

From: s 22(1)(a)(ii)
To:
Subject: FW: Long service leave query - negative balance [SEC=UNCLASSIFIED]
Date: Monday, 25 February 2019 11:29:31 AM

UNCLASSIFIED

From: APSC - Workplace Relations <workplacerelements@apsc.gov.au>
Sent: Wednesday, 15 August 2018 11:08 AM
To: s 22(1)(a)(ii)
Subject: RE: Long service leave query - negative balance [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hello s 22(1)(a)(ii)

The APSC does have responsibility for administering the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act) and the *Long Service Leave (Commonwealth Employees) Regulation 2016* (LSL Regs), however, please note that the powers and functions conferred under the LSL Act were delegated to Agency Heads in 1996.

The 2013 advice to which you refer was formulated following the provision of legal opinion about the intent and interpretation of sections 18 and 19 of the LSL Act which state the method to be used to calculate long service leave credit.

That opinion indicated that, it is not considered that a credit can be a debt or liability owed by a person. The word 'credit' connotes a benefit in the nature of something owed to a person. The purpose of sections 18 and 19 of the LSL ACT is to provide the tools for working out the LSL credit of Commonwealth employees. Section 18 sets out the formula for calculating the credit, while section 19 defines an important element of the formula – the amount of long service leave previously granted. Both sections are ancillary to sections 16 and 17 and operate purely for the purposes of determining whether a person has a credit for the purposes of those provisions, and if so, the size of the credit.

In this context, sections 18 and 19 cannot be regarded as creating a debt simply because the application of these provisions in particular circumstances produces a negative number. All that this means is that there is no credit for the purposes of determining entitlements under section 16 or 17. There is nothing in sections 16–19, or in the LSL Act as a whole, to suggest that these sections may be used to calculate or create a debt rather than a credit.

If the application of the section 18 formula yields a negative number in these circumstances, this means that the person has no credit, and thus no entitlement to either a grant of leave or a payment in lieu under the LSL Act. It does not mean the person has a 'negative credit' such that they are liable for a debt owed to the Commonwealth (or a Commonwealth body) if their Commonwealth employment ceases before they acquire a credit. In our view, the LSL Act does not provide for or contemplate the concept of a negative credit.

Whilst the employee does not have a 'debt' the 'negative' is not forgotten or 'written off' for the purposes of accruing long service leave from that point forward. The credit remains at zero until such times as the calculation yields a positive result resulting in a credit to the employee. So, if the calculation yields, for example, a minus 0.6 months' result, the employee's balance would be 'zero' and the employee would not receive a credit. The following year, the calculation would be done again and the result would be minus 0.3 months so the employee's balance would be 'zero', with the employee receiving no credit. When the calculation was done the next year, the result would be 'zero' so the employee would not receive a credit. And, finally, the next year, the calculation would result in a plus 0.3 month credit so, only then would the

employee be credited with 0.3 of a month of long service leave.

So, essentially, the 'negative' remains a 'negative' but recorded as zero until such time that the 'negative' is fully accounted for.

I trust this information is of assistance and please note, the above advice is based on the information you have provided and our understanding of the LSL Act and is not legal advice. In this context, the Agency may wish to seek independent legal advice on this matter. If you do seek legal advice, please forward me a copy of the resulting advice in accordance with the Attorney-General's *Legal Service Directions 2017*.

Please note that this advice is only provided to human resource practitioners and senior executives in Commonwealth agencies only. It is, therefore, not to be disseminated to other recipients, including individual employees, without the express permission of the Commission.

Best regards

s 22(1)(a)(ii) | Conditions Policy
s 22(1)(a)(ii) | E: s 22(1)(a)(ii) | W: www.apsc.gov.au

From: s 22(1)(a)(ii)
Sent: Wednesday, 8 August 2018 10:53 AM
To: APSC - Workplace Relations
Subject: Long service leave query - negative balance [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi

I'm seeking your advice on what the current policy is for employees who have a negative long service leave balance due to recognising prior service with another organisation.

Historically, I was always under the impression that a negative long service leave balance was allowed as outlined in the 1994 edition of the Personnel Operations Program training workbook on 'Advanced Long Service Leave'

Prior service which has resulted in a negative credit of LSL

An employee may have State service recognised for LSL purposes, however these conditions may be less or more generous than Commonwealth conditions. Where an employee has been paid in lieu for State service and has then had their service recognised under the Commonwealth LSL Act, they may have a "negative" credit. This employee is not entitled to further LSL entitlements until their payment in lieu is subtracted and their balance under Commonwealth provisions becomes positive.

However, the more recent 2013 'Recognition of prior service' participant workbook prepared by the HR Operations Training Program (APSC) contradicts the above and states clearly the LSL Act does not provide for, or contemplate, the concept of negative credit.

3.10 Prior service that results in a 'negative credit'

If a payment in lieu of LSL is made to an employee under State or Territory legislation, this must then be accounted for in any calculation of long service leave credits on commencement in the APS.

Some state and territory schemes are more generous than the LSL Act and, in some of these circumstances, the calculation results in a negative. I.e. they have accrued LSL earlier, or have accrued a greater quantity, than they would have under the Commonwealth Scheme. When the calculation is done under the LSL Act provisions, the resulting credit may be less than they have been paid in lieu for.

If this occurs, it does not mean that the employee 'goes into the red or has a negative credit'. The employee will have a zero balance, i.e. the negative is automatically waived and they are not liable for any debt to the Commonwealth.

THE LSL ACT DOES NOT PROVIDE FOR, OR CONTEMPLATE, THE CONCEPT OF A NEGATIVE CREDIT

As mentioned above, we have an employee that will have a negative LSL balance due to recognising prior service with another organisation. Can you advise if I am to ignore the negative balance and reset that balance to Nil?

Please don't hesitate to contact me if you wish to discuss further.

Regards

s 22(1)(a)(ii)

Payroll Services | Financial Accounting Branch
Corporate Division | Department of the Prime Minister and Cabinet
p. s 22(1)(a)(ii)
e. s 22(1)(a)(ii) | w. www.pmc.gov.au
Ground Floor CentraPlaza | PO Box 6500 CANBERRA ACT 2600

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

Important: This email remains the property of the Commonwealth and is subject to the jurisdiction of section 70 of the Crimes Act 1914. It may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender.