

Know your Rights: Leave without pay

What right or benefit does the clause provide?

Leave without pay is a discretionary leave set out in the State Service Regulations 2011, this means that the leave is not an entitlement, but rather that it may be granted by a Head of Agency upon application by an employee.

Maximum LWOP:

An employee who's successful in applying for LWOP can be granted a maximum of three years Leave without Pay – most commonly however, the leave is granted in 12 month intervals with an opportunity to reapply for an extension of the leave. Shorter periods can also be granted.

Fixed-term employees can only be granted LWOP at a maximum, until the end of their fixed-term contract (casual employees can't be granted LWOP.)

Granting LWOP:

When determining the outcome of an application for LWOP, consideration is usually given to:

- If the operational needs of the agency can be met in the absence of the employee, and whether or not the position can or would need backfilling;
- Whether or not there's benefit to the agency, and to the development of the employee.

What will happen to my position during my absence?

In your absence your position can be backfilled via a fixed-term contract until your return. You may apply to return earlier than the period of LWOP, which was specified in your application, and the use of a fixed-term contract helps to allow for that, as these contracts can usually conclude with two weeks' notice from either party. Having said that, an earlier return than specified in the application also needs approval by the Head of Agency.

Your position may remain open without backfill. You can relinquish your position to take a period of leave without pay. This means the position will then be considered vacant, allowing the position to be advertised and filled permanently or it may be abolished. In such a scenario, you retain your permanency as a State Service Employee, however you will not return to your previous position.

Upon your return you would be allocated new duties at your substantive classification. In a scenario such as this, an agreement would be developed specifying the terms and conditions before accepting the LWOP so you can provide your consent.

Superannuation:

Your employer doesn't make contributions to your superannuation during leave without pay. So you'll need to determine how to proceed in relation to your superannuation. We strongly encourage you to speak with your superannuation fund.