

**LIDCOMBE CASTLEREAGH WASTE MANAGEMENT CENTRE
ENTERPRISE AWARD 1997**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

FAMILY PROVISIONS CASE - 19 DECEMBER 2005.

(No. IRC 4201 of 2005)

VARIATION

1. Insert into clause 20, Leave: Bereavement, of the award published 3 December 2004 (347 I.G. 539), the following new item (6):

(6) Bereavement entitlements for casual employees

- (a) Subject to the evidentiary and notice requirements in (2) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 26(i)(c)(2) of clause 26, Leave: Personal/Carer's.
- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

2. Delete 26(i)(a) of clause 26, Leave: Personal/Carer's, and insert in lieu thereof the following:

(a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 26(i)(c)(2) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 28, Leave: Sick of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

3. Delete 26(i)(b) of clause 26, Leave: Personal/Carer's, and insert in lieu thereof the following:

(b) The employee shall, if required,

- (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
- (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

4. Insert the following notation at the end of 26(i)(f) of clause 26, Leave: Personal/Carer's:

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 37, Grievance and Dispute Settling Procedures, should be followed.

5. Delete 26(ii)(a) of clause 26, Leave: Personal/Carer's, and insert in lieu thereof the following:

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 26(i)(c)(2) above who is ill or who requires care due to an unexpected emergency.

6. Delete 26(iii)(a) of clause 26, Leave: Personal/Carer's, and insert in lieu thereof the following:

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

7. Insert the following new item 26(iii)(d) into clause 26, Leave: Personal/Carer's, as follows:

- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

8. Insert the following new item 26(vii) into clause 26, Leave: Personal/Carer's, as follows:

- (vii) Personal Carers Entitlement for casual employees -

- (1) Subject to the evidentiary and notice requirements in 26(i)(b) and 26(i)(f) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 26(i)(c)(2) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

9. Delete clause 25, Leave: Parental, and insert in lieu thereof the following:

25. Leave: Parental

- (1) Refer to the *Industrial Relations Act 1996 (NSW)*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*.
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
 - (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(3) Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
- (i) to extend the period of simultaneous unpaid 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 employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under 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 employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer 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 employee held before commencing parental leave; and
- (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

10. This order shall take effect on and from 19 December 2005.

NOTE: This variation is made pursuant to section 50 of the *Industrial Relations Act* 1996, to give effect to the orders made by the Industrial Relations Commission of New South Wales (Full Commission: Wright J, President, Sams DP, Staff J and Ritchie C) on 19 December 2005, published 27 January 2006 (353 I.G. 731).

G. M. GRIMSON Industrial Registrar.

Printed by the authority of the Industrial Registrar.