



## **ATTACHMENT TO CITY OF GERALDTON-GREENOUGH UNION COLLECTIVE AGREEMENT 2008**

### **NATIONAL EMPLOYMENT STANDARDS UPDATE SUMMARY**

**EFFECTIVE January 1 2010**

On January 1st 2010, the new National Employment Standards (NES) will come into effective as part of the Labor Government's Fair Work Act 2009. The NES forms the minimum conditions of employment for the City and as a result, our Collective Agreement must adhere to these minimum conditions.

Although our Collective Agreement provides a much higher standard of entitlements, there are some minimum conditions that have been changed under the NES that the City must now come into line with.

### **7.6 *Cashing-out annual leave***

**The following clause of the Collective Agreement shall now be read as follows:**

- 7.6.1 By agreement between the Employee and the City, a full-time Employee may request in writing up to 76 hours of accrued annual leave per annum be cashed-out. A part-time Employee may cash-out leave on a pro-rata basis.
- 7.6.2 Only one application can be made per calendar year.
- 7.6.3 Full-time Employees must maintain a minimum accrued balance of **152 hours** annual leave after the leave has been cashed-out. Annual leave cannot be cashed-out in advance of it being credited to the Employee. Part-time Employees must maintain a pro-rata balance of leave after cash-out.
- 7.6.4 Employees who wish to cash-out annual leave must complete the Request to Cash-Out Leave form.
- 7.6.5 Cashed-out annual leave will be paid at the rate of pay that the Employee receives at the time when the election is made.

**Comment:** The NES now requires an Employee to remain a balance of 4 weeks (152 hours) as opposed to 2 weeks (76 hours). Clause 7.6.1 remains unchanged.

## **7.7 Personal leave**

**The following clause of the Collective Agreement should now be read as follows:**

7.1.10.3 Paid leave is deducted from the Employees accrued personal leave.

**Comment:** The NES has removed the 'cap' for the maximum amount of paid carer's leave an Employee is entitled to take in any 12 month period. This was 76 hours, for a full-time Employee, or on a pro rata basis for part-time Employees. **This no longer exists.**

## **7.11.16 Special maternity leave**

**The following clause of the Collective Agreement should now be read as follows:**

7.11.6.1 Where the pregnancy of an Employee terminates **within** 28 weeks (other than the birth of a living child), and the Employee has not commenced maternity leave, the Employee may take unpaid special maternity leave for the period certified as necessary by a medical practitioner.

**Comment:** This clause used to read after 28 weeks.

## **5.1 Flexible Working Arrangements**

**The following NES provisions should now be read in conjunction with clause 5.1 of the Agreement**

### **Requests for flexible working arrangements**

1) Employee may request change in working arrangements

(1) An employee who is a parent, or has responsibility for the care, of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child:

(a) is under school age; or

(b) is under 18 and has a disability.

*Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.*

2) The employee is not entitled to make the request unless:

(a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or

(b) for a casual employee—the employee:

(i) has been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately before making the request; and

(ii) has a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

3) The request must:

(a) be in writing; and

(b) set out details of the change sought and reasons for the change.

4) The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.

5) The employer may refuse the request only on reasonable business grounds.

6) If the employer refuses the request, the written response must include the reasons for the refusal.

### **7.11.9 Adoption Leave**

**The following NES provisions should now be read in conjunction clause 7.11.9 of the Agreement:**

Unpaid pre-adoption leave

Entitlement to unpaid pre-adoption leave

(1) Subject to subsection (2), an employee (**including Casuals**) is entitled to up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required in order to obtain approval for the employee's adoption of a child.

(2) An employee is not entitled to take a period of unpaid pre-adoption leave if:

(a) the employee could instead take some other form of leave; and

(b) the employer directs the employee to take that other form of leave.

(3) An employee who is entitled to a period of unpaid pre-adoption leave is entitled to take the leave as:

(a) a single continuous period of up to 2 days; or

(b) any separate periods to which the employee and the employer agree.

*Notice and evidence*

(4) An employee must give his or her employer notice of the taking of unpaid pre-adoption leave by the employee.

(5) The notice:

(a) must be given to the employer as soon as reasonably practicable (which may be a time after the leave has started); and

(b) must advise the employer of the period, or expected period, of the leave.

(6) An employee who has given his or her employer notice of the taking of unpaid pre-adoption leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination as mentioned in subsection (1).

(7) An employee is not entitled to take unpaid pre-adoption leave unless the employee complies with subsections (4) to (6).

### **7.11.10 Transfer to a safe job**

**The following NES provisions should now be read in conjunction clause 7.11.10 of the Agreement:**

#### *Transfer to a safe job*

(1) This section applies to a female employee who is pregnant if:

(a) she is entitled to unpaid parental leave; and

(b) she has already complied with the notice and evidence requirements of section 20 for taking unpaid parental leave; and

(c) she gives her employer evidence that would satisfy a reasonable person that she is fit to work, but that it is inadvisable for her to continue in her present position during a stated period (the risk period) because of:

(i) illness, or risks, arising out of her pregnancy; or

(ii) hazards connected with that position.

(2) Without limiting the generality of paragraph (1)(c), an employer may require the evidence referred to in that paragraph to be a medical certificate.

(3) If this section applies to an employee:

**(a) if there is an appropriate safe job available—the employer must transfer the employee to that job for the risk period, with no other change to the employee's terms and conditions**

of employment; or

**(b) if there is no appropriate safe job available—the employee is entitled to take paid no safe job leave for the risk period.**

(4) An appropriate safe job is a safe job that has:

(a) the same ordinary hours of work as the employee's present position; or

(b) a different number of ordinary hours agreed to by the employee.

(5) Without limiting paragraph (3)(a), if the employee is transferred to an appropriate safe job for the risk period, the employer must pay the employee for the safe job at the employee's full rate of pay (for the position she was in before the transfer) for the hours that she works in the risk period.

(6) If the employee takes paid no safe job leave for the risk period, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the risk period.

(7) If the employee's pregnancy ends before the end of the risk period the risk period ends when the pregnancy ends.

## **7.11 Parental Leave**

**The following NES provisions should now be read in conjunction clause 7.11 of the Agreement:**

### **Extending period of unpaid parental leave: extending to use more of available parental leave period (As per NES Provisions)**

1) This section applies if:

- (a) an employee has given notice of the taking of unpaid parental leave; and
- (b) the period specified in the notice (the original leave period) is less than the employee's available parental leave period and:
- c the original leave period has commenced.

2) The employee's available parental leave period is 12 months, less any periods of the following kinds:

- (a) a period of concurrent leave that the employee has taken in accordance with the NES;
- (b) a period of unpaid parental leave that the employee has been required to take in accordance with the NES;
- (c) a period by which the employee's entitlement to unpaid parental leave is reduced section 76(6)(c) of the NES
- (d) a period of special maternity leave that the employee has taken.

#### *First extension by giving notice to employer*

(3) The employee may extend the period of unpaid parental leave by giving his or her employer written notice of the extension not later than 4 weeks before the end date of the original leave period. The notice must specify the new end date for the leave.

(4) Only one extension is permitted under subsection (3) of section 75 of the NES. Subsequent extensions by agreement with employer

(5) If the employer agrees, the employee may further extend the period of unpaid parental leave one or more times. No entitlement to extension beyond available parental leave period.

(6) Nothing in this section entitles the employee to extend the period of unpaid parental leave beyond the employee's available parental leave period.

### **Extending period of unpaid parental leave: extending for up to 12 months beyond available parental leave period (As per NES Provisions)**

#### *Employee may request further period of leave*

(1) An employee who takes unpaid parental leave for his or her available parental leave period may request his or her employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period.

### *Making the request*

(2) The request must be in writing, and must be given to the employer at least 4 weeks before the end of the available parental leave period.

### *Agreeing to the requested extension*

(3) The employer must give the employee a written response to the request stating whether the employer grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made.

(4) The employer may refuse the request only on reasonable business grounds.

(5) If the employer refuses the request, the written response under subsection (3) must include details of the reasons for the refusal.

### *Special rules for employee couples*

(6) The following paragraphs apply in relation to a member of an employee couple extending a period of unpaid parental leave in relation to a child under this section:

(a) the request must specify any amount of unpaid parental leave and unpaid special maternity leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;

(b) the period of the extension cannot exceed 12 months, less any period of unpaid parental leave or unpaid special maternity leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;

(c) the amount of unpaid parental leave to which the other member of the employee couple is entitled under section 70 in relation to the child is reduced by the period of the extension.

### *No extension beyond 24 months after birth or placement*

(7) Despite any other provision of this Division, the employee is not entitled to extend the period of unpaid parental leave beyond 24 months after the date of birth or day of placement of the child.

### **Employee who ceases to have responsibility for care of child**

(1) This section applies to an employee who has taken unpaid parental leave in relation to a child if the employee ceases to have any responsibility for the care of the child.

(2) The employer may give the employee written notice requiring the employee to return to work on a specified day.

(3) The specified day:

(a) must be at least 4 weeks after the notice is given to the employee; and

(b) if the leave is birth-related leave taken by a female employee who has given birth—must not be earlier than 6 weeks after the date of birth of the child.

(4) The employee's entitlement to unpaid parental leave in relation to the child ends immediately before the specified day.

## **7.16 Public holidays**

**The following NES provisions should now be read in conjunction clause 7.16 of the Agreement:**

### **Entitlement to be absent from employment on public holiday**

(1) An employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes.

Reasonable requests to work on public holidays

(2) However, an employer may request an employee to work on a public holiday if the request is reasonable.

(3) If an employer requests an employee to work on a public holiday, the employee may refuse the request if:

- (a) the request is not reasonable; or
- (b) the refusal is reasonable.

(4) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:

(a) the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;

(b) the employee's personal circumstances, including family responsibilities;

(c) whether the employee could reasonably expect that the employer might request work on the public holiday;

(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;

(e) the type of employment of the employee (for example, whether full-time, part-time, casual or shiftwork);

(f) the amount of notice in advance of the public holiday given by the employer when making the request;

(g) in relation to the refusal of a request—the amount of notice in advance of the public holiday given by the employee when refusing the request;

(h) any other relevant matter

### **Payment for absence on public holiday**

If, in accordance with this Division, an employee is absent from his or her employment on a day or part-day that is a public holiday, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or part-day.

*Note: If the employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment under this section.*

*For example, the employee is not entitled to payment if the employee is a casual employee who is not rostered on for the public holiday, or is a part-time employee whose part-time hours do not include the day of the week on which the public holiday occurs.*

## **Section Ten – Termination of Employment**

The following NES provisions should now be read in conjunction section 10 of the Agreement:

### **Notice of termination or payment in lieu of notice**

#### **117 Requirement for notice of termination or payment in lieu**

##### *Notice specifying day of termination*

(1) An employer must not terminate an employee's employment unless the employer has given the employee **written notice** of the day of the termination (which cannot be before the day the notice is given).

Note 1: Section 123 describes situations in which this section does not apply.

Note 2: Sections 28A and 29 of the Acts Interpretation Act 1901 provide how a notice may be given.

##### **In particular, the notice may be given to an employee by:**

- (a) delivering it personally; or**
- (b) leaving it at the employee's last known address; or**
- (c) sending it by pre-paid post to the employee's last known address.**

##### *Amount of notice or payment in lieu of notice*

(2) The employer must not terminate the employee's employment unless:

- (a) the time between giving the notice and the day of the termination is at least the period (the minimum period of notice) worked out under subsection (3); or
- (b) the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.

## **Division 12—Fair Work Information Statement**

### **124 Fair Work Ombudsman to prepare and publish Fair Work Information Statement**

(1) The Fair Work Ombudsman must prepare a Fair Work Information Statement. The Fair Work Ombudsman must publish the Statement in the Gazette.

Note: If the Fair Work Ombudsman changes the Statement, the Fair Work Ombudsman must publish the new version of the Statement in the Gazette.

(2) The Statement must contain information about the following:

- (a) the National Employment Standards;

- (b) modern awards;
- (c) agreement-making under this Act;
- (d) the right to freedom of association;
- (e) the role of FWA and the Fair Work Ombudsman;
- (f) termination of employment;
- (g) individual flexibility arrangements;
- (h) right of entry (including the protection of personal information by privacy laws).

(3) The Fair Work Information Statement is not a legislative instrument.

(4) The regulations may prescribe other matters relating to the content or form of the Statement, or the manner in which employers may give the Statement to employees.

### ***Giving new employees the Fair Work Information Statement***

(1) An employer must give each employee the Fair Work Information Statement before, or as soon as practicable after, the employee starts employment.

(2) Subsection (1) does not require the employer to give the employee the Statement more than once in any 12 months.

Note: This is relevant if the employer employs the employee more than once in the 12 months.