



EMPLOYERS GUIDE TO LEAVE VOLUME 3

Made for Allied Health Professionals such as Physio's, Chiropractors, Osteopaths and
Yoga/Exercise Specialists

HR/IR is a HR consultancy firm based out of Wollongong. We are legally trained and focus on workplace/employment problem solving and advice. We work with management teams to help manage workplace relations. In addition to advice/problem solving, we write any formal documentation that you require including contracts, policies and onboarding procedures.

1. Maternity and Parental Leave

Maternity leave is simply the most common form of parental leave. Other forms include paternity/partner leave, adoption leave and special maternity leave.

All employees in Australia are entitled to parental leave if they:

- Have worked for their employer for at least 12 months:
 - o Before the date or expected date of birth
 - o Before the date of adoption (if the child is under 16)
 - o When the leave starts
 - o If casual, they have been working on a regular and systematic basis
 - o If casual, has an expectation of work on a regular and systematic basis
- Have or will have responsibility for the care of a child

Unpaid Parental Leave:

Unpaid parental leave applies to anyone who will have the responsibility and care of a child. Parents who experience a stillbirth or death of an infant during the first 24 months of life can also take unpaid parental leave.

Each eligible member of an employee couple can take up to 12 months of unpaid parental leave. If only one person is taking the leave, it can be up to 24 months if the employer agrees.

Parents can take up to 8 weeks leave concurrently. Apart from this 8-week period, the leave must be split between the parents. Employers are entitled to ask for evidence of who is taking leave at what time.

Paid Parental Leave:

The federal government pays for up to 18 weeks or 90 days of paid parental leave.

This 90-day leave includes 12 weeks of continuous paid parental leave and 30 days flexible paid parental leave. This is where the person taking leave returns to work but can claim 30 extra days within the first two years of birth or adoption.

The pay is based on the national minimum wage of \$812.45 per week.

In addition, a partner is eligible for two weeks or ten days' worth of paid parental leave. This does not detract from the 90 days; it simply adds to the total time off.

Having Another Child:

Having another child within 12 months of taking parental leave will have no effect on parental leave. If your employee has been with you for less than 12 months, your employee will need to wait for the 12 months before claiming parental leave.



Parental leave is tricky because it is covered by state laws, but the federal government pays for the leave. For parental leave policies, call John on 0407069507

2. Family & Domestic Violence Leave

All employees are entitled to 5 days unpaid family and domestic violence leave each year. This entitlement is found in the NES.

What is meant by domestic violence?

Domestic violence is defined by threatening or other abusive behaviour by an employee's close relative that seeks to coerce or control the employee *and* causes them harm or fear.

What is meant by close relative?

- Spouse/former spouse
- De facto partner or former partner
- Child

- Parent
- Grandparent
- Grandchild
- Sibling

2022 changes

It is worth noting that in May, the Fair Work Commission has issued a provision decision to include paid family and domestic violence leave in awards for permanent employees.

As of 28 July, Parliament has introduced a bill which would amend the NES to introduce paid Domestic Violence Leave. This bill would remove the 5 days of unpaid leave and replace it with 10 days of paid leave. This would be paid by the employer at the employee's base rate of pay.

The logo consists of a blue circle containing the letters 'H' and 'R' stacked vertically on the left, and 'I' and 'R' stacked vertically on the right, separated by a diagonal slash.

For continual updates on the newest rules and regulations to do with employment law, check our website at <https://hrirsolutions.com.au/>

3. Public Holidays

Some Public Holidays are nominated by each state and vary from state-to-state e.g., Melbourne Cup Day is only a public holiday in Victoria, Generally, Public Holidays are nominated in the National Employment Standards.

What is a public holiday under the NES?

Public holidays are listed in the NES as:

- Jan 1 – New Year's Day
- Jan 26 – Australia Day
- Good Friday
- Easter Monday
- 25 April – Anzac Day
- Queen's Birthday Holiday
- 25 December – Christmas Day

- 26 December – Boxing Day
- Any other day or part-day prescribed by the law of a State or Territory for people working in that State or Territory

Requesting to work or refusing to work on a Public Holiday:

When determining whether an employer can ask an employer to work or an employee can request not to work, there are a few things that must be taken into account:

- Operational requirements of the workplace
- Employee's circumstances
- Could the employee expect to be asked to work?
- Is the employee entitled to additional remuneration for working?
- Type of employment – part-time, full-time, casual
- The employer gives an amount or notice
- Amount of notice given by the employee
- Any other relevant matter

Payment for Public Holidays:

If your employee is not working on the public holiday but is usually scheduled to work, they are entitled to be paid their regular wages for the day. This excludes bonuses, loadings, monetary allowances, overtime or penalty rates. If your employee does work, you must pay them what they are entitled to under the relevant award.

Our example receptionist in a physio office works 20 hours per week, spread over three days. The days that they perform are Monday, Tuesday and Wednesday.

Anzac Day was on a Monday in 2022, meaning that the receptionist gets all the benefits of working or not working on a public holiday, the same as a full-time employee.

If Anzac Day fell on a Friday, the receptionist would receive no benefits, as they were not scheduled to work.



4. Long Service Leave

Long service leave is state governed rather than federally controlled.

This guide will focus on NSW-based long service leave requirements. If you are based outside NSW, check your state's long service leave requirements.

In NSW, extended service leave must be provided to an employee with ten years of continuous service. Most NSW employees are entitled to this leave, and at ten years, employees are entitled to two months' wages at their ordinary pay.

Queensland works a little differently, in that 4.3333 weeks of long service leave accrue per five years. This leave is only accessible after 10 years.

In Victoria, workers will qualify for long service leave after 7 years of service. Victorian workers will get one week of long service leave, each 60 weeks that are worked.

Each additional five-year block of employment will allow the employee to accrue an extra month of long service leave.

Long service leave can be taken in one continuous period, or if you and your employee agree:

- Where leave is equal to two months, two separate periods
- Where leave is above two months and below 19.5 weeks, in two or three separate periods
- Where leave exceeds 19.5 weeks, in two, three or four separate periods

If your employee has served above five years but less than ten years of service (minus unpaid leave such as parental leave), and:

- Resign as a result of illness, incapacity, domestic or other pressing necessity; or
- Are dismissed for any reason except serious and wilful misconduct; or
- Die

They are entitled to a long service pro-rata payment.

Portable Long Service Leave:

What happens if you are an employer with projects in multiple states with different long service leave laws?

There are some industries in which there is long portable service leave guaranteed. Such sectors include building and construction, coal mining and contract cleaning.

If you are not a part of these industries, it becomes difficult to say with certainty what the law requires. The case law, however, suggests that the employer should apply the relevant laws of the state or territory in which the employee takes the extended service leave or where termination of employment occurs.

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To be sure, if this unique situation applies to your business, contact an expert to have written documents specifying the rules. Ring John on 0407069507.

5. Community Service Leave

Community service leave is broad, but can be split into two distinct categories. Those categories are voluntary emergency management and jury duty.

Voluntary Emergency Management:

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.

A recognised emergency management body is:

- A body that has a role or function under a plan that is for coping with emergencies / natural disasters (prepared by the Commonwealth or a state or territory)
- A fire-fighting, civil defence or rescue body
- Any other body which is involved in responding to an emergency or natural disaster.

There is no limit to the amount of community service leave an employee can take. The employee must, as soon as possible, give notice and give the expected period of absence. The employer is also entitled to ask and receive evidence for the period of leave.

Jury Duty:

All employees are entitled to Jury Duty leave, but casuals are not entitled to 'make up pay'. Make up pay is the difference between jury duty payment and the employee's base pay. Other employees are entitled to this pay for the first 10 days of jury selection and jury duty.

An employer can request evidence from an employee to show that all the necessary steps to claim jury duty have been taken.

Some states and territories may provide further benefits for employees. Check your local legislation for more information.

Key Take Aways for Leave:

- All employees across the country are entitled to leave of some sort. Make sure that you understand what leave your employees are entitled to. This will depend upon:
 - o The relevant modern award, NES and other Federal/State legislation
 - o Type of work (Casual/Part-Time/Full-Time)
 - o The Employment Contract
- The best way to regulate leave for your business is through workplace policies. Workplace policies allow you to choose how leave works in your business.
- Enforcing outdated or un-signed policies in your workplace can lead to a Fair Work Investigation, possible leading to fines and ongoing observation



If you are unsure about any part of leave in the workplace, it is best to have a professional's opinion. Contact HR/IR Solutions for a HR check-up, contracts, policies or general advice.