

STAFF LEAVE ENTITLEMENT POLICY

Our Service is committed to providing a safe and healthy workplace that supports employees to take breaks away from the workplace to balance work with rest, recreation and family responsibilities.

The *Staff Leave Entitlement Policy* aims to comply with Government legislation and workplace laws to provide clear guidelines in relation to employment conditions and entitlements set by Fair Work Australia through the National Employment Standards and relevant Awards, including but not limited to Children's Services 2010-Award and Education Services (Teachers) 2020 Award.

NATIONAL QUALITY STANDARD (NQS)

QUALITY AREA 4: STAFFING ARRANGEMENTS		
4.1	Staffing arrangements	Staffing arrangements enhance children's learning and development.
4.1.1	Organisation of Educators	The organisation of Educators across the Service supports children's learning and development.
4.1.2	Continuity of staff	Every effort is made for children to experience continuity of Educators at the Service.

EDUCATION AND CARE SERVICES NATIONAL REGULATIONS	
126	Centre-based services – general educator qualifications
135	Early childhood teacher illness or absence
151	Record of Educators working directly with children
152	Record of access to early childhood teachers
Division 5	Requirements for educators who are early childhood teachers.

RELATED LEGISLATION

NSW Anti-Discrimination Act 1977	Fair Work Act 2009
Federal and State Occupational Safety and Health Legislation	Federal and State Equal Opportunity Legislation and any other relevant industrial awards
Education and Care Services National Law Act 2010	Children and Young Persons Act 1998

RELATED POLICIES

Code of Conduct Policy Child Safe Environment Policy Dealing with Complaints Policy Governance Policy Pregnancy in Early Childhood Policy	Privacy and Confidentiality Policy Recruitment Policy Responsible Person Policy Student and Volunteer Policy
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PURPOSE

This policy has been developed to communicate expectations and obligations regarding applying for leave from the Service including- Annual leave, Personal/Carer's Leave, Parental Leave Pay, Dad and Partner Pay, Long Service Leave, Community Service Leave, Family and Domestic Violence Leave, Compassionate Leave, Rostered Days Off, Superannuation, Termination/Resignation of employment and Overtime/ Time in Lieu.

SCOPE

This policy applies to staff, educators, approved provider, nominated supervisor and management the Service.

IMPLEMENTATION

Our Service will commit to providing leave arrangements for all employees as legislated by the Australian Government through relevant industrial Awards and the National Employment Standards as set by Fair Work Australia. We will offer an opportunity for staff to access paid and unpaid leave for a range of purposes to support a healthy and productive workplace. This policy provides guidelines for staff to request and apply for leave.

All documentation relating to Leave Entitlements is to be stored confidentiality in individual staff files.

DEFINITIONS

FAMILY MEMBER

Fair Work Australia defines an immediate family member as a:

- spouse or former spouse
- de facto partner or former de facto partner
- child
- parent
- grandparent

- grandchild
- sibling, or
- child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse or de facto partner).

This definition includes step-relations (e.g., step-parents and step-children) as well as adoptive relations. A household member is any person who lives with the employee.

TYPES OF EMPLOYMENT: Full Time/ Part Time/ Casual

A full-time employee is engaged to work an average of 38 ordinary hours per week.

A part-time employee is an employee who is engaged to work on a regular basis for less than 38 hours per week.

Casual employment means employment on a day-to-day basis. Casuals will be paid a minimum of two hours pay for each engagement.

NATIONAL EMPLOYMENT STANDARDS (NES)

The NES sets minimum employment standards and conditions for employees within Australia including maximum weekly hours, requests for flexible working arrangements, offers and requests to convert from casual to permanent employment, parental leave and related entitlements, annual leave, personal/carer's leave, compassionate leave and unpaid family and domestic violence leave, community service leave, long service leave, public holidays and notice of termination and redundancy pay.

ANNUAL LEAVE

Annual Leave will be accrued at the rate as stated in the relevant Award and NES.

The NES, Children's Services Award and Educational Services (Teachers) 2020 state full time employees will be entitled to 4 weeks Annual Leave every 12 months. Part time employees are entitled to Annual Leave on a pro rata basis. For example, if an employee works 19 hours per week, they will be entitled to 2 weeks Annual Leave every 12 months. Casuals are not entitled to Annual Leave.

Annual Leave begins to accumulate from the first day of employment. Annual Leave accumulates when employees are on leave including paid leave, such as paid annual leave and paid sick and carer's leave, community service leave including jury duty and long service leave.

Annual leave does not accumulate when the employee is on unpaid annual leave, unpaid sick/carer's leave, unpaid parental leave and unpaid family and domestic violence leave.

Annual Leave does not accumulate when an employee is on leave on the Paid Paternity Leave Scheme. The balance of Annual Leave at the end of each year carries over to the next year.

REQUESTING ANNUAL LEAVE

Annual leave must be accumulated before it can be taken as paid leave.

To request Annual Leave, employees must lodge a *Leave Request Form* and hand it to the Nominated Supervisor. Employees will be notified in writing if the request has been successful and approved. Leave will not be granted to any two (2) employees for the same period. Leave request forms must be submitted at least 2 weeks before the leave is requested.

All leave will be subject to approval. The operational and key staff requirements of the business will be taken into consideration prior to leave being approved. This includes ensuring the Education and Care Services National Regulations (2011) requirements for staffing are met at all times.

DIRECTION TO TAKE ANNUAL LEAVE

Employees may be directed to take Annual Leave if the employee has an excessive accumulation of Annual Leave, usually if the balance of Annual Leave is over 6 weeks.

PERSONAL/ CARER'S LEAVE

Personal Leave will be accrued at the rate as stated in the relevant Award and NES.

The NES, Children's Services Award and Educational Services (Teachers) 2020 state Personal Leave will be accrued at the rate as stated in the relevant award or agreement. All permanent full-time staff are entitled to 10 days Personal Leave each year, and pro-rata for part-time staff. Casual staff are not entitled to Personal Leave. Evidence may be requested for any personal leave where a staff member is unable to work due to illness or injury or is caring for family member.

Personal Leave provides provisions for an employee take time off to help them deal with personal illness, caring responsibilities and family emergencies. Personal Leave can be used when an employee is ill or injured. An employee may have to take time off to care for an immediate family or household member who is sick or injured or help during a family emergency. This is known as Carer's Leave, but it comes out of the employee's Personal Leave balance.

Personal Leave begins to accumulate from the first day of employment. Personal leave must be accumulated before it can be taken as paid leave. Personal Leave accumulates when employees are on leave including paid leave such as paid annual leave and paid sick and carer's leave, community service leave including jury duty and long service leave and Paid Parental leave.

Personal leave does not accumulate when the employee is on- unpaid annual leave, unpaid sick/carer's leave, unpaid parental leave and unpaid family and domestic violence leave.

NOTIFICATION OF ABSENCE

If you are unwell and cannot attend your rostered shift you must contact the Nominated Supervisor or assigned nominee at least four (4) hours before the commencement of your shift. Under no circumstances are messages to be left with a colleague. Text messages/ emails/ Private Messages are not an acceptable form of communication.

If you do not notify the Nominated Supervisor/Responsible Person and do not attend for your shift, it will be considered that you have abandoned your responsibilities and your employment may be terminated.

REQUESTING PERSONAL LEAVE

Personal leave should not be requested in advance. We encourage all medical appointments to be arranged outside of work hours. If a medical appointment or elective surgery is pre-arranged and it is advised the employee is unfit to work, then this will be discussed with the Nominated Supervisor prior to leave being approved.

MEDICAL CERTIFICATE REQUEST

For those in permanent positions, evidence may be requested for personal leave to state the staff member was genuinely entitled to personal leave and be provided by a registered medical practitioner. A statutory declaration is considered an acceptable form of evidence. If a staff member does not provide evidence when asked they may not be entitled to paid personal leave.

UNPAID PERSONAL LEAVE

All employees, including casual workers, are entitled to 2 days unpaid Personal/Carer's Leave each year. Employees get 2 days unpaid carer's leave each time an immediate family member or household member of the employee needs care and support because of:

- illness

- injury or
- an unexpected emergency.

Full time and Part time employees are unable to use unpaid Personal leave if they have any accumulation of Personal Leave.

HEALTH OF EMPLOYEE

Employees may be requested to provide a medical clearance if management is concerned that the employee may have an injury or illness that provides a risk to their own health or wellbeing or the health or wellbeing to children or colleagues. The employee may be requested to take Personal Leave or Leave without Pay until a medical clearance is arranged.

PARENTAL LEAVE

Parental leave lets employees take time away from work for the birth or adoption of a child. The term 'parental leave' can include:

- unpaid parental leave
- government-funded payments-
 - Paid Parental Leave
 - Dad and Partner Leave
- employer-funded paid parental leave.

UNPAID PARENTAL LEAVE

Under the National Employment Standards in the Fair Work Act 2009, an employee employed with the same employer for 12 months or more before they or their partner gives birth or adopts a child, may be entitled to up to 12 months of unpaid parental leave. An employee can also request an additional 12 months' unpaid leave. (Including long-term casuals)

PAID PARENTAL LEAVE SCHEME

From 1 July 2023 the date of a child's birth or adoption will affect Parental Leave Pay. For children born or adopted **before** July 1 2023, eligible working parents are able to access 18 weeks of government funded Parental Leave Pay. Fathers and other eligible partners may still be able to apply for Dad and Partner Leave for a child born or adopted before July 1 2023. ([Claiming timeframes apply](#)).

For children born or adopted **after** July 1 2023 a payment for up to 100 days, or 20 weeks is available to assist parents care for a child. This payment combines the Paid Parental Leave and Dad and Partner's Pay.

See: [Parental Leave Pay for child born or adopted after July 2023](#)

REQUEST FOR FLEXIBLE WORKING CONDITIONS

Employers and employees can agree to change standard working arrangements to help employees balance work with other aspects of their lives. The employee must have worked with the employer for at least 12 months and the request fit into one of the following categories:

- a parent of, or have responsibility for the care of, a child who is school age or younger
- a carer (within the meaning of the Carer Recognition Act 2010)
- a person with disability
- aged 55 or older
- experiencing family violence, or
- providing care or support to a family member, or someone they live with, who is experiencing family violence.

The employee must make the request in writing and the employer must consider their request, discuss the request with the employee to try to reach an agreement about changes to their working conditions and respond in writing within 21 days.

The employer must state whether the request is granted or refused and provide reasons if the request is refused and only refuse a request on reasonable business grounds.

LONG SERVICE LEAVE

Long service leave applies to employees who are full-time, part-time or casual. If an employee has been working for the same employer for 10 years, they are entitled to 2 months (8.67 weeks) paid leave, to be paid at the employees ordinary gross weekly wage under the [Long Service Leave Act 1955](#) (the Act).

Employees are entitled to Long Service Leave as per state/territory laws or provisions. Contact the [long service leave agency](#) in your state or territory for further information.

To request Long Service Leave, employees must lodge a *Leave Request Form* and hand it to the Nominated Supervisor. Employees will be notified in writing if the request has been successful and approved. Leave will not be granted to any two (2) employees for the same period. Leave request forms must be submitted at least 2 weeks before the leave is requested.

LEAVE WITHOUT PAY

Leave Without Pay will not be approved unless all existing Annual and Personal Leave has been granted.

To request Leave Without Pay, employees must lodge a *Leave Request Form* and hand it to the Nominated Supervisor. Employees will be notified in writing if the request has been successful and

approved. Leave will not be granted to any two (2) employees for the same period. Leave request forms must be submitted at least 2 weeks before the leave is requested.

COMMUNITY SERVICE LEAVE

Community Service Leave covers voluntary emergency management activities, such as RFS/SES.

Community service leave is unpaid, except for Jury Duty.

An employee engages in a voluntary emergency management activity if:

- the activity involves dealing with an emergency or natural disaster
- the employee engages in the activity on a voluntary basis
- the employee was either requested to engage in an activity, or it would be reasonable to expect that such a request would have been made if circumstances had permitted, and
- the employee is a member of or has a member-like association with a recognised emergency management body.

An employee is entitled to take community service leave while they are engaged in the activity and for reasonable travel and rest time. There is no limit on the amount of community service leave an employee can take.

JURY DUTY

Employees must advise their employers of the period or expected period of leave as soon as possible. If an employee requests leave, they need to provide evidence showing they attended jury selection or jury duty.

Employees are paid by the court a portion of their base pay rate per day. Employers may be required to provide make-up payment for the ordinary hours worked, for up to 10 days.

FAMILY AND DOMESTIC VIOLENCE PAID LEAVE

The National Employment Standards (NES) provides conditions for all employees, including full-time, part-time and casual employees, to access 10 days of paid family and domestic violence leave within a 12-month period. The leave is not pro-rated for part-time or casual employees. Family and Domestic Violence Leave does not accumulate each year if it is not used; the 10 days of leave is renewed every 12 months. The new 10 day leave entitlement will be introduced from February 1 2023 for non-small business employers (business with 15 or more employees) or the August 1 2023 for small business employers (businesses with less than 15 employees). The paid Family and Domestic Violence Leave replaces the unpaid Family and Domestic Leave of 5 days.

The paid Family and Domestic Leave will renew each year on the employee's work anniversary.

Employees are able to take paid Family and Domestic Leave in accordance with the conditions set from Fair Work Australia.

COMPASSIONATE LEAVE

All employees (including casual employees) are entitled to compassionate leave.

Compassionate leave can be taken when a member of an employee's immediate family or household:

- dies
- contracts or develops a life-threatening illness or injury
- a baby in their immediate family or household is stillborn
- they have a miscarriage
- their current spouse or de factor partner has a miscarriage

Full-time and part-time employees receive paid compassionate leave and casual employees receive unpaid compassionate leave.

Full-time and part-time employees are paid at their base pay rate for the ordinary hours they would have worked during the leave. Compassionate leave cannot be cashed out.

SUPERANNUATION

All employees who earn above the threshold limit will be entitled to superannuation paid at the statutory rate. If you wish to have your Superannuation paid to your fund of choice you will need to complete the "Superannuation Standard Choice Form". You can obtain a copy from the Nominated Supervisor or [online](#)

TERMINATION/RESIGNATION CONDITIONS

Notice of termination of employment will be as per relevant Award. In the event of instant dismissal, the notice period may be paid, and the employee asked to leave immediately.

Employees who fail to give the required notice must forfeit the relevant termination pay. Notice to terminate employment must be given in writing to the Nominated Supervisor.

[Children's Service Award 2010](#)

Employee's period of continuous service with the employer at the end of the day the notice is given	Period of notice
Not more than one year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks

More than 5 years	4 weeks
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An employer has to provide an extra week of notice if the employee is over 45 years old and have worked for the employer for at least 2 years.

EDUCATIONAL SERVICES (TEACHERS) AWARD 2020

Period of notice - 4 weeks' notice

An employer has to provide an extra week of notice if the employee is over 45 years old and have worked for the employer for at least 2 years.

ABSENCE FROM EMPLOYMENT WITHOUT NOTIFICATION

An employee may be taken to have abandoned their employment if they do not provide notification of absence. The Nominated Supervisor will make reasonable attempts to contact the employee, if the employee does not respond to these attempts the termination of employment procedure will be instructed.

OVERTIME AND TIME IN LIEU

Overtime may be paid in circumstances where the employee works over 38 hours per week or where employees are required to work or attend meetings or training outside of general ordinary hours.

Overtime rates will be paid as per award. Overtime must be approved by the Nominated Supervisor prior to the employee working additional hours.

SOURCES

Australian Government. [Fair Work Ombudsman](#)

Australian Government. Fair Work Ombudsman. [Community service leave](#)

Australian Government. Fair Work Ombudsman. [Family and domestic violence leave](#)

Australian Government. Fair Work Ombudsman. [Flexible working arrangements](#)

Australian Government. Fair Work Ombudsman. [Jury duty](#)

Australian Government. Fair Work Ombudsman. [Long Service Leave](#)

Australian Government. Fair Work Ombudsman. [Maternity & parental leave](#)

Australian Government. Fair Work Ombudsman. Modern Award. [Children's Services Award 2010](#)

Australian Government. Fair Work Ombudsman. Modern Award. [Educational Services \(Teachers\) Award 2020](#)

Australian Government- Fair Work Ombudsman [Parental Leave Best Practice Guide](#)

Australian Government. Fair Work Ombudsman. [Pregnant employee entitlements](#)

Australian Government. Fair Work Ombudsman. [Sick & carer's leave](#)

Australian Government Services Australia *Paid Parental Leave Scheme Employer Toolkit* (updated 2020).

<https://www.servicesaustralia.gov.au/organisations/business/services/centrelink/paid-parental-leave-scheme-employers/what-resources-are-available/paid-parental-leave-scheme-employer-toolkit>

Education and Care Services National Law Act 2010. (Amended 2023).

[Education and Care Services National Regulations](#). (2011). (Amended 2023)
 Guide to the National Quality Framework. (2017). (Amended 2023).
 NSW Government. NSW Industrial Relations. [Long Service Leave Entitlement NSW](#)
[Western Australian Education and Care Services National Regulations](#)

REVIEW

POLICY REVIEWED BY	Hayley Owen	Director	1/6/23
POLICY REVIEWED	FEBRUARY/ JUNE 2023	NEXT REVIEW DATE	OCTOBER 2024
VERSION NUMBER	V8.6.23		
MODIFICATIONS	FEBRUARY <ul style="list-style-type: none"> • additional information/links to Paid Parental Leave scheme • deleted Pandemic Leave (now closed) • addition of Family and domestic violence leave JUNE <ul style="list-style-type: none"> • alert re: changes to Parental Leave (effective July 2023) • Childcare Centre Desktop Resource section added 		
POLICY REVIEWED	PREVIOUS MODIFICATIONS	NEXT REVIEW DATE	
OCTOBER 2022	<ul style="list-style-type: none"> • hyperlinks checked and repaired as required • continuous improvement/reflection section added • link to Western Australian Education and Care Services National Regulations added in 'Sources' 	OCTOBER 2023	
JUNE 2022	<ul style="list-style-type: none"> • policy maintenance • minor formatting edits within text • hyperlinks checked and repaired as required 	OCTOBER 2022	
DECEMBER 2021	Reviewed to include changes in legislation related to compassionate leave for miscarriage and stillbirth (October 2021)	JUNE 2022	
JUNE 2021	New Policy Created	JUNE 2022	