

Public Sector Industrial and Employee Relations

Level 4 75 William Street Brisbane QLD 4000 Title Long Service Leave
Telephone 32252346 Facsimile 32295943 Date 4 June 2001 Circular No. 4/01
"Domestic and other pressing necessity" as referred to in Ministerial Directive 1/01: Long Service Leave

Ministerial Directive 1/01: *Long Service Leave* provides, among other things, for pro rata long service leave after 7 years be paid to a public service employee on separation if a case can be made that the employee is resigning for reasons of "domestic or other pressing necessity".

This circular provides some information to help agencies evaluate applications for pro rata long service leave after 7 years on termination, based on the qualification of "domestic or other pressing necessity". The information is based on cases decided by courts and tribunals. It is intended that these be used as a guide only and are not exhaustive.

It is necessary to consider what is reasonable in the circumstances when assessing whether there is a domestic or other pressing necessity sufficient to justify the granting of pro rata long service leave.

The test of reasonableness could include whether there was a serious problem in the home although not necessarily a crisis.

Exaggerated or frivolous explanations are to be rejected but over-exacting standards are not to be adopted.

A material consideration would be whether a domestic situation was such that a reasonable person might feel compelled to seek its solution by making such a request.

Other considerations might include:

- Whether the situation was one that could be described as domestic or pressing.
- Whether the situation as stated was genuinely held by the employee to exist and was not simply a rationalisation.
- If it was not the sole cause for the employee's plan to resign, whether it was the real or motivating reason for it.
- Whether a reasonable person in the employee's position might feel compelled to resign.

In exercising discretion the employer must not unreasonably withhold consent and must not contravene any provisions of the *Anti Discrimination Act 1991*.

Some examples of domestic or other pressing necessity might include:

- changing jobs to lessen travel expenses when in a difficult financial situation;
- leaving a job because the night shift had become a strain on the employee's family relationships and repeated requests for a transfer to the day shift had not been met;
- leaving employment because the employer was relocating and the employee would be required to drive extra hours each way to work and the employee was not prepared to move house or to require the spouse to change jobs.

It is important to keep in mind the carer's leave provisions of the *Family Leave Award Queensland Public Sector* and the *Family Leave Award - State* in addition to similar provisions in the *Industrial Relations Act 1999*. Where entitlements to leave for purposes of family responsibility exist under industrial instruments these could be considered before utilising directives that rely on the common law explanations of the entitlement.

Further Enquiries

Please ensure when distributing this information within your agency that you nominate your own contact officer to respond to enquiries from staff within your agency.



JIM MCGOWAN
General Manager

The Division of Public Sector Industrial and Employee Relations provides policy advice and consultancy and training services to Queensland Government departments and agencies. It is part of the Department of Industrial Relations.

- Enquiries about this circular should be directed to Maria McGinity of Public Sector Industrial and Employee Relations on telephone 07 32252346.
- General enquiries about public sector industrial and employee relations matters should be directed to telephone 07 32252342.
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