

Factsheet Five

WHAT LEAVE CAN I TAKE?

There are many different types of leave that you can take. Some types of leave are paid and some are unpaid. Some types of leave are only available to permanent employees and others are available to casual employees. Some types of leave are guaranteed to all employees under the National Employment Standards (NES). For others you will need to check what you are entitled to under your Modern Award, agreement, contract or legislation. The following is a basic guide to the types of leave you may be entitled to.

Your Modern Award, agreement or contract may supplement the NES terms about leave, as long as this does not have a detrimental effect on you, the employee. For example, your agreement could allow you to take twice the annual leave required by the NES but at half the rate of pay. The NES provides for a *minimum* amount of leave. This means that you may be entitled to additional leave under your Modern Award, agreement or contract.

Annual Leave

Permanent full time workers and permanent part time workers

Under the NES, permanent full-time workers are entitled to 4 weeks of paid annual leave each year, and permanent part-time workers are entitled to this on a pro-rata basis. Some shift workers are entitled to 1 extra week of annual leave each year. An employer may offer more than 4 weeks paid annual leave. For example Northern Territory Government employees have an entitlement of 6 weeks annual leave per year.

Annual leave accrues progressively and accumulates from year to year.

Your employer cannot unreasonably refuse your request for annual leave. Your employer can direct you to take annual leave, but only if this is reasonable.

If you are on annual leave and a public holiday occurs this does not count towards your annual leave. Also, if you need to take personal leave whilst on annual leave and this is approved, these days do not count towards your annual leave. Personal leave whilst on annual leave usually needs to be supported by a medical certificate. At the finalisation of your employment (whether you are terminated or you resign) you are entitled to be paid out

any untaken annual leave including any leave loading entitlement.

You cannot take or accrue any paid or unpaid leave (except parental leave) while on workers' compensation.

Casual employees

Casual employees are not entitled to paid annual leave under the NES.

Fixed term contract workers

Fixed term contract employees are generally entitled to annual leave. Usually the allocation of leave is estimated at a pro-rata basis. For example if you are employed on a fixed contract for 6 months, you would be entitled to 2 weeks annual leave (rather than 4 weeks which is the full annual entitlement under the NES).

Cashing out annual leave

You are entitled to cash out your annual leave, as long you will still have 4 weeks leave remaining, and a term in your agreement or Modern Award allows this. Your request and your employer's response must be in writing. It is against the law for your employer to influence or pressure you to cash out your annual leave.

Leave loading

Annual leave loading is an additional payment, usually 17.5%, which you may get on top of your ordinary pay while you are on leave if you are covered by a Modern Award or agreement, unless your Modern Award, contract or agreement expressly excludes it.

If you are not covered by a Modern Award or agreement, and are only covered by the NES, you are not automatically entitled to leave loading, although your employer may choose to provide it.

Don't forget if you are entitled to leave loading, it is also payable on termination.

Personal / Carer's and compassionate leave (sick leave)

Under the NES, all **permanent** employees are entitled to:

- 10 days of paid personal/carer's leave per year;
- a further 2 days of unpaid carer's leave per occasion if all paid leave has been used up; and
- 2 days of paid compassionate leave per occasion.

Under the NES, **casuals** are entitled to:

- 2 days of unpaid carer's leave per occasion; and
- 2 days of unpaid compassionate leave per occasion.

Personal/carer's leave can be taken if:

- You are not fit to work because of personal illness or injury; or

- You need to provide care or support for a member of your immediate family or household due to personal illness or injury, or an unexpected emergency. The definition of immediate family includes your spouse, de facto partner, child, parent, grandparent, grandchild or sibling, and your spouse or de facto partner's child, parent, grandparent, grandchild or sibling.

Compassionate leave can be taken if a member of your immediate family or household dies or has an illness or injury that poses a serious threat to their life.

For permanent employees, leave accrues progressively and is cumulative. The number of paid carer's leave days which can be used is no longer capped at 10 days per year. If you are on annual leave and a public holiday occurs or you become ill and would, if not on annual leave, be entitled to take sick leave, then these days will not count as annual leave. Instead, they will be taken as public holidays or sick leave. You cannot take or accrue any paid or unpaid leave (except parental leave) while on workers' compensation.

Cashing out personal/carer's leave

You can request to cash out personal/carer's leave entitlements, as long as a minimum balance of 15 days leave (or pro-rata for part-time workers) is available after cashing out. However, you can only cash out personal/carer's leave if a term in your agreement or Modern Award allows this. Your request and your employer's response must be in writing. It is unlawful for an employer to influence or pressure you to make you cash out your personal leave. If you are not covered by a Modern Award or agreement you cannot cash out personal/carer's leave.

Your responsibilities

If you need to take personal/carer's leave you have to notify your employer as soon as reasonably practicable. Your employer may ask you to provide evidence (e.g. a medical certificate or a statutory declaration). You do not need to do this if there are reasons beyond your control (for example you are suffering a severe mental or physical impairment). Your employer can also ask for evidence for compassionate leave. Your Modern Award, agreement, or workplace policies may also contain requirements about the evidence you need to give.

Community service leave

You can take unpaid leave to undertake an eligible community service activity such as jury service or voluntary emergency management. Your employer must provide permanent employees with make up pay for jury duty for up to 10 days. You must give notice as soon as possible, and your employer may require evidence.

Annual 'shut down' period initiated by employer

An employer may temporarily close their business or workplace during slow business

periods, like between Christmas and New Year or during school holidays. This is called a shut down.

If you are not covered by a Modern Award or agreement, your employer can require you to take paid annual leave during a shut down if the requirement to take annual leave is reasonable.

If you are covered by an Modern Award or agreement, the Modern Award or agreement will stipulate whether your employer can temporarily close their business and any conditions that must be fulfilled prior to the shut down, for example, giving four (4) weeks notice of the shut down.

This is not a standard Modern Award feature, and you should check the terms of your Modern Award or agreement.

If you don't have enough leave, or your Modern Award or agreement doesn't allow your employer to require you to take paid annual leave, you can agree to take paid or unpaid leave or annual leave in advance. If you don't agree, then you're entitled to be paid your usual wages.

Long service leave

If your Modern Award, agreement or contract is silent on the issue of long service leave, or if you are not covered by a Modern Award, agreement or contract, then the *Long Service Leave Act NT* applies. Under this act, all employees, including casuals, are entitled to 1.3 weeks of long service leave for every year of completed service, after 10 years of service, and in some situations, after 7 years. However, if your Modern Award, agreement or contract provides more then it will apply instead of the Act.

In some cases, accrued long service leave will be paid out when your employment terminates. If you are eligible for long service leave, but your employment terminates before taking it, you are entitled to be paid out the amount due to you. If your employment terminates after 7 years because you are retiring, or because of illness, incapacity or domestic or other pressing necessity, you are entitled to be paid out your long service leave, at 1.3 weeks for every completed year of service. (If you are terminated for serious misconduct this does not apply).

You are entitled to have your Long Service Leave paid out upon termination, but we encourage you to take the leave if you can. You deserve the break!

Public holidays

You are entitled to be absent on prescribed public holidays. Your employer may make a reasonable request for an employee to work on a public holiday. However, an employee may

refuse to work if they have reasonable grounds, or if the request is unreasonable.

Parental & pregnancy related leave

There are a range of leave options available to women who are pregnant and parents who are adopting or expecting the birth of a child. Below is a summary of leave options that might be available to you. Please read factsheet 13 *Parenting and pregnancy* for more details on these and other parenting related entitlements.

Leave for sickness and medical appointments during pregnancy

If you are sick during your pregnancy or have medical appointments, you are entitled to access your personal leave (also known as sick leave). Some workplaces also offer antenatal leave which is dedicated leave for such purposes so that you don't have to use up your personal leave.

Under the NES unpaid special maternity leave is available to women with a pregnancy related illness or to recover from a miscarriage that occurs up to 28 weeks before the expected date of birth or in the event of a stillbirth. You can take as much unpaid special maternity leave as your doctor recommends in a medical certificate.

You have the right to choose whether you would prefer to access your paid personal leave or unpaid special maternity leave.

Transfer to a safe job

If you are pregnant and your job poses a risk to your health or the health of your baby, you have the right to be transferred to a safe job with the same pay and conditions. You need to provide a medical certificate stating that you are fit to work but are unable to continue in your present position. If a transfer is not reasonably practical (for example, because appropriate and safe work is not available), you are entitled to take paid leave for the period you can't continue in your position (as stated in the medical certificate). This paid leave is called 'paid no safe job leave' and is in addition to your normal leave entitlements, such as personal leave and annual leave. Paid no safe job leave does not reduce your 12 months parental leave entitlement. Note that no safe job leave will only be paid if you are entitled to parental leave (see below) and you have notified your employer that you will be taking parental leave. If you are not entitled to parental leave you are entitled to unpaid no safe job leave.

Pre-Adoption leave

Adopting parents can take up to two days of pre-adoption leave (either continuously or in separate periods as agreed with the employer), for adoption interviews or exams (unless their employer requires them to take other leave they have available). The employer may require you to provide evidence of interview or exams.

Unpaid parental leave

Under the NES, parental leave is leave taken on the birth of a child or the adoption of a child

under 16 (the child may be your child or your partner's child).

To be eligible to take parental leave, you must have worked continuously for the same employer for 12 months immediately before the child's due date or adoption placement date. This includes casuals who have worked regular systematic hours and have a reasonable expectation of continuing employment on a regular and systemic basis.

Each parent can each take a maximum of 12 months of unpaid leave. One parent can request an extension of their leave to a maximum of 24 months, reduced by the amount of any leave (except unpaid special maternity leave) taken by their partner. Both parents can take 8 weeks parental leave concurrently.

Employer provided paid parental leave

Many employers provide paid parental leave as a way of valuing, supporting and retaining their staff. For example, female employees of the NT public service are entitled to 14 weeks paid maternity leave after 12 months service. You should check your Modern Award, agreement, contract or letter of offer to see if you may be eligible for paid parental leave. It is not compulsory for your employer to provide paid maternity leave.

Please read factsheet 13 *Parenting and pregnancy* for more details on these and other parenting related entitlements.

Commonwealth Paid Parental Leave Scheme

Please read factsheet 13 *Parenting and pregnancy* for more information about the federal government's [paid parental leave scheme.

Other forms of leave

Under your agreement, Modern Award or contract you may be entitled to other forms of leave (paid or unpaid) as well as those discussed above. These may include leave without pay, union training leave, study leave, cultural leave, and even moving or re-location leave. Aboriginal and Torres Strait Islander people working under certain Modern Awards or agreements may be entitled to additional leave, with or without pay, to participate in ceremonial activities and cultural obligations. You should check your conditions carefully. You may also be able to negotiate additional leave entitlements with your boss. Be sure to put any agreement in writing.

Where can I get more help?

NT Working Women's Centre

Freecall: 1800 817 055

Web: www.ntwwc.com.au

Your Union

Unions NT

Ph: 8941 0001

Web: www.unionsnt.com.au

NT Anti Discrimination Commission

Freecall: 1800 813 846

Web: www.adc.nt.gov.au

Australian Human Rights Commission

Complaints Info line: 1300 656 419

Web: www.humanrights.gov.au

The Fair Work Ombudsman

Fair Work Info line: 13 13 94

Web: www.fairwork.gov.au

The Fair Work Commission

Ph: 08 8936 2800

Local call: 1300 799 675

Web: www.fwc.gov.au

To access an interpreter

Interpreting and Translating Service NT

Ph: 1800 676 254

Web: www.itsnt.nt.gov.au/

Aboriginal Interpreter Service

Ph: 8999 8353

Web: www.ais.nt.gov.au/

For people with a hearing and/or speech impairment

National Relay Service

Ph: 133 677

Freecall: 1800 555 677

The NT Working Women's Centre provides free and confidential information, advice and assistance to women about work related matters.

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NT Working Women's Centre 1800 817 055

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