

Employee Leave Entitlements and Public Holidays



NOTE: SCHEDULE X EXTENSION

The variation which enabled award employees are entitled to take up to 2 weeks' unpaid pandemic leave has been extended.

This leave must now commence before 31 December 2021 and applies if the employee is required by government or medical authorities or a medical practitioner to self-isolate or is otherwise prevented from working by measures taken by the government or medical authorities in response to the COVID-19 pandemic.

Notice and evidence requirements apply. [Go to Schedule X of the Pastoral Award 2020 for further details.](#)

Employers and award employees can agree in writing that the employee take annual leave at half pay. This leave must commence before 31 December 2021.

[Go to Schedule X of the Pastoral Award 2020 for further details.](#)

Introduction

Breaking down information in the awards and the National Employment Standards (NES) can be a tricky business and it is sometimes difficult to understand exactly what is being said.

If you're not sure about something, or just want to be certain that you have understood the information correctly, it is best to seek professional independent advice. Check with an Industry Adviser, lawyer or contact the [Fair Work Ombudsman](#)

It is better to ask for help at the start than to find out you haven't been paying someone the correct entitlements. If this is the case, you could find yourself with a costly back pay bill.

This information applies to all [national system employers in WA](#) and to all private sector employers in the other states and territories.

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Annual leave

How much annual leave do I have to pay?

All full-time employees are entitled to four weeks paid annual leave each year. Part-time employees accrue paid annual leave on a pro-rata (proportional) basis. Essentially, if your employee only works half the hours of a full time employee, they will only receive half the amount of paid annual leave. [The Fair Work Ombudsman web site has a handy tool](#) to help you calculate how much leave you need to pay your employees.

The Pastoral Award 2020, the Horticulture Award 2020 and the Cotton Ginning Award 2020 all provide for a 17.5% annual leave loading to be paid to employees when taking annual leave and upon termination if any annual leave is paid out.

Casual employees do not receive paid annual leave as the 25% casual loading compensates then for this entitlement.

When can my employees take annual leave?

Annual leave can be taken at any time that is agreed upon by both you and the employee and you can't refuse any *reasonable* request by the employee to take annual leave.

The Pastoral Award 2020 (clause 20.8) and the Horticulture Award 2020 (clause 22.7-22.9) Cotton Ginning Award 2020 (clause 23.5-23.7) provide for the situation where an employee has accrued excessive leave.

As of 29 July 2016 employers and employees covered by the Pastoral Award 2020 the Horticulture Award 2020 and the Cotton Ginning Award 2020 can agree in writing to cash out annual leave. The maximum amount of annual leave that can be cashed out in any 12-month period is 2 weeks and employees must keep a minimum of 4 weeks accrued leave. The Award provides a template written agreement in a Schedule at the end of the award. This agreement must be kept with the employee's employment records.

Award employees can also cash out accrued annual leave if this is part of a formal workplace agreement and the employer agrees. Each agreement to cash out annual leave must be in writing. Employees must keep 4 weeks of annual leave to be taken as leave.

Non-award employees can cash out annual leave by agreement with the employer.

See the Resources section below for Cashing Out Annual Leave Agreement Templates.

Accrued annual leave must be paid out on termination.

NSW Long service leave changes

Long service leave is paid leave granted to employees to recognise a long period of service to the employer.

NSW has passed legislation to give workers earlier and more flexible access to long service during the COVID-19 pandemic and possibly providing a model for other states.

The amendments to the [1955 Long Service Leave Act](#) enable long service leave to be taken with less than the current one month's notice and in blocks of less than a month, where there is agreement between employer and employee.

The amendments proposed will sunset initially after six months,. However, provisions have also been made to allow the Government to apply these changes for up to 12 months, if circumstances require this.

[Read more about NSW state industrial laws](#)

NOTE

Annual leave entitlements are provided for in the National Employment Standards and the Pastoral Award 2020, the Horticulture Award 2020, and the Cotton Ginning Award 2020. See the [NES and annual leave Fact Sheet](#) for more detailed information.

Keeping records

It is important that you [keep a record](#) of all leave applications, leave taken, and leave owing. If you have a lot employees this can be very time consuming and you may want to speak to your accountant about using a computerised accounting system like Quickbooks or MYOB. You can also use the employment annual leave record below to help you keep a written record of all employee annual leave.

IT'S THE LAW

Under the Fair Work Act, employers must keep written time and wage records for all their employees for at least 7 years. This includes records of leave taken and leave balances.

RESOURCES AND REFERENCES

[The Fair Work Ombudsman leave entitlement calculator P.A.C.T.](#) - Web Link
[NES and annual leave Fact Sheet](#) - PDF
[Employment annual leave record](#) - Word Doc
[Application for leave](#) - Word Doc
[Agreement to Cash Out Annual Leave: Award](#) - Word Doc
[Agreement to Cash Out Annual Leave: Non Award](#) - Word Doc
[Quickbooks](#) - Web Link

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Long service leave

Long service leave is provided for by State and territory laws. These laws vary. For more information about long service leave, you should contact your local state long service leave department.

NOTE

In Victoria as of 1 November 2018, the Victorian government has made significant changes to the laws about long service leave.

[Click to read more about this on the Business.vic.gov.au Website](#)

RESOURCES AND REFERENCES

[Leave calculating tool – Fair Work Ombudsman](#) - Website
[Employment Long service leave record](#) - Word Doc

Victoria - [Business Victoria - Workforce](#) 1800 287 287

New South Wales - [NSW Industrial Relations](#) 131628

Queensland - [Department of Justice and Attorney General](#) (07) 3225 2299

Northern Territory Commissioner for Public Employment (08) 8999 5511

Western Australia [WageLine](#) 1300 655 266

South Australia [SafeWork SA](#) 1300 365 255

Tasmania [Workplace Standards Tasmania](#) 1300 366 322

Australian Capital Territory [Worksafe ACT](#) (02) 6207 3000

Public holidays

The National Employment Standards provide that all employees are entitled to be absent from work on a public holiday. Permanent employees are entitled to receive payment for the public holiday at their base rate of pay for ordinary hours of work. Part time employees are entitled to public holiday pay if they would normally be rostered for work on that day. Casual employees are entitled to public holiday pay if they were rostered on for work on that day.

Award free Employees and Employers can agree to substitute another day for the public holiday.

Awards provide for additional payment to be made if employees work on a public holiday and some awards provide for employers and employees to substitute another day for the public holiday. See [Horticultural Award 2020 \(clause 27.2\)](#) and [Pastoral Award \(clause 25.2\)](#).

It is important to remember that employees cannot be required to work on a public holiday. You can ask an employee to work on a public holiday, if the request is reasonable, but they may refuse a request to work if they have reasonable grounds.

Think about the following things before deciding if it is 'reasonable' to ask your employees to work on a public holiday.

- what are the employee's personal circumstances? Do they have family commitments or children they may need to look after?
- are you offering the employee more money or penalty rates for giving up their public holiday?
- do you really need someone at the workplace for this day?
- how much notice have you given the employee before requesting they work on the public holiday?
- what does the award or agreement say about working on public holidays?

Make sure you check the industry specific information at the end of this section for more details about the award that applies to you.

RESOURCES AND REFERENCES

For a full list of current public holidays by state visit the [Fair Work Australia Website](#)

[NES and Public Holidays](#) – PDF

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Parental leave

Paid parental leave

The federal paid parental leave scheme came into operation on 1 January 2011. It is an entitlement for working parents of children born or adopted after 1 January 2011. Under the scheme, parents are provided with pay at the minimum wage for a maximum of 18 weeks.

All working parents, including full-time, part-time, self-employed, casual, contract and seasonal employees, are entitled to parental leave pay, providing they meet the eligibility criteria.

If you work for a family business (such as a farm), you may also qualify even if the business is not generating any income, so long as you are undertaking the work for financial gain or benefit.

Paid parental leave can be taken at any time in the first 24 months following the birth or adoption.

Parental leave pay is taxable and can be received at the same time as annual leave, long service leave or other employer funded paid parental leave. See the [paid parental leave fact sheet](#) for more information and resources.

Unpaid parental leave

The [NES](#) outline the minimum entitlements regarding unpaid parental leave.

All employees in Australia are eligible for unpaid parental leave if they have completed at least 12 months of continuous service with their employer. This includes casual employees, but only if:

- they have been employed by the employer on a regular and systematic basis for a sequence of periods over at least 12 months
- had it not been for the birth (or expected birth) or adoption (or expected adoption) of a child, they would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Resources and References

[The Fair Work Ombudsman leave entitlement calculator P.A.C.T.](#) - Web Link
[NES and annual leave Fact Sheet](#) - PDF
[Employment annual leave record](#) - Word Doc
[Application for leave](#) - Word Doc

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Personal and other leave

Personal / carer's leave

Sick leave is now called personal / carer's leave.

Under the [National Employment Standards](#), full-time employees (other than casuals) are entitled to 10 days' paid personal/carer's leave for each year of service. Personal/carer's leave accrues progressively throughout the year and any untaken leave accumulates from year to year. Part-time employees accrue personal leave on a pro-rata (proportional) basis according to the hours worked.

Personal/carer's leave will continue to accrue on any paid leave (such as annual leave) but will generally not accrue over periods of unpaid leave. (The exception to this is when the leave is classified as community service leave). Payment for personal/carer's leave is at the employee's base rate of pay for [Ordinary Hours of Work](#)

Personal leave can be taken when an employee is unable to work due to personal illness or injury, and employers can require reasonable evidence of the need for the leave. This is usually in the form of a doctor's certificate.

Carer's leave is leave to provide care or support for a member of the employee's household or immediate family due to personal illness, injury or an unexpected emergency.

Immediate family is defined in the [National Employment Standards](#) as a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee or the employee's spouse.

Compassionate Leave

Employees are also entitled to two days' paid compassionate leave per occasion (unpaid for casual workers). Compassionate leave can be taken as a single continuous two day period, two separate periods of one day each, or any other periods that are agreed to by both you and the employee.

Compassionate leave is available for employees to spend time with a serious of their immediate family or household who has a personal illness or injury that poses a serious threat to their life. It is also available for employees after the death of a member of the employee's immediate family or household. *You do not have to pay out accrued personal / carer's leave on termination.*

Family and Domestic Violence Leave

Employees are entitled to 5 days' unpaid leave per year to deal with family and domestic violence.

Go to clause 24 of the Pastoral Award 2020, Clause 26 of the Horticulture Award 2020 or clause 27 of the Cotton Ginning Award 2020 or section 106A of the Fair Work Act for further information about the entitlement to Family and Domestic Violence Leave and how it operates including the requirement for notice.

For more information, visit the [Family & domestic violence leave page of the Fairwork.gov.au website](#)

NOTE

Employees must give you notice as soon as practicable before taking any personal / carer's leave or compassionate leave.

Unpaid carer's leave

The [National Employment Standards](#) state that employees, including casual employees, can have two days unpaid carer's leave for each occasion as required. Unpaid carer's leave can only be taken by permanent employees if their personal leave has been used up.

Employees are also entitled to unpaid [community service leave](#) for voluntary emergency activities or natural disasters. Employees (excluding casual employees) who are required to attend jury service are entitled to be paid for a period of up to 10 days. See the [community service leave fact sheet](#) for more information.

NOTE

Employees (other than casual) are entitled to 'make up pay' for the first 10 days of jury duty. This pay is the difference between any jury service fee and the employee's base rate for normal hours worked.

RESOURCES AND REFERENCES

[Introduction to the NES](#) - PDF
[Employment personal leave record](#) - Word Doc
[Personal / carer's leave and the NES](#) - PDF
[Community service leave and the NES](#) - PDF
[Statutory declaration form](#) - PDF

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Excessive leave changes

Terms about excessive leave in the Pastoral Award 2020 changed as of 29 July 2017.

Accrued annual leave is regarded as 'excessive' if more than eight weeks' annual leave has accrued. If employees have accrued excessive annual leave, the employer and the employee can discuss ways to reduce or eliminate the amount of leave owing.

If the employer and the employee cannot agree on the taking of the leave, clauses 20.6, 20.7 and 20.8 of the Pastoral Award 2020, clauses 22.7, 22.8 and 22.9 of the Horticulture Award and clauses 23.5, 23.6 and 23.7 of the Cotton Ginning Award 2020 provide a procedure for the employer to direct the employee to take the excessive leave and a procedure for the employee to require the employer to grant the excessive leave.

These provisions only apply if there is an excessive leave balance (more than eight weeks' leave accrued).

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Also relevant [Employers](#)