

## DETERMINATION UNDER THE TEACHING SERVICE ACT 1980

### DETERMINATION NO. 6 of 2016

#### ANNUAL LEAVE AND PAYMENT FOR NON ATTENDANCE BY TEACHERS IN NON TERM WEEKS

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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 rescinds Determination 3 of 2009 – Annual Leave and Payment for Non Attendance by Teachers in Non Term Weeks
- 1.2 This determination does not apply to casual teachers, teachers employed at the Saturday School of Community Languages, teachers employed in non school based teaching service positions or chief education officers.

#### 2 Definitions

- 2.1 “Annual Holidays Act” means the *Annual Holidays Act*, 1944.
- 2.2 “Annual leave” means the paid four (4) or five (5) calendar weeks annual leave entitlement per year for full time officers of the Teaching Service.
- 2.3 “Eastern Vacation Division” means all that area of the State of New South Wales to the east of the Western Vacation Division.
- 2.4 “Leave without pay” means any approved unpaid leave granted on any day.

Where a teacher takes half pay leave including half pay extended (long service) leave one half of the total number of days on leave shall be deemed for the purpose of this determination only to be on leave without pay.

- 2.5 “Non term” means the period from and including the first day of the student vacation period up to and including the last day of the student vacation period.

- 2.6 "Ordinary pay" means that rate of pay prescribed for the class of employee under an award, determination or other industrial instrument or where appropriate, payments made to an employee in accordance with relevant legislation.
- 2.7 "Payments during non term week(s)" are not payments for leave or for holidays but are payments made to teachers during the period when they are not required by the employer to attend their workplaces.
- 2.8 "School term" means that period from and including the first working day following a student vacation, including teaching days and school development days etc that are held during week days, up to and including the last working day preceding the next occurring student vacation.
- 2.9 "Student vacation" means the total of the calendar days between the last day of each school term and the first day of the next school term occurring in a school year, inclusive of all public holidays occurring during those periods.
- 2.10 "School year" means that period from and including the first day of the first school term in any year, including teaching days and school development days etc that are held during week days, up to and including the last day of the next occurring summer vacation.
- 2.11 "Service" means:
- 2.11.1 those working days or the proportion of any working day when a teacher is on duty;
  - 2.11.2 those working days or the proportion of any working day when a teacher is on approved leave on full ordinary pay;
  - 2.11.3 the paid portion of any period of leave granted on half ordinary pay, expressed in the equivalents of full working days;
  - 2.11.4 unpaid sick leave of up to 20 teaching days in any school year.
  - 2.11.5 Those working days a teacher is absent on workers compensation.

- 2.11.6 An equivalent of 5 days or less approved leave without pay during any school year.
- 2.12 "Teacher" means permanent and temporary school teachers who work under teaching hours and conditions including teachers deployed from a teaching to an administrative position working teaching hours and duties and excluding teachers working in an administrative position working administrative hours and conditions.
- 2.13 "Teaching days" means the number of teaching and school development days occurring in a school year during which a teacher is required to attend at a school or other place of employment.
- 2.14 "Teaching Service Act" means the *Teaching Service Act*, 1980.
- 2.15 "Temporary Teacher" means a person employed in one engagement full time for four weeks or more or in one engagement for one to four days per week for two terms or more.
- 2.16 "Western Vacation Division" means the Western Division as defined by the Second Schedule to the *Crown Lands Consolidation Act*, 1913.
- 2.17 *Workers Compensation Act*, means the *Workers Compensation Act*, 1987.
- 2.18 "Working days" means the ordinary working days, Monday to Friday inclusive, of a school term including any public holiday which falls on an ordinary working day.

### **3. Annual Leave**

- 3.1 In lieu of the provisions under the Annual Holidays Act, permanent full time teachers shall be granted four (4) calendar weeks annual leave per school year. Permanent full time teachers in the Western Vacation Division shall be granted five (5) calendar weeks annual leave per school year.
- 3.2 Annual leave for teachers in the Eastern Vacation Division shall be taken during the first calendar non term week of the autumn, winter, spring and summer student vacations
- 3.3 Annual leave for teachers in the Western Vacation Division shall be taken during the first non term calendar week of the autumn, winter

and spring student vacations and during the first two calendar non term weeks of the summer student vacation.

- 3.4 Permanent part time and temporary teachers shall be entitled to annual leave on a pro rata proportion of the entitlement of a permanent full time teacher.
- 4. Workers compensation payments during periods of annual leave and during weeks of non attendance in non term weeks**
- 4.1 Teachers receiving workers compensation payments will receive payments for annual leave in accordance with this Determination and workers compensation payments as determined by the Department's Fund Manager in accordance with the Workers Compensation Act, for the period of annual leave that occurs during the non term periods of the year.
  - 4.2 Teachers receiving workers compensation payments will receive payments for the non term week(s) as determined by the Department's Fund Manager in accordance with the Workers Compensation Act, in accordance with the definition of ordinary pay at clause 2.6.
- 5. Annual Leave Loading**
- 5.1 Teachers who complete twelve (12) months continuous service during the period from 1 December to 30 November shall be entitled to an annual leave loading equivalent to 17.5% of four weeks normal salary, provided that payment cannot exceed the loading calculated on the maximum salary for a Clerk Grade 12 in the New South Wales public service.
  - 5.2 Teachers with less than twelve (12) months continuous service as at 30 November shall be entitled to annual leave loading calculated on a pro rata basis.
  - 5.3 Permanent part time and temporary teachers shall be entitled to paid annual leave loading on a pro rata proportion of the entitlement of a permanent full time teacher.
  - 5.4 Temporary teachers shall be entitled to annual leave loading on service from 1 December to 30 November whether or not the service is continuous.

**6. Non attendance during non term week(s)**

- 6.1 Unless otherwise required by the employer, teachers shall not be required to attend their workplaces during the non term week(s) of the student vacation periods.
- 6.2 Teachers will continue to be paid for the non term week(s), as appropriate under this Determination
- 6.3 Any payments made to a teacher during non term week(s) are not defined as and are not treated as payments for "leave" of any form.

**7. Pro rata payment for annual leave and for non attendance during non term week(s)**

- 7.1 Subject to clause 8 and sub clause 7.2 of this clause, and in lieu of the provisions of the Annual Holidays Act, a teacher shall during a school year be paid for annual leave and for non term week(s) proportional to service during the school year in accordance with the following formula:

$$N = \frac{S}{T} \times C$$

Where

- "N" is the number of paid non term days the teacher has accrued at that time;
- "S" is the number of days of service during the school year;
- "T" is the number of teaching days during the school year in the Eastern and Western Vacation Division as appropriate; and
- "C" is the number of student vacation days in the Eastern or Western Vacation Division as appropriate.

- 7.2 Notwithstanding the provisions of clause 7.1:

- 7.2.1 Where upon the occurrence of any student vacation, a teacher is, by reason of subclause 7.1 not entitled to be paid for the whole or any part of the non term week(s), the teacher's pay shall be adjusted accordingly.
- 7.2.2 Where at the commencement of a student vacation a teacher has an accrued entitlement in accordance with

subclause 7.1 in excess of the length of that student vacation the teacher shall be paid only for the period of the non term week(s).

7.3 A teacher who is transferred:

7.3.1 from the Eastern Vacation Division to a school in the Western Vacation Division is entitled to be paid for the last week of the Western Vacation Division summer student vacation, regardless of whether the teacher otherwise has an entitlement to payment for a period of non term week(s) for the summer vacation;

7.3.2 from the Western Vacation Division to a school in the Eastern Vacation Division is entitled to be paid for the non term week(s) of the summer vacation as though the teacher had been appointed at all material times to a school in the Eastern Vacation Division.

7.4 Upon the retirement or resignation of a teacher, or any other termination of that teacher's services, other than for willful misconduct, the teacher shall be paid any entitlement under subclause 7.1 which has not already been paid to the teacher during that school year. In calculating this entitlement, the last day of service will be the date of resignation, retirement or termination.

**8. Extended Leave**

8.1 Except as otherwise provided for in this Determination, extended leave on full pay is taken into account in full for the accrual of paid annual leave and payment for non term week(s), and extended leave on half pay is taken into account to the extent of half thereof, for the accrual of paid annual leave and payment for non term week(s).

8.2 All days taken on extended leave on half pay shall be aggregated and expressed as equivalent full days of service and the balance shall be deemed to be taken on leave without pay.

**9. Date of Effect**

9.1 The provisions of this Determination become effective from the date on which the Determination is made by the Secretary.

- 9.2 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.
- 9.3 Notwithstanding the provisions of sub-clause 9.1, the Department will continue to apply the provisions of the rescinded Determination 3 of 2009 until such time as the provisions of Determination 6 of 2016 are commenced by administrative action.

Signed:



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Mark Scott  
**SECRETARY**  
**DEPARTMENT OF EDUCATION**

Date: 19 September 2016