



Australian Government

Department of Foreign Affairs and Trade

LOCALLY ENGAGED STAFF TERMS & CONDITIONS OF EMPLOYMENT

**UNITED STATES OF AMERICA
2023**



AMENDMENTS

| Date of amendment | Section | Summary of change |
|-------------------|---------|-------------------|
| | | |
| | | |

CONTENTS

| | |
|--|-----------|
| Amendments | 1 |
| 1. Introduction | 4 |
| 1.1 Welcome | 4 |
| 1.2 Scope | 4 |
| 1.3 Date of Effect | 5 |
| 1.4 Variation | 5 |
| 1.5 Policies and procedures..... | 5 |
| 1.6 Delegation to set terms & conditions | 5 |
| 1.7 Consultative arrangements | 5 |
| 1.8 Further information | 6 |
| 2. LES Employment framework..... | 7 |
| 2.1 Employment framework..... | 7 |
| 2.2 Engagement of LES | 7 |
| 2.3 Types of LES employment | 7 |
| 2.4 LES Employment Offers | 8 |
| 2.5 variations TO EMPLOYMENT OFFERS..... | 8 |
| 2.6 Internal transfers | 8 |
| 2.7 LES Code of Conduct..... | 8 |
| 3. Pre-conditions of employment | 9 |
| 3.1 Pre-engagement medical clearance | 9 |
| 3.2 Probity checks, security clearances and identification | 9 |
| 3.3 Non-national employees – visas..... | 9 |
| 3.4 Probation | 9 |
| 3.5 Fitness for Duty | 10 |
| 4. Remuneration & benefits | 11 |
| 4.1 Rate of salary..... | 11 |
| 4.2 Payment of salary..... | 11 |
| 4.3 Overpayment of salary | 11 |
| 4.4 Remuneration reviews..... | 11 |
| 4.5 Taxation | 12 |
| 4.6 U.S. Social Security Contributions | 12 |
| 4.7 Principal Pension Scheme (PPS) | 12 |
| 4.8 Superannuation guarantee contributions | 12 |
| 4.9 Workers' compensation | 12 |
| 4.10 Health insurance | 13 |

| | |
|--|-----------|
| 5. Hours of Work..... | 14 |
| 5.1 Hours of work..... | 14 |
| 5.2 Flexible work arrangements | 14 |
| 5.3 Excess duty | 15 |
| 5.4 Shift work..... | 16 |
| 6. Leave | 17 |
| 6.1 Leave entitlements | 17 |
| 6.2 Unauthorised absences | 21 |
| 6.3 Recall from leave..... | 21 |
| 7. Retirement, resignation and termination of employment..... | 22 |
| 7.1 Retirement | 22 |
| 7.2 Resignation | 22 |
| 7.3 Expiry of employment OFFERS | 22 |
| 7.4 Termination of employment | 22 |
| 7.5 Redundancy..... | 23 |
| 7.6 Separation entitlements | 24 |
| 7.7 Death of an employee | 26 |
| 7.8 Recovery of debts on cessation of employment..... | 26 |
| 8. Post-specific provisions | 27 |
| 8.1 North American Pension Scheme (NAPS) | 27 |
| 9. Glossary | 28 |

1. INTRODUCTION

1.1 WELCOME

Locally engaged staff (LES) are engaged overseas to perform work for the Department of Foreign Affairs and Trade (DFAT) or another Australian Government Agency at an overseas post. LES support and complement the professional capacities of Australian Public Service (APS) employees by providing essential in-country knowledge, networks, and continuity at overseas posts in over 100 locations. LES form an important part of our workforce and make a significant contribution towards the Australian Government's objective of advancing Australia's national interests and we welcome you on board.

1.2 SCOPE

This document is known as the 'Locally Engaged Staff Terms and Conditions of Employment – United States of America 2023 - and abbreviated to LES T&C USA. It outlines the terms and conditions of your employment with Australia's overseas posts in the USA. It applies to all LES engaged by the following posts, unless otherwise specified:

- Australian Embassy Washington DC;
- Australian Consulate-General New York;
- Australian Permanent Mission to the UN, New York;
- Australian Consulate-General Los Angeles;
- Australian Consulate-General Honolulu; and
- Australian Consulate-General Chicago.

These locations are collectively referred to as a "post" throughout this document.

These terms and conditions replace and supersede in their entirety the Locally Engaged Staff Terms and Conditions – United States of America 2019. Any previous version(s) and any prior arrangements, undertakings, or obligations, written or verbal, are hereby replaced.

These terms and conditions do not extend to LES engaged by Austrade, nor do they apply to contractors and third-party service providers who are not considered to be LES. Domestic staff employed by the [Head of Mission (HOM) / Head of Post (HOP)] and non-[HOM/HOP] Senior Executive Service (SES) officers are not subject to these terms and conditions.



1.3 DATE OF EFFECT

This document is effective from 17 November 2023 and will continue to apply until it is replaced by a new Terms and Conditions document.

1.4 VARIATION

The post reserves the right to vary or extend these terms and conditions at any time as a result of changes to local labour law or operational requirements. Any variations will be made in consultation with post management and relevant Agency Heads.

Such changes may include, but are not limited to:

- changes of a structural or technological nature;
- changes in methods of operation; or
- changes to operational hours.

1.5 POLICIES AND PROCEDURES

These terms and conditions are supported by a series of workplace management and Human Resource policies, guidelines and instructions and should be read in conjunction with the LES Human Resources Manual (LES HRM) and 'office circulars' issued by post management. Where particular conditions of employment are absent from this document, local labour law will apply.

For the avoidance of doubt, these terms and conditions override the LES HRM in the event of any inconsistency.

Agency-specific policies and procedures pertaining to employment matters do not form part of this document.

The contents of these terms and conditions of employment and associated policies and guidelines do not constitute the terms of a contract of employment, express or implied, or the guarantee of any benefits. These terms and conditions of employment should not be construed as a guarantee of continued employment. Regardless of any statement in these terms and conditions, employment with the post is in an 'at-will' capacity and either the employee or the post may end the relationship at any time and for any reason.

1.6 DELEGATION TO SET TERMS & CONDITIONS

The delegation (authority) to approve and/or amend these terms and conditions is outlined in the Secretary's Instrument of Delegation.

1.7 CONSULTATIVE ARRANGEMENTS

Post management will consult with LES about proposed changes to these terms and conditions and will provide an opportunity for employees to express their views before a final decision is made to implement a change.



1.8 FURTHER INFORMATION

This document has been designed to provide you with easy access to all of the information you need about your terms and conditions of employment as a LES member. Should you dispute the interpretation of a term or condition of employment or require clarification or additional information about any aspect of your employment, please contact your supervisor in the first instance, or liaise with the post management team.

2. LES EMPLOYMENT FRAMEWORK

2.1 EMPLOYMENT FRAMEWORK

In accordance with the Prime Minister's Directive: Guidelines for Management of the Australian Government Presence Overseas, DFAT is the lead agency managing the Australian Government's international presence. Each individual post is the legal employer responsible for the employment arrangements of the LES engaged by the post in the USA (excluding those LES engaged by Austrade).

2.2 ENGAGEMENT OF LES

LES are employed under local labour law as it applies to diplomatic and consular missions, as prescribed by the Vienna Conventions on Diplomatic and Consular Relations. The official delegation (authority) to engage LES at the post is outlined in the Secretary's Instrument of Delegation.

2.3 TYPES OF LES EMPLOYMENT

LES may be engaged in one of the following categories:

| Category | Description |
|--------------------------|--|
| Ongoing (permanent) | Engaged without a specified end date May work full-time or part-time hours |
| Non-ongoing (fixed-term) | Engaged for a specified term or task, up to a maximum of two continuous years May work full-time or part-time hours |
| Non-ongoing (ad hoc) | Engaged to perform duties that are irregular or on an intermittent basis for a finite period of time May work ad hoc (on demand) hours, up to a maximum of 12 continuous months |
| Temporary | Engaged on a temporary basis directly from the post's Temporary Employment Register on a non-ongoing (fixed-term or casual) basis, up to a maximum of six (6) continuous months |

Part-time employees

Remuneration and the range of benefits outlined in this document are calculated on a pro-rata basis for employees who have been approved to work part-time hours, unless otherwise required by local law.

If you are the principal A or G class visa holder, on the basis of your employment at post, you may not work part time.

2.4 LES EMPLOYMENT OFFERS

Post management will determine the type of employment offered for each LES position and all employment offers must be signed before an employee commences duty.

To avoid doubt and without prejudice to any rights the parties may have under the employment offer, the employee acknowledges that upon the expiration of non-ongoing (fixed-term or casual) employment the post is under no obligation whatsoever to extend all or any of the terms of the offer, enter into any further or other offers of employment with the employee, or provide any further employment to the employee. Any renewal of a non-ongoing or temporary employment offer is at the discretion of the post and further employment should not be assumed.

2.5 VARIATIONS TO EMPLOYMENT OFFERS

Your employment offer may be amended to reflect changes in employment arrangements, in accordance with the terms of the employment agreement and local labour law (where practicable). Supervisors will discuss employment variations with you at least five working days before the proposed variation date.

2.6 INTERNAL TRANSFERS

Post management reserves the right to re-allocate employees to different positions and sections within each location, if required, in order to meet the work priorities of each individual post. Transfers will occur after appropriate consultation with the affected employee, the appropriate Agency Head and approval by post management.

Transfers will be to positions that require the same or similar skills of the transferring employee and may occur within an agency as well as inter-agency. The affected employee will be transferred at their existing level of remuneration and WLS pay point. A transfer to a different section or agency within the same location is considered to be an internal transfer and does not require the resignation and re-engagement of the employee or affect accrued entitlements.

If you are transferred to another position, you shall be notified in writing no less than five working days prior to the transfer date.

If you are successful in obtaining a position in another location, please be advised that this is not considered an internal transfer, but new employment and you will be required to resign from your current position and sign a new offer of employment.

Please note that the Australian Consulate-General and the Australian Permanent Mission to the UN in New York are considered separate posts for the purpose of this section.

2.7 LES CODE OF CONDUCT

The LES Code of Conduct of the USA forms part of your conditions of employment. Upon commencement, you are required to sign an acknowledgement that you have read and understood the LES Code of Conduct and will abide by its contents. You are required to maintain conduct consistent with the LES Code of Conduct during your employment and should review the LES Code of Conduct regularly.

Alleged misconduct may be investigated formally and if you are found to have breached the Code of Conduct, you will be subject to disciplinary action, including possible dismissal.

3. PRE-CONDITIONS OF EMPLOYMENT

3.1 PRE-ENGAGEMENT MEDICAL CLEARANCE

Your employment may be subject to a satisfactory medical clearance to establish fitness for duty and your ability to perform the duties for which you will be engaged, only to the extent, however, that such medical clearance is objectively required by the type of your duties. Medical examinations will be conducted, where possible, by a post-designated physician and the cost will be covered by the relevant agency.

3.2 PROBITY CHECKS, SECURITY CLEARANCES AND IDENTIFICATION

A probity check and/or Australian Government security clearance may be required as a pre-condition of your employment, and you may need to undertake revalidation reviews on a periodic basis. False statements made by you relating to the security clearance or probity check will be deemed to be a violation of the LES Code of Conduct.

You are required to notify the post of any change in name, address or family composition (e.g. new partner or child). Security cleared employees should also refer to the DFAT Diplomatic Security Framework for requirements surrounding notification of planned travel and changes to personal circumstances.

3.3 NON-NATIONAL EMPLOYEES – VISAS

For all Australian or other non-host country national LES, your employment is conditional on you holding and maintaining a valid visa with relevant employment authorisation. It is your responsibility to obtain the relevant documents and ensure compliance with immigration regulations relating to your visa and employment authorisation at all times. Employment may be terminated on the basis of a breach in compliance with US immigration laws.

If such permission to remain in USA is not provided, or is refused, revoked, or otherwise not renewed, your employment will be terminated with immediate effect and the post will only be obliged to pay any compensation or similar payment in respect of such termination in accordance with the labour laws of the USA where applicable. All costs associated with your relocation to, from, and stay in the USA, including visa fees, are your personal responsibility. The post will provide limited administrative assistance with the lodgement of your relevant visa and work permit through the relevant authorities where required. The post is unable to assist with visa matters in relation to your spouse/partner or family members.

3.4 PROBATION

The engagement of all new ongoing (permanent) and non-ongoing (fixed-term) LES is subject to the satisfactory completion of a probationary period of three (3) to six (6) months and all mandatory training. There is no probationary period for non-ongoing (ad-hoc) or temporary employees.

During the probationary period, either you or the post may terminate your employment in accordance with local labour law (see Termination during probation).

The probationary period is included in your length of service for the purpose of calculating accrued entitlements.

3.5 FITNESS FOR DUTY

In certain cases, post management may require medical information to assist you to manage a medical condition in the workplace. Post management in consultation with the relevant Agency Head may direct you, by written notice, to undertake an independent medical examination to identify your fitness for duty.

You may be directed to undertake a fitness for duty appointment where:

- you have been absent from work due to illness or injury for an extended period of time (in excess of three consecutive working days);
- you have been or will be absent from work for which you are seeking to apply FMLA or other job protected leave;
- you are returning to work after being absent due to a serious or extended illness or injury;
- you are absent from work for health reasons and there are concerns that a return to work may expose you to further health risks;
- your health may be affecting your work performance;
- you may have been exposed to an infectious disease or harmful substances during the course of your official duties;
- an assessment needs to be made regarding your ability to participate in a return to work program;
- medical advice indicates a total and permanent incapacity; or

Your agency may have additional 'fitness for duty' requirements which apply and you should seek guidance from your Agency Head as required.

4. REMUNERATION & BENEFITS

The LES total remuneration package is comprised of salary and benefits as outlined in these terms and conditions and is based on comparability with local employers, conformity to local law and the post's operational requirements.

4.1 RATE OF SALARY

The work level standard (WLS) classification (LE1 to LE8) assigned to your position determines your rate of salary in accordance with the post's salary table.

4.2 PAYMENT OF SALARY

Your salary and any related payments are paid twice per month, on the first and fifteenth day of each month, directly to your nominated US-based personal bank account in accordance with the post's payment procedures.

All payments are calculated and paid in US dollars.

4.3 OVERPAYMENT OF SALARY

Any overpayment of salary or related benefits paid to you under these terms and conditions is repayable as soon as practicable, subject to reasonable arrangements being agreed between you and post management.

4.4 REMUNERATION REVIEWS

Remuneration reviews take a total package approach whereby LES salary and benefits are reviewed centrally by DFAT in Canberra. Reviews are conducted in accordance with the methodology outlined in the LES HRM.

Remuneration reviews:

- occur on an annual basis;
- may result in a new salary table being developed;
- use external labour market data sourced from remuneration experts;
- consider each post's ability to attract, motivate and retain LES in order to fulfil the Australian government's objectives; and
- take into account the Australian government's budgetary constraints, including the need for equitable, defensible and sustainable employment arrangements for all LES employees.

Annual salary increases should not be assumed. Any salary increase needs to be accommodated and sustained within agencies' operating and out year budgets and approved by the DFAT delegate in consultation with post management and relevant Agency Heads.

In considering applying an increase to LES salaries, DFAT Canberra will consider the post's (including Partner Agencies) capacity to pay a salary increase, retention rates of existing LES and ability to recruit suitable new employees.

An employee whose salary is higher than their WLS salary range will not receive an increase through the remuneration review process.

4.5 TAXATION

Taxation arrangements are deemed to be a personal matter between you and the relevant taxation authorities. Employees shall receive gross salary payments without any deductions for taxation and it is your personal responsibility to ensure you are aware of your own taxation obligations and to report your income to the relevant taxation authority. These arrangements may be subject to change and the post may elect to withhold tax on behalf of host government taxation authorities if required.

Australian residents for taxation purposes should refer to the guidance in the LES HRM.

4.6 U.S. SOCIAL SECURITY CONTRIBUTIONS

Upon application and the provision of proof of quarterly payment the post will reimburse eligible LES for the employer's share of social security and Medicare taxes.

4.7 PRINCIPAL PENSION SCHEME (PPS)

LES who are not members of the North American Pension Scheme or any Australian superannuation scheme towards which the post is already contributing the employer portion, are eligible to join the Principal Pension Scheme.

LES may opt to contribute up to 20% of their salary (including Higher Duties Allowance) to this scheme.

Agencies will match the member's contribution up to a maximum of 5% of annual salary (including Higher Duties Allowance).

There are no vesting periods of any kind applying to membership of this scheme.

Further information on the PPS is available from Human Resources.

4.8 SUPERANNUATION GUARANTEE CONTRIBUTIONS

For Australian residents for taxation purposes:

The post is required to make Superannuation Guarantee Contributions (SGC) to a complying superannuation fund on behalf of LES who are considered by the Australian Taxation Office (ATO) to be Australian residents for taxation purposes. Further guidance is available in the LES HRM.

4.9 WORKERS' COMPENSATION

For LES engaged to work for posts in Washington, New York and Chicago, workers' compensation is currently provided by Comcare for employees who are injured, or who contract a work-related illness in the course of their employment. In the event that a locally available workers' compensation scheme is identified, coverage will be provided by this scheme and the Comcare arrangement will cease. Further information on the policy arrangements can be provided by post management.

For LES engaged to work for posts in Los Angeles and Honolulu, the posts maintain a workers' compensation policy to provide coverage for employees who are injured, or who contract a work-related illness in the course of their employment. LES are covered by a local insurer and can consult the policy and any other written material from the insurance company for policy information. Further information can be provided by post management.



4.10 HEALTH INSURANCE

LES engaged to work at least 30 hours per week for a minimum period of three (3) months (20 hours per week with no minimum employment period for LES engaged to work at the Consulate-General in Honolulu) will be offered membership in the local health insurance scheme on a cost sharing basis between the employee and the employer. The scheme provides medical coverage for LES and their eligible dependants (as defined by the plan). These arrangements will be reviewed periodically and the provider is subject to change. Full details of the scheme, including employee costs, are available from Human Resources.

A LES member who is the spouse of an APS employee will not be eligible to maintain coverage under the A-based overseas health provisions if they elect to take up coverage under the health insurance scheme for LES.

5. HOURS OF WORK

5.1 HOURS OF WORK

The standard hours of work for the post are as follows:

| | |
|---------------------------|---|
| Five days per week | Monday to Friday |
| Hours per week | 37 hours and 30 minutes |
| Hours per day | 7 hours and 30 minutes |
| Start time | As set by the work unit |
| Breaks | Two paid rest breaks of 10 minutes each may be taken mid-morning and mid-afternoon and do not need to be recorded on attendance records. An unpaid meal break of 30 minutes should be taken every five hours of work and must be recorded on attendance records |
| Finish time | As set by the work unit |

These hours of work may be changed at post management's discretion by advance notice in writing.

For employees occupying the positions of Security Guards, you will be required to work 40 hours per week (80 hours per fortnight), according to your designated shift roster.

Subject to approval from post management, you may be engaged to work a range of hours within the post's standard working hours / working hours' bandwidth as outlined below:

Full-time hours: full standard hours of work set for the post

Part-time hours: agreement to work less than standard hours of work set for the post

Casual hours: as agreed with post management

N.B. For DC, NY and CA, employees who report for work on a regular workday must be paid for a minimum of four hours or for the duration of the scheduled work period if less than four hours, even if the employee is not required to work the full period

5.2 FLEXIBLE WORK ARRANGEMENTS

Within operational constraints and where permitted under local employment laws and visa requirements, and subject to approval by the Branch Head, HOM/HOP or post management, you may have access to flexible work arrangements on a case-by-case basis. The extent to which you can access flexible work hours will depend on operational requirements and appropriate security arrangements. If applicable, details on flex-time provisions can be obtained from post management or the Human Resources Hub in Washington. Flexible work arrangements should be reviewed every 12 months.

5.3 EXCESS DUTY

Non-Exempt Employment Status

Some positions are considered non-exempt from the overtime protection of the Fair Labor Standards Act on account of the nature of the work performed, compensation level, and the amount of discretion they may exercise in the fulfilment of assigned tasking.

The incumbents in such 'non-exempt' positions will be paid overtime for hours worked in excess of 40 hours per week. Overtime shall be paid at the rate of time and one half (150%) for each hour of excess duty worked. Non-exempt employees are not eligible to take TOIL, and will have limited access to flexible work arrangements, including flex-time provisions (if applicable). For DC, NY and CA, non-exempt employees who report for overtime on a non-standard workday must be paid for a minimum of four hours or for the duration of the scheduled work period if less than four hours (but not less than two hours), even if the employee is not required to work the full period. **Employees must receive approval prior to working overtime.**

Exempt Employment Status

Subject to prior approval, LES considered to be exempt from the overtime protection of the Fair Labor Standards Act, and who are directed to work additional hours, may be paid overtime if approved by the Agency delegate. Overtime, where approved, shall be paid at the rate of time and one half (150%).

LES occupying positions at LE7 and above are not eligible to be paid overtime but may access Time Off in Lieu (TOIL) provisions.

Overtime payment

Overtime payment is based on your regular base hourly pay, including any shift allowances or night span differential pay if applicable, at the time the excess duty was performed. A minimum payment of two hours applies for excess duty performed if not contiguous with standard working hours, even if actual time worked is less. This payment includes a component for travel time.

Overtime payments will be made twice per month, on the first and fifteenth day, in arrears with normal salary payments.

For Los Angeles only:

In the case of employees in Los Angeles, additional overtime is payable under local labour law, as per the following table:

| Period of excess duty | Loading to be applied | Conditions |
|---|-----------------------|--|
| Any period after the condition has been met | 200% | You must have already worked 12 hours in the standard working day or 8 hours on the 7th day of continuous work in the week |

Time off in lieu

Subject to operational requirements and prior approval from your supervisor, Exempt employees may take time-off-in-lieu (TOIL). TOIL accrues on an hour-for-hour basis for the period of excess duty worked, i.e. four hours of excess duty worked, results in four hours of TOIL.

Unless otherwise agreed with post management, accrued TOIL must be taken within 30 days and the maximum allowable TOIL credit at any one time is 37.5 hours (or one week equivalent for part-time employees).

TOIL credits cannot be cashed out or transferred to another position.

Provisions relating to TOIL whilst undertaking official travel are outlined in the LES HRM or the local instructions.

5.4 SHIFT WORK

Shift-workers, including security guards, may be rostered for duty at any time, on any day of the year, including weekdays, weekends, public holidays and at times when the post is closed.

Shift-workers are considered non-exempt from the overtime protection of the Fair Labor Standards Act (FLSA).

To compensate for irregular, longer and required standard hours, shift workers will be paid salary loadings of:

- I. 10% for rostered Monday – Friday shifts worked (including the post-observed public holidays);
- II. 25% for rostered Saturday and Sunday shifts worked; and
- III. 10% for night-span shifts starting between 6pm and 6am.

Shift allowance is not payable for paid time off (such as leave, rostered days off and public holidays not worked).

Shifts worked in addition to those rostered, hours worked in excess of a standard shift, and hours worked in excess of 40 hours per week, will be paid as overtime. Overtime pay will be based on time and one half of the hourly rate of pay including any applicable shift allowances or night span differential pay.

Any additional hours worked are to be approved in advance by the shift-worker's supervisor.

Shift-workers are entitled to the post-observed public holidays each year. Shift-workers who work on an observed public holiday will be paid an additional single time for the actual hours worked (equating to double-time for public holiday work) plus the applicable shift allowance on the basis that the public holiday is already compensated in regular wages.

6. LEAVE

6.1 LEAVE ENTITLEMENTS

Leave is an approved absence from duty during your normal (agreed) working hours. Approved leave may be with or without pay. The following leave entitlements apply to eligible LES and are pro-rated for part-time employees.

Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) is a law that provides eligible employees with job-protected leave for qualifying family and medical reasons.

Under the federal FMLA, eligible employees may take up to 12 weeks of unpaid leave during a 12-month rolling period from the date the employee first takes FMLA leave for the following reasons:

- The birth, adoption or foster placement of a child with you,
- Your serious mental or physical health condition that makes you unable to work,
- To care for your spouse, child or parent with a serious mental or physical health condition, and
- Certain qualifying reasons related to the foreign deployment of your spouse, child or parent who is a military servicemember.

An eligible employee who is the spouse, child, parent or next of kin of a covered servicemember with a serious injury or illness may take up to 26 work weeks of FMLA leave in a single 12-month period to care for the service member.

The FMLA provides for job-protected absence from the workplace. Employees are required to use available accrued paid personal/carers leave during any period of FMLA leave for medical reasons. Employees may use available accrued paid annual leave during any period of FMLA leave if they wish. FMLA leave runs concurrently with other types of leave, including paid personal/carers, annual or miscellaneous leave that is substituted for unpaid FMLA leave, and any state and local family leave time, to the extent allowed by law. Note that some states have a local equivalent of the FMLA that will apply simultaneously to the federal requirements. It also requires that the employee's group health benefits be maintained during the leave.

Employees are eligible for job-protected leave under federal FMLA if they have worked for their employer for at least 1,250 hours over the past 12 months.

Where both parents or multiple care providers are employed by the post, the job-protected leave benefit for the birth, adoption or placement for foster care of a child or for the care of a family member is shared amongst the post's employees. This may vary under State FMLA in certain circumstances.

Under FMLA, leave for the birth of a child or the placement of a child for adoption or foster care is to be taken all at once within 12 months following the birth or placement.

Leave taken for the care of a family member or for an employee's own serious illness may be taken all at once, intermittently, or on a reduced schedule basis.

In order for leave to be considered under the FMLA, evidence of the reason for leave must be provided. Absences for leave not covered under FMLA remain at the discretion of the supervisor or post management.

Further details on FMLA and other leave provisions are available from Human Resources.

| Type of leave | Entitlement | Eligibility/Criteria |
|-----------------------|-------------------------------|---|
| Public Holidays | 14 paid working days per year | <ul style="list-style-type: none"> - Employees are entitled to be paid salary for approved public holidays - Payment of salary will be based on the hours that would have normally been worked if that day was not a public holiday - Where a public holiday falls during a period of leave without pay there is no entitlement to receive payment as a public holiday |
| Annual leave | 22 paid working days per year | <ul style="list-style-type: none"> - Accrues progressively - A maximum accrual (cap) of 33 days applies - Timing of leave is subject to prior approval from your supervisor unless taken as part of FMLA leave |
| Personal/Carers leave | 18 paid working days per year | <p>Personal/carers leave can be used for the following reasons:</p> <ul style="list-style-type: none"> • personal illness or injury or caring for an eligible member of family/member of household who is sick or injured • attending scheduled medical appointments or for accompanying eligible member of family/member of household to scheduled medical appointments as necessary • if the employee is a victim of family or domestic violence or sexual abuse or to support an employee's family member if they are a victim of family or domestic violence or sexual abuse <ul style="list-style-type: none"> - Accrues progressively - You are required to notify your supervisor as soon as reasonably practicable (preferably prior to 10:00am on the day of the absence) - Medical certificates from a registered health practitioner or statutory declaration may be required for absences exceeding three consecutive working days and for absences in excess of a total of five working days in any one calendar year - Cannot be taken by two employees to care for the same person at the same time except where permitted under FMLA - Any unused personal/carers Leave will not be paid to you upon separation |

| | | |
|--|----------------------|--|
| Parental Leave | 6 weeks paid leave | <ul style="list-style-type: none"> - Provided the employee has 12 months' qualifying service, an employee may request an absence from the workplace up to 12 months following the birth, adoption or fostering of a child. The absence consists of paid pregnancy leave if applicable and paid parental leave. Available accrued paid annual leave credits may also be used during this period as well as Leave Without Pay. All leave must be taken within 12 months from the birth, adoption or fostering of the child. <p>An employee is entitled to take paid parental leave to care for a child after the:</p> <ul style="list-style-type: none"> • employee gives birth • employee's spouse or de facto partner gives birth • employee adopts or fosters a child under 16 years of age |
| Pregnancy leave | 6 weeks paid leave | <ul style="list-style-type: none"> - Provided the employee has 12 months' qualifying service, they are entitled to take paid pregnancy leave to manage their health during pregnancy and immediately following childbirth - Leave can be taken anytime from up to six weeks prior to the expected date of birth, either all at once or intermittently |
| Breastfeeding Absence | As reasonably needed | <ul style="list-style-type: none"> - Upon return to work from maternity leave, female LES may take a paid break during normal working hours for the purpose of breastfeeding or expressing breastmilk |
| Military, Military Caregiver and Duty Leave | Leave without pay | <ul style="list-style-type: none"> - Under federal FMLA, employees may take 26 working weeks of unpaid leave in a 12-month period to care for their family member who is a current member of the US Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness - Employees serving in the military may be entitled to unpaid leave for up to five years and returned to their previous or equivalent role - Additional unpaid leave may apply under State regulations if the employee's spouse or child is deployed on active duty - Leave may apply when active or inactive/reserve service duty employees are required to attend training 26 working weeks of leave in a 12-month period will be granted to an employee to care for their family member (spouse, son, daughter, parent or next of kin) who is a current member of the US Armed Forces, |

| | | |
|---|---|---|
| | | including a member of the National Guard or Reserves, with a serious injury or illness |
| Qualifying Exigency Leave | Leave without pay | <ul style="list-style-type: none"> - 12 working weeks of leave in a 12-month period for a “qualifying exigency” arising out of the foreign deployment of the employee’s spouse, son, daughter, or parent who is on covered active duty or has been notified of an impending call to covered active duty in the Armed Forces (including the National Guard and Reserves) |
| Pregnancy Disability Leave Leave as a Reasonable Accommodation under the Americans with Disabilities Act | Leave without Pay (for Los Angeles employees – leave can be taken up to four months as legislated under the Pregnancy Disability Leave) | <ul style="list-style-type: none"> - You are entitled to a reasonable period of leave from the date of recommendation by a health care provider for a disability - You may be entitled to transfer to a less strenuous or hazardous position if available - For Los Angeles employees – leave may be taken up to four months as legislated under the Pregnancy Disability Leave if you are disabled in relation to being pregnant or the childbirth. Paid Pregnancy Leave may be used during this period and substitute for Leave Without Pay <ul style="list-style-type: none"> • You may be entitled to reasonable accommodation for conditions related to pregnancy, childbirth or related medical conditions • You may take this leave intermittently or on a reduced schedule • You are required to provide 30 days’ notice period for foreseeable disability leave • The post will maintain your medical benefits while you are on this leave - Any reasonable accommodation provided by post must be recommended by a health care provider |
| Compassionate leave | 3 working days paid | <ul style="list-style-type: none"> - Employees are entitled to access compassionate leave on each occasion following: <ul style="list-style-type: none"> • the death of an employee’s family member or member of the employee’s household • Stillborn birth or miscarriage • the spouse or partner has a still born birth or miscarriage - Adequate documentation is required to support the application for leave - Employees may request additional unpaid Miscellaneous leave or request to use accrued paid annual leave credits to extend an absence for compassionate reasons |

| | | |
|---------------------------------|--|---|
| | | <ul style="list-style-type: none"> - Approval is at the discretion of the Agency Head |
| Miscellaneous Leave | Subject to HOM/HOP/SES Band 1 SAO/Agency Head approval and may be approved with or without pay | <ul style="list-style-type: none"> - May be granted to cover exceptional and unexpected absences from work, including leave for emergencies, natural disasters, and where serious circumstances beyond your control make it impossible for you to perform your day-to-day work - May be taken to accommodate other unpaid absences protected by various State requirements such as to attend a school activity, donate blood, bone marrow or an organ, volunteer for emergency services, or if the victim of a crime where other paid leave is not accessed - A public holiday that falls within a period of unpaid miscellaneous leave will not be paid |
| Leave Without Pay (LWOP) | Subject to HOM/HOP/SES Band1 SAO /Agency Head approval | <ul style="list-style-type: none"> - LWOP will not count as service for any purpose, unless otherwise specified under local labour law - A public holiday that falls within a period of LWOP will not be paid |

6.2 UNAUTHORISED ABSENCES

If you are absent from duty without approval for five or more consecutive days, you will be considered to have abandoned your employment and all salary and entitlements will cease until you either resume duty or are granted leave. Where contact cannot be made with you, the delegate will consider the appropriate action to take in accordance with local labour law.

6.3 RECALL FROM LEAVE

You may be recalled to duty in the event an emergency situation arises. Should this occur, you will be granted leave in lieu of this time as soon as possible after the emergency situation has finished. You may also seek reimbursement of reasonable non-refundable associated costs, subject to approval by post management.

7. RETIREMENT, RESIGNATION AND TERMINATION OF EMPLOYMENT

This section refers to your separation from the post upon cessation of employment and specifies the entitlements that apply. You should adhere to required notice periods and notify the post as far in advance as possible of your intention to cease employment with the post. All employment is “at will”.

7.1 RETIREMENT

Employees wishing to retire should provide at least four weeks’ notice in writing to post management.

The [separation entitlements](#) section outlines the entitlements that apply upon retirement.

7.2 RESIGNATION

You may voluntarily resign from the post at any time by providing four weeks’ notice in writing to post management. In certain circumstances, post management may consider a shorter period of notice.

The [separation entitlements](#) section outlines the entitlements that apply upon resignation.

7.3 EXPIRY OF EMPLOYMENT OFFERS

Non-ongoing (fixed-term and ad hoc) employment automatically terminates upon expiration of the offer of employment. Renewal of a non-ongoing employment offer after this time is at the discretion of post management and further employment should not be assumed.

The [separation entitlements](#) section outlines the entitlements that apply to expiry of non-ongoing employment offers.

7.4 TERMINATION OF EMPLOYMENT

Delegation

The official delegation (authority) to terminate the employment of LES at the post is outlined in the Secretary’s Instrument of Delegation.

Termination during probation

The delegate may approve termination of your employment in accordance with local labour law during the probationary period with one weeks’ notice. You will receive salary entitlements owing until the termination date and payment for any annual leave balance but are not entitled to any other payment in respect of termination.

Grounds for termination of employment

Termination of employment may occur in the following circumstances, including but not limited to:

- where an employee is excess to the requirements of the post (see clause 7.5 Redundancy);

- where the employee contravenes, or is in gross or serious breach of the LES Code of Conduct and/or the criminal laws of the United States of America (see clause 7.4 Misconduct);
- lack or loss of an essential qualification or condition of employment;
- non-performance or unsatisfactory performance of duties;
- inability to perform duties because of physical or mental incapacity, with or without a reasonable accommodation; and
- where the employee abandons their position for more than five working days without approval (see clause 6.2 Unauthorised absences).

The severance entitlements section outlines the periods of notice that will apply in the event a LES member's employment is terminated.

Instant dismissal for misconduct

The post may unilaterally terminate your employment if you behave in a manner which contravenes either the LES Code of Conduct, the criminal laws of the United States of America or any other lawful and reasonable direction given to you by your employer or your employer's representative.

Where employment is terminated under this provision you may be subject to instant dismissal, without any separation entitlement or payment of salary in lieu of notice unless required by local labour law.

7.5 REDUNDANCY

Non-probationary ongoing (permanent) employees may be made redundant if the position they occupy becomes excess to the requirements of the post and is abolished, redesigned or reclassified.

An employee is excess if:

- the duties they perform are no longer necessary for the efficient and economical working of the post;
- the services of the employee cannot be effectively used because of technological or other changes in the work methods of the post or structural or other changes in the nature, extent or organisation of the functions of the post; or
- the duties usually performed by the employee are to be performed at a different locality, the employee is not willing to perform duties at the new locality and no suitable alternative duties can be identified at the current locality.

This includes where a position is reclassified, where a position is no longer funded or where the duties performed are substantially changed such that the employee is no longer qualified to perform the role.

Redeployment

If you are made redundant because the position you hold has been abolished, the post will investigate the possibility of redeploying you to a similar vacant position at the same level or at a lower classification.

If you accept an offer of redeployment at a lower classification, your salary will be reduced at the time of redeployment to the highest pay point of the lower classification (e.g. from a LE4.2 to a LE3.5).

If you cannot be redeployed, are unwilling to accept an available position at a lower classification (and salary), or are unsuccessful in securing the newly advertised position, redundancy action will be initiated and you will be entitled to a termination payment as specified in the [separation entitlements](#) section.



7.6 SEPARATION ENTITLEMENTS

Upon cessation of employment, you will be paid in full for all entitlements that are owing including outstanding salary and accrued annual leave in accordance with local labour law. Any personal/carers leave will not be paid to you upon separation.

Any payments required under local labour law will also be made where applicable.

The following table outlines the required notice periods and any severance benefits that may apply in addition to accrued entitlements. You may receive a payment of salary in lieu of a notice period, subject to approval by the delegate.

The rate of salary used to calculate any severance pay shall be your gross base salary at the date of separation, excluding overtime, bonuses and/or any additional allowances, and shall be payable upon provision of a signed deed of release.

| Type of separation | Notice period | Severance entitlement |
|--|---|--|
| Resignation | Four weeks | None |
| Retirement | Four weeks | None |
| Redundancy | You will be provided with a notice period of four (4) weeks | <p>Provided you have at least 12 months' continuous service immediately prior to being made redundant, you will be entitled to:</p> <ul style="list-style-type: none"> - One week's salary for each completed year of service from 1 to 10 years - Two weeks' salary for each completed year of service in excess of 10 years - Any additional periods of employment less than a complete year will be pro-rated to the nearest whole month - Maximum entitlement of twelve months base salary at the time of redundancy |
| Termination of employment during probation | You will be provided with a notice period of one week | None |
| Employer initiated early termination of non-ongoing (fixed term) employment contract | You will be provided with a notice period of four weeks or as otherwise stipulated in the offer of employment | None |
| Early termination of non-ongoing (ad-hoc) and temporary employment | You will be provided with a notice period of one week or as otherwise stipulated in the offer of employment | None |
| Expiry of non-ongoing (fixed-term) employment contract | You will be provided with a notice period of four weeks or as otherwise stipulated in the offer of employment | None |
| Termination of employment for misconduct | No requirement to provide notice | May be liable to instant dismissal without payment of salary in lieu of notice |
| Termination of employment other than misconduct | You will be provided with a notice period of four weeks or as otherwise stipulated in the offer of employment | None |



7.7 DEATH OF AN EMPLOYEE

If an employee dies while employed by the post, all financial entitlements which have been accrued, but not previously paid to the employee, will be paid in full to the employee's nominated beneficiary/ies, next of kin or legal representative. Before any payment is made, the beneficiary will be required to prove their eligibility under local labour law to the satisfaction of post management.

7.8 RECOVERY OF DEBTS ON CESSATION OF EMPLOYMENT

Upon termination of employment, if you owe money to the post, or a debt arises, you are required to pay the money owed or the debt within five working days. The post also reserves the right to deduct the amount of the debt from any monies you are owed or become entitled to.



8. POST-SPECIFIC PROVISIONS

8.1 NORTH AMERICAN PENSION SCHEME (NAPS)

The NAPS scheme was closed to new members on 30 June 1998. Existing members are entitled to maintain their membership. Members are required to contribute 7% of their annual salary (including HDA) to this scheme.

Agencies will contribute 2.4% of an eligible LES member's annual salary (including HDA) to the fund to contribute to plan administration costs. This may be adjusted from time to time in accordance with directions from DFAT Canberra.

Details of pension entitlements can be located in the NAPS Handbook and enquiries directed to Human Resources.

9. GLOSSARY

| Term | Definition |
|---|---|
| “agreed hours” | the hours of work agreed within the post’s standard working hours / working hours’ bandwidth. May be on a full-time, part-time, or ad-hoc basis. |
| “Agency” | the departments or agencies of the Government of Australia which have representation at the post |
| “Agency Head” | the most senior representative of the agency, either at the post or in Canberra, or their nominated delegate |
| “APS employee” | Australian Public Servant employee, engaged under section 22 of the <i>Public Service Act 1999</i> |
| “Australian Embassy /Consulate-General/Permanent Mission” | the official diplomatic offices for the Government of Australia representation in the USA |
| “days” | unless otherwise specified are calendar days |
| “DFAT” | the Department of Foreign Affairs and Trade |
| “delegate” | the position-holder appointed with the official delegation under section 74 of the <i>Public Service Act 1999</i> to approve an action or request. This may be on behalf of an agency and may be held at the post or in Canberra. |
| “employee” | a person engaged overseas by the delegate under section 74 of the <i>Public Service Act 1999</i> to perform work at the Australian Embassy and Consulate-Generals in the USA irrespective of citizenship or residency including as an ongoing or non-ongoing (fixed-term, ad-hoc or temporary) employee |
| “employer” | the Agency Head (HOM/HOP) as delegated under section 74 of the <i>Public Service Act 1999</i> to engage persons overseas to perform duties overseas as employees in accordance with the Prime Minister’s Directive on the Guidelines for the Management of the Australian Government Presence Overseas |
| “employment offer” | the legal document establishing the employer-employee relationship between the post as one party and the individual as the other party |
| “HOM/HOP” | Head of Mission / Head of Post |
| “LES” | Locally Engaged Staff see also “employee” |
| “local labour law” | The United States legislation that covers the protection and rights of employees |
| Member of family/member of household | Spouse, domestic partner, child (including stepchild, foster-child, or adopted child), parent or parent-in-law, daughter-in-law, son-in-law, sibling, or other family member who also resides with the staff member. State and federal FMLA legislation may have a different definition of family member for the purposes of job-protected leave. |

| | |
|-------------------|--|
| “month” | a calendar month unless otherwise specified |
| “pay point” | the salary point within the salary range for a classification level which is the substantive salary payable to an employee |
| “post” | <ul style="list-style-type: none"> • Australian Embassy Washington DC; • Australian Consulate-General New York; • Australian Permanent Representative to the UN, New York; • Australian Consulate-General Los Angeles; • Australian Consulate-General Honolulu; • Australian Consulate-General Chicago; and <p>Any other new/additional/alternate location operating as a representative of the Australian Government managed by DFAT.</p> |
| “post management” | consists of the HOM/HOP, DHOM/DHOP and the SAO. In personnel matters, post management is represented by the SAO. |
| “SAO” | the Senior Administrative Officer of DFAT |
| “SES” | Senior Executive Service officers of DFAT |
| “supervisor” | an employee or agency representative with the responsibility for managing or supervising employees |
| “week” | is a calendar week unless otherwise specified |
| “WLS” | the work level standard used to classify positions |
| “year” | is a calendar year unless otherwise specified |