed in the Schedule apply.
- 6. EFFECTIVE DATE:** This directive is to operate from **21 January 2011**.
- 7. VARIATION:** The provisions in the Schedule may be varied in accordance with certified agreements made under section Chapter 6, Part 1 of the *Industrial Relations Act 1999* or decisions of an industrial tribunal of competent jurisdiction.
- 8. INCONSISTENCY:** Sections 52 and 54 of the *Public Service Act 2008* and section 687 of the *Industrial Relations Act 1999* apply if there is a conflict with an act, regulation or industrial instrument.
- 9. SUPERSEDES:** Directive 22/05: *The Retrenchment of Temporary Employees Engaged on a Full Time or Part Time Basis*
- 10. PREVIOUS REFERENCES:** Directive 18/01: *The Retrenchment of Temporary Employees Engaged on a Full Time or Part Time Basis*
Directive 25/99: *The Retrenchment of Temporary Employees Engaged on a Full Time or Part Time Basis*
Part 6 of the Public Service Commissioner's Directive 19/97: "*The Employment of Temporary Employees Engaged on a Full Time or Part Time Basis*"

SCHEDULE

TEMPORARY EMPLOYEES WHOSE WORK IS SURPLUS TO REQUIREMENTS

GENERAL CONDITIONS

1. Definitions

- 1.1 “**Same employer**” for the purpose of this directive means the same:-
(a) chief executive as defined in section 10 of the *Public Service Act 2008*; or
(b) head of a Public Service Office as defined by section 21(2) of the *Public Service Act 2008*;

or

where a transmission of business or a machinery of government change has occurred, the successor chief executive or head of a public service office.

- 1.2 “**Severance benefit period**” is the period of time which equates to the payment of the severance benefit expressed in weeks (note this period of time does not include recreation leave, long service leave or the notice period).

2. Coverage

- 2.1 This directive applies to an employee engaged on a temporary basis under sections 147(2)(a) or 148(2)(a) of the *Public Service Act 2008*. It does not apply to a casual employee engaged under sections 147(2)(b) or 148(2)(b) of the *Public Service Act 2008*. It does not apply to an employee engaged for a specific period or task. It does not apply to tenured employees.

- 2.2 The employee may undertake work either in a position normally occupied by an officer or in one in which an officer does not ordinarily perform the work.

3. Requirement

- 3.1 This directive is to be read and operate in conjunction with the directive issued by the Public Service Commission Chief Executive on *Temporary Employment*.

4. Eligibility

- 4.1 When,

(a) at the initiative of the employer, the employee's engagement has been terminated prematurely for reasons other than misconduct or poor performance;

and

(b) the employee has completed a minimum of 12 months continuous service with the same employer;

and

(c) the same employer has extended the employee's engagement beyond the initial period of their employment or has renewed the employee's engagement several times over a lengthy period the employee is entitled to the severance benefit defined in part 5 of this Schedule.

- 4.2 When,

(a) the employee's engagement has not been renewed for reasons other than misconduct, poor performance or the employee's refusal of an offer of re-engagement or extension of engagement;

and

(b) the employee has completed a minimum of 12 months continuous service with the same employer;

and

(c) the same employer has extended the employee's engagement beyond the initial period of their employment or renewed the employee's engagement several times over a lengthy period the employee is entitled to the severance benefit defined in part 5 of this Schedule.

- 4.3 Continuity of service provisions of the *Industrial Relations Act 1999* are to be applied.

5. Entitlements

- 5.1 Eligible employees are entitled to a severance benefit of two weeks' pay per year of service and a proportionate amount for an incomplete year of recognised service with the same employer paid at the employee's substantive appointed level.

Example—

An employee undertook a 19 month temporary AO4 contract with department A. At the cessation of that contract the employee was subsequently offered a 12 month contract with department B. The employee undertook a further 2 consecutive 12 month contracts with department B. At the conclusion of the last contract with department B the employee became surplus to requirements.

Provided that the employee satisfies the eligibility requirements set out within this directive, only the 3 years with department B will be taken into consideration for calculating the severance benefit. The 19 month contract with department A is irrelevant as recognition of prior service for the purposes of calculating an employee's severance benefit only includes service with the same employer (same department).

- 5.2 The minimum payment is four weeks' pay, and the maximum is 52 weeks, provided that no employee shall receive less than the severance benefit under the Termination, Change and Redundancy Statement of Policy issued by the Queensland Industrial Relations Commission.
- 5.3 Entitlement to the cash equivalent of accrued long service leave shall be in accordance with the Ministerial Directive: *Long Service Leave*.
- 5.4 The notice provisions of the *Industrial Relations Act 1999* are to be applied.

6. Re-engagement

- 6.1 A person who has received a severance benefit who is subsequently re-engaged by the same employer as a consultant, contractor, or employee for a total cumulative period of more than twenty (20) working days during the severance benefit period is required to refund to the Crown a portion of their severance benefit. The person shall be entitled to retain only that portion of the severance benefit which covers the period of time for which they were not engaged by the same employer or a minimum of twenty days salary, whichever is the greater.

Example—

A person who receives a severance benefit of 30 weeks' pay may work only for a total cumulative period of 20 days in the 30 week period after receipt of the severance benefit without having to refund a portion of the severance benefit.

Once the person has worked in excess of 20 days within the 30 week severance benefit period, the person is entitled to retain that portion of the severance benefit applicable to the period of time for which they were not engaged by the same employer. The person would be required to refund to the Crown the remainder of the severance benefit.

- 6.2 A part-time employee who receives a severance benefit for the loss of one part-time job and who retains another part-time job in the Queensland public service, shall be required to refund the portion of severance benefit to which they are not entitled should they subsequently increase their part-time hours during the severance benefit period.
- 6.3 The same employer is responsible for implementing procedures to collect the refund.
- 6.4 A person not re-engaged by the same employer is entitled to retain their severance benefit.

Example—

A temporary AO5 employee who was determined to be surplus to requirements by department A receives a severance benefit of 13 weeks pay. The person then immediately undertakes a temporary 12 month contract with department B. The employee would not be required to refund their payment.

However, if the temporary AO5 employee in receipt of the 13 weeks severance benefit from department A is subsequently re-engaged with department A within the severance benefit period for more than 20 days (cumulative), the employee would be required to refund a portion of the severance benefit.