



Factsheet:

Taking leave

Leave entitlements for all employees are now covered by the National Employment Standards (NES). The NES outlines the minimum terms and conditions of employment, which employers must stick to – including leave.

There are lots of different types of leave covered in the NES:

- Annual Leave
- Parental Leave
- Personal/Carer's Leave
- Compassionate Leave – normally referred to as Sorry Business
- Community Service Leave
- Public Holidays
- Ceremonial Leave
- Long Service Leave.

All employees (except casual employees) are entitled to four weeks paid annual leave for each year of service with an employer. An employee's entitlement to annual leave accrues progressively throughout the year and is based on their ordinary hours of work and accumulates from year to year.

Shift employees are entitled to five weeks paid annual leave (if on continuous shifts)

It is up to the employer and the employee to agree on when and for how long paid annual leave can be taken. However an employer cannot refuse a reasonable request to take annual leave. Some awards and agreements include terms

that allow an employer to direct an employee to take annual leave if an employee has accrued an excessive amount of leave – check your award for more details.

If a public holiday falls during a period an employee is on annual leave – the employee is to be paid for the public holiday, the public holiday is not considered as an annual leave day.

Close down periods

Some awards and agreements allow for an employee to be directed to take annual leave in certain circumstances, such as during a Christmas shut down period. Those employees without enough accrued leave may be required to take leave without pay for a maximum of four weeks. Employers shutting down their business for a certain period must give their employees at least four weeks notice.

Check your award or agreement to see how this affects you.

Paying annual leave

When an employee takes annual leave, they must be paid at least their base rate of pay for the ordinary hours they would have worked during that time. Always check your award which may contain different provisions.

Annual leave loading is not a provision under the National Employment Standards; this is a provision under an award. Always check your modern award for annual leave loading requirements.

When employment ends, You are entitled to receive all untaken annual leave that you have accrued.

Some awards and agreements allow for annual

leave to be cashed out at any time. For this to happen there needs to be a separate agreement in writing each time. The employee must be paid the full amount that they would have been entitled to had they taken leave.

It is illegal for an employer to force an employee to make an agreement to cash out annual leave.

Personal/carer's leave

Employees accrue 10 days paid personal/carer's leave per year of employment. Casual employees are able to take unpaid personal/carer's leave. In simple terms, personal/carer's leave covers both sick leave and carer's leave and accrues according to the number of ordinary hours an employee works and carries over from one year to the next.

An employee can take paid personal/carer's leave:

- If they are unable to work because of their own personal illness or injury, or
- To provide care or support to a member of their immediate family or household member because of an illness, injury or emergency.

An employee must be paid for any personal/carer's leave taken at their base rate of pay for the ordinary hours they would have worked.

Remember that a public holiday needs to be paid as a public holiday if it falls while an employee is on personal/carer's leave.

Compassionate leave for Sorry Business

All employees, including casuals, are entitled to two days of compassionate leave to spend time with an immediate family member who has a life-threatening illness or injury or when someone dies. An employee can also take compassionate leave for "Sorry Business".

Compassionate leave for each occasion can be taken as:

- a single continuous two day period
- two separate periods of one day each
- any separate periods that the employer and the employee agree to.

Employees (except casual employees) must be paid at the base rate of pay for the ordinary

hours they would have worked during the period.

It is best for an employee to let an employer know as soon as possible about taking leave and how long the employee expects to be away from work. An employee cannot be absent from work and expect the employer to understand if the employee has not discussed their proposed absence in advance of taking it.

Employees who have taken compassionate leave may also need to be able to provide evidence, if asked by the employer – this is usually a medical certificate or a death certificate – check your modern award or agreement.

Community service leave

Employees (including casual employees) can take community service leave if they are involved with community activities such as voluntary emergency service duties and jury service. There is no set limit on how much community service leave an employee is able to take, however the reason for the absence must fit into the terms covered by the Fair Work Act 2009 and the employee must:

- give their employer notice of the absence as soon as possible
- state how long they expect to be away for
- provide evidence of why the community service leave was taken if asked by their employer.

Is community service leave paid?

Community service leave is unpaid, except when it comes to jury service.

Employees (although not casual employees) serving on a jury are entitled to make-up pay for the first 10 days that they are away. Please check your modern award to make sure of your obligations and responsibilities regarding community service leave. Make-up pay is the difference between any jury service payments (excluding expenses and allowances) and the employees base rate of pay for the ordinary hours they would have worked



Public holidays

Under the NES, the following days are public holidays:

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Saturday
- Easter Sunday
- Easter Monday
- 25 April (Anzac Day)
- Queen's Birthday holiday (on the day on which it is celebrated in a State or Territory)
- Labour Day
- 25 December (Christmas Day)
- 26 December (Boxing Day)
- Any other day gazetted by a State or Territory

There may be other public holiday days declared by States and Territories. NSW public holidays are listed on www.industrialrelations.nsw.gov.au



An award or an agreement may allow an employer and an employee to agree to swap another day for a public holiday.

It is an employees workplace right to be away from work on these days and be paid (except casual employees) for any ordinary hours they would have worked.

An employee is not entitled to payment for a public holiday if they would not have ordinarily worked on that day. For example – a part-time employee is not entitled to be paid for a public holiday if the public holiday falls on a day of the week which they would not have normally worked.

Ceremonial leave

Ceremonial leave generally allows employees to take unpaid leave to participate in a range of ceremonial or cultural activities, such as NAIDOC week. Employees need to talk to their employer about taking time off for these events. An employer may also require proof of attendance at these events. Modern Awards and Agreements may not provide an entitlement to ceremonial leave.

Long service leave

Long service leave is two months of paid leave given to employees after completing ten years' service with the same employer. There is another one month of paid leave for each additional five years' service.

When is an employee entitled to long service leave?

Full-time, part-time and casual employees who have completed a continuous period of at least ten years' service with the same employer are entitled to long service leave, even if:

- an employee is transferred between companies within the same group
- the business is sold and the employee continues to work for the new owner running the same business.

While most people are automatically covered by the NSW Long Service Leave Act, if there is a clause in an award or agreement covering long service leave which is more beneficial, then this will apply.

What if you have worked for less than ten years?

An employee who has completed five years (but less than ten years) of service is entitled to a long service pro-rata payment if the employee:

- resigns as a result of illness, incapacity, domestic or other pressing necessity
- is dismissed for any reason except serious and wilful misconduct or
- dies.

An employee who resigns or is terminated in this situation may be entitled to a pro-rata amount.

If an employee takes leave does it break the length of their service?

If an employer approves absences from work such as annual leave, this time away from work will not affect the amount of time included in an employee's years of service when calculating long service leave.

Some absences, such as parental leave, are not counted as time worked. These absences are not included in an employee's period of service when calculating long service leave.



How is long service leave paid?

Long service leave pay is based on whichever is the highest rate:

- the employee's current gross weekly wage for the last pay period prior to the leave being taken, or
- the average weekly ordinary rate of pay earned during the previous five years.

Bonuses and commissions received by the employee are averaged over the previous 12 months and added to the weekly rate used to calculate the leave payment.

Shift work, other penalty rates and overtime payments are not included.

Long service leave can be paid in a lump sum or as part of an employee's normal pay period.

How can long service leave be taken?

Long service leave can be taken in one continuous period of leave or, if the employee and employer agree:

- where the leave owing is two months – in two separate periods
- where the leave owing is between two months and nineteen and one-half weeks – in two or three separate periods
- where the leave is more than nineteen and one-half weeks – in two, three or four separate periods.

Can an employee be paid their long service leave instead of taking the leave?

The long service entitlement must be taken as leave. Payment without taking leave is only made on termination of employment.

When must long service leave be granted to an employee?

An employer is required to grant long service leave as soon as possible taking into account the needs of the business.

The employer must give their employee one month's notice of when the long service leave starts.

If both the employer and employee agree, long service leave can be postponed to a time that suits both parties better.

What are the employer's responsibilities?

An employer must keep full records of their employees' long service leave details. These records must be kept for at least six years after the employee has resigned or been terminated.

Can long service leave be taken in advance?

Yes, as long as the employer and employee both agree and if the leave request is for a month or more.

What if a public holiday occurs during long service leave?

An extra day must be included in the long service leave if it is a day the employee would have worked had they not been on long service leave.

→ The easiest way to calculate an employee's entitlement to leave is to use the leave calculator on the Fair Work website. The link for the calculator is listed below:

www.fairwork.gov.au/leave/leave-calculator/pages/default.aspx

Useful websites and contacts

Fair Work Ombudsman

Hotline: 13 13 94 www.fairwork.gov.au

Work Cover NSW

Hotline: 13 10 50 www.workcover.nsw.gov.au

NSW Industrial Relations

Hotline: 131 628 www.industrialrelations.nsw.gov.au



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