

WORKERS' RIGHTS LEAVE



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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 relevant State legislation.

Your award, agreement or contract may supplement your entitlement to leave under the NES, as long as this does not disadvantage employees. 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 four weeks on a pro-rata basis. Some shift workers are entitled to one extra week of annual leave each year, provided the business operates shifts 24 hours a day, seven days a week, and the employee regularly works rostered shifts on Sundays and public holidays. Casual employees are not entitled to annual leave under the NES.

Your employer cannot unreasonably refuse your request for annual leave. If your award or agreement provides for it, then your employer may be able to direct you to take annual leave, but only if this is reasonable, for example you may have accrued excessive annual leave, or the business may close during an annual Christmas shutdown.

Annual leave accrues progressively and is cumulative. When your employment is terminated you are entitled to be paid out any untaken annual leave.

Cashing out annual leave

You are only entitled to cash out your annual leave if your agreement or award allows this. Many awards and agreements do not have any provisions to cash out annual leave. Where an award or agreement allows you to cash out annual leave, you still need to have at least four weeks leave remaining. You have to request "cashing out" in writing and your employer must also reply 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%) on top of your ordinary pay while you are on leave. Leave loading is not a right under the NES but is covered by many awards, agreements and individual employment contracts. If you are entitled to leave loading in your award or agreement, then this should also be paid out on any untaken annual leave on termination.

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 two days of unpaid carer's leave per occasion if all paid leave has been used up; and
- two days of paid compassionate leave per occasion.

Under the NES, casual employees are entitled to:

- two days of unpaid carer's leave per occasion; and
- two 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, or any other member of your household.

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. 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 a public holiday or sick leave.

You cannot take or accrue any paid or unpaid leave (except parental leave) while on worker's compensation in South Australia.

Cashing out personal/carers leave

You can only cash out personal/carers leave if a term in your agreement or award allows this. Most awards and agreements do not have any provisions to cash out personal leave. If your award or agreement allows, you can request to cash out personal/carers leave entitlements, as long as a minimum balance of 15 days leave is available after cashing out. 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.

Your responsibilities

If you need to take personal/carers leave you have to notify your employer as soon as reasonably practicable, and should let them know how long you expect to be on leave for. Your employer may ask you to provide evidence (e.g. a medical certificate or a statutory declaration). 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.

Parental leave

Parental leave is an entitlement under the Fair Work Act 2009 for employees who have or will have responsibility for the care of a child. Under the NES, parental leave is taken on the birth of a child or the adoption of a child (the child may be your child or your partner's child). Note that 'partner' includes a spouse, a former spouse, a de facto partner and a same sex partner.

Employees who have completed at least 12 months continuous service with their employer on a permanent full-time or part-time basis are entitled to parental leave. Casual employees are not entitled to parental leave unless they have worked regularly and systematically with at least 12 months continuous service and have a reasonable expectation of ongoing work. Each parent can take a maximum of 52 weeks of unpaid leave, unless one parent requests an extension. Some employers provide paid parental leave but under the Australian Government Parental Leave Pay scheme, all eligible working parents earning less than \$150,000 per year will receive Parental Leave Pay at the minimum wage (\$589.30 as at 1 July 2011) per week for a maximum period of 18 weeks. For more information see the factsheet about Parental Leave.

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.

Long service leave

In South Australia, if you have worked 10 years with the same employer, you are entitled to long service leave. This means that you receive 13 weeks of leave on full pay. For each year after that you are entitled to 1.3 weeks. So, if you have worked for 12 years you are entitled to 15.6 weeks of leave. If you leave your employment after seven years, you may be entitled to pro-rata long service leave. Casual employees are also entitled to long service leave if they have worked continuously with their employer.

An employee who has worked for more than 10 years may 'cash out' either part or all of his/her accrued long service leave. 'Cashing out' long service leave can be done only through a written and signed agreement between the employer and the employee. Agreements also can be made to cover deferring long service leave, granting long

service leave on less than 60 days notice and taking long service leave in anticipation of the entitlement becoming due.

Public holidays

Permanent employees are entitled to be absent on public holidays without loss of pay. Your employer may make a reasonable request for you to work on a public holiday. However, an employee may refuse to work on a public holiday if they have reasonable grounds, or if the request is unreasonable.

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 employer. Be sure to put any agreement in writing.

Discrimination and Adverse Action

Under the Fair Work Act 2009, 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 (e.g. 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.

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 three months in total in any 12 month period (time spent on paid sick leave or worker's 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 factsheets on Discrimination and Sexual Harassment, Termination of Employment and Adverse Action for more information.

Where can I get more help?

Your union
SA Unions
Ph: (08) 8279 2222
www.saunions.org.au

Legal Services Commission
Ph: 1300 366 424
www.lsc.sa.gov.au

82-98 Wakefield Street
Adelaide SA 5000

Young Workers Legal Service
Ph: (08) 8279 2233
www.ywls.org.au

Fair Work Ombudsman (FWO)
Ph: 13 13 94
www.fairwork.gov.au

Level 2, 148 Frome St.
Adelaide SA, 5000

Telephone Interpreter Service
Ph: 13 14 50

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