



What leave can I take?

There are many different types of leave that you can take from work. Some types of leave are paid and some are unpaid. Some types of leave are only available to permanent employees, 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 award, agreement, contract or legislation. The following is a basic guide to the types of leave you may be entitled to.

Your 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 award, agreement or contract.

Annual Leave

Under the NES, permanent full-time workers are entitled to four 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 one extra week of annual leave each year. Casual employees are not entitled to annual leave under the NES. Annual leave accrues progressively and is cumulative.

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 or you are entitled to take sick leave, these days do not count towards your annual leave. When your employment is terminated you are entitled to be paid out any untaken annual leave. You cannot take or accrue any paid or unpaid leave (except parental leave) while on worker's compensation.

Cashing out annual leave

You are entitled to cash out your annual leave, as long as you will still have 4 weeks leave remaining, and a term in your agreement or 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%) you get on top of your ordinary pay while you are on leave if you are covered by an award or agreement, *unless* your award or agreement expressly excludes it. If you are not covered by an award or agreement, and are only covered by the NES, you are not entitled to leave loading, although your employer may choose to provide it.

Personal/Carer's and compassionate leave

Under the NES, all permanent employees are entitled to:

- 10 days of paid personal/carers' 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/carers' 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 worker's 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. You can only cash out personal/carer's leave if a term in your agreement or 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 an 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 (eg 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 award or agreement may also contain requirements about the evidence you need to give.

Community services 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 ten days. You must give notice as soon as possible, and your employer may require evidence.

Long service leave

If your award, agreement or contract is silent on the issue of long service leave, or if you are not covered by an 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 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).

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 leave

Parental leave is leave taken on the birth of a child or the adoption of a child under 16 (it may be your child or your partner's child). Note that partner includes a spouse, a former spouse, a defacto partner, a former de facto partner and a same sex de facto partner. The leave is only available if you will have a responsibility for the care of the child. The terms paternity and maternity leave are no longer used.

To be eligible to take this leave, you must have worked continuously for the same employer for 12 months immediately before the child's due date or adoption placement date (or before the leave date if you are taking leave after your partner takes leave). This includes casuals who have worked





regular systematic hours and have a reasonable expectation of continuing employment.

Each parent can each take a maximum of 12 months of unpaid leave. Generally, parental leave can only be taken by one parent at a time and in a single continuous period. One parent can request an extension of their leave to a maximum of 24 months, reduced by the amount of any leave taken by their partner. You must make the request in writing at least four weeks before the end of the initial period of leave. They must respond in writing within 21 days stating whether they grant or refuse the request. Employers may refuse the request only on reasonable business grounds and must include the reasons for the refusal in the written response. While reasonable business grounds are not defined in the NES, they may include the effect on the workplace (eg. the impact on finances, efficiency, productivity, customer service), the inability to manage the workload among existing staff or the inability to recruit a replacement employee.

If you are both employed, you and your partner can only take 3 weeks unpaid parental leave at the same time, either immediately after the birth or placement of a child or by agreement with the employer, at any time during an extended period starting before the birth and ending no later than six weeks after the birth or placement. This three weeks counts towards the total 12 months leave each.

You can also take other forms of leave, such as annual leave or long service leave, at this time, however your entitlement to 12 months of parental leave will be reduced by the amount of any other form of leave you take (such as long service leave or annual leave).

When can I start parental leave?

If you are pregnant, your leave may start up to 6 weeks before your expected due date, but no later than the date of birth. For adoption leave, the leave must start on the day of placement of the child. If you want to stay at work within 6 weeks before the expected date of birth, your employer may request a medical certificate to state that you are fit to work.

If your spouse or de facto partner is not an employee and will have responsibility for the care of the child their leave may start anytime within 12 months after the date of birth or day of placement of the child.

Special maternity leave can be taken by a female employee for 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 still birth. You can take as much special maternity leave as your doctor recommends in a medical certificate. Any leave taken counts towards the 12 months unpaid parental leave entitlement. You must be eligible for parental leave to be able to take special maternity leave.

What notice do I have to give?

You must give your employer at least 10 weeks' written notice before starting your leave, unless this is not possible. The notice must specify the intended start and end dates of the leave, and you must confirm the intended start and end dates of the leave (or advise of any changes) at least 4 weeks before the intended start date, unless it is not possible. An employer may require evidence of the due date or adoption placement date.

Pre-Adoption leave

Adopting parents can take up to two days of pre-adoption leave for adoption interviews or exams (unless their employer requires them to take other leave they have available). You do not need to meet service requirements. You must give notice of the intention to take unpaid pre-adoption leave and your employer can require reasonable evidence.

Transfer to a safe job

If you are pregnant and your job poses some risk you have the right to be transferred to a safe job with the same pay and conditions. You need to provide evidence (eg 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, you are entitled to paid leave for the period you can't continue in your position (as stated in the medical certificate). You can only be transferred to a safe job if you are eligible for parental leave and have followed any notice requirements. Paid no safe job leave does not reduce your 12 months parental leave entitlement.





Consultation while on leave

While you are on parental leave, you are entitled to be kept informed of any decisions your employer makes that will have a significant effect on the status, pay or location of your pre-parental leave position. Your employer must take all reasonable steps to give you information about, and an opportunity to discuss, the effects of any such decisions.

Returning to work

When returning to work from parental leave you have the right to return to your old position or to a new position if you have been promoted or agreed to accept a new position. If your old job no longer exists and you are qualified and able to work in another position, then you are entitled to work in another position that is nearest in status and pay to your former position.

Right to request flexible working arrangements

If you are a parent or have responsibility for the care of a child under school age (or a child with a disability under 18), you can request a change in working arrangements to assist with the care of your child. School age in the NT is 6 years old.

To make this request, you must have 12 months continuous service with the employer, and if you are a casual, you must also have an expectation of ongoing employment on a regular and systematic basis. You must make the request in writing and include what change you are wanting and why. Your employer must give you a written response within 21 days, stating whether the request is granted or refused, and if refused, detailed reasons why. You should be able to clearly understand why your request is rejected. They cannot just give a refusal without reasons. A request can only be refused on reasonable business grounds. While these are not defined in the NES, they may include the effect on the workplace, including the financial impact of doing so and the impact on efficiency, productivity and customer service; the inability to organise work among existing staff; and the inability to recruit a replacement employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the request.

Paid parental leave

Many organisations 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 award, agreement, contract or letter of offer to see if you may be eligible for paid parental leave.

The Federal Government is proposing to introduce a paid parental leave scheme for parents (or, in exceptional circumstances a third party) who are the primary carers of a child born or adopted on or after 1 January 2011. The leave must be taken *after* the birth or adoption and be completed within 12 months of the date of the birth or adoption.

While the details of the scheme are still being devised, the Federal Government has proposed taxable payments at the level of the Federal Minimum Wage for a maximum period of 18 weeks. It will be possible for each parent to take part of the 18 weeks paid leave, provided that no more than 18 weeks is taken in total per child. In most cases, you will receive the payment through your employer. It is proposed that to be eligible you must be in paid work and have undertaken at least 330 hours of paid work in the 13 month period prior to the expected birth or adoption (an average of around one day of paid work a week). You may have taken a break of no longer than eight consecutive weeks between two periods of work during that time. An income test of \$150,000 will apply based on the primary carer's adjusted taxable income in the previous financial year. You must be an Australian resident or have a special category visa. The scheme will be available to all employees, including casual workers, as well as contractors and the self-employed. The leave will also be payable to mothers in the event of a stillborn baby. Employees who have resigned from work or finished a contract can still make a claim.

The leave can be taken in conjunction with, or in addition to, employer-provided paid parental leave, and other employer-provided leave entitlements such as recreation leave. If you meet the eligibility criteria, you can *choose* between the scheme or the Baby Bonus and other family assistance.





Employers who currently provide paid parental leave through an agreement *cannot* withdraw that entitlement for the life of the agreement. However, existing leave schemes could be modified in the bargaining process for a new agreement.

Provided that the Federal Government's legislation proceeds as planned, it is likely that you will be able to lodge a claim from 1 October 2010. You can visit the Federal Government's Family Assistance Office website for more information about paid parental leave or contact them by phone.

Other forms of leave

Under your agreement, 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 leave. Aboriginal and Torres Strait Islander people working under certain 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.

Discrimination and Adverse Action

Under the *Fair Work Act*, it is against the law for your employer (or potential employer) to take or threaten to take "adverse action" against you because you have a workplace right (such as the right to take annual leave) or because you exercise a workplace right (eg you take parental leave). It is also against the law for your employer to take or threaten to take "adverse action" against you because you are pregnant, breastfeeding, or you have family or carer's responsibilities. Adverse action includes refusing to employ you, sacking you, denying you access to training or promotions, demoting you, and changing your hours or status.

Anti-discrimination laws also provide protection to pregnant women, parents, and 'potentially pregnant' women (i.e. women of child bearing age, who may be likely or perceived to be likely, to become pregnant). It is also unlawful for employers or potential employers to question you about current or future pregnancies.

It is unlawful to be dismissed because of a "temporary absence" due to personal ill health or injury. A temporary absence means an absence on unpaid sick leave of less than 3 months in total in any 12 month period (time spent on paid sick leave or workers' compensation does not count). You must have informed your employer of your absence through, for example, a medical certificate which indicates you were unfit for work on the relevant days due to illness.

Check the Discrimination and Sexual Harassment, the Termination of Employment and the Adverse Action Factsheets for more information.

Where can I get more help?

NT Working Women's Centre
Ph: 8981 0655
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
Ph: 8999 1444
Freecall: 1800 813 846
Web: www.adc.nt.gov.au

Australian Human Rights Commission
Ph: (02) 9284 9600
Complaints Infoline: 1300 656 419
Web: www.humanrights.gov.au



The Fair Work Ombudsman
Local call: 13 13 94
Web: www.fwo.gov.au

Fair Work Australia
Ph: (local call) 1300 799 675
Web: www.fwa.gov.au

Telephone Interpreter Service
Ph: 131 450

National Relay Service (for people with a hearing and/or speech impairment)
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.
Contact us on 1800 817 055, or www.ntwwc.com.au**

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