

Leave Matters for the NSW Health Service

**Summary** This Policy Directive provides information on all leave provisions for the NSW Health Service.

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**Audience** All Staff and Executives of Public Health Organisations;Administration

## Leave Matters for the NSW Health Service

### Policy Statement

NSW Health organisations must comply with all the provisions and requirements concerning the management and availability of leave for staff employed in the NSW Health Service.

Regard must be had to the relevant Industrial Award, which may contain more specific provisions. Where Award provisions differ from those in this Policy Directive, the relevant Award takes precedence

### Summary of Policy Requirements

A NSW Health manager's primary responsibility is to ensure the continuation of service provision and the wellbeing of patients and staff.

In dealing with leave requests, managers must ensure decisions are made consistent with legislative provisions, NSW Health Awards and this Policy Directive.

For leave of a sensitive nature, while the employee's absence from the workplace may need to be identified into the roster for service and operational needs, leave applications must be treated in a confidential manner, ensuring that any leave documentation is kept secure.

Employees are required to follow requirements in applying for and taking leave. The various types of leave outlined in this Policy Directive are for specific situations and must be taken for the purpose sought. For example, parental leave is to provide employees time to care for and bond with their children. Sick leave is granted to allow employees to recover from illness or injury, while personal carers leave is available to care for immediate members of their family who are injured or ill.

Employees who plan to take up any secondary employment during a period of leave must seek prior approval.

If an employee commences a period of extended leave, for example three months, any existing secondary employment approvals must be evaluated. Failure to seek approval prior to undertaking secondary employment may be treated as a breach of the Code of Conduct and managed accordingly.

### Revision History

Version	Approved By	Amendment Notes
PD2024_046 December-2024	Deputy Secretary People, Culture and Governance	Reissued to update parental leave provisions to extend to ongoing placement of a child or young person subject to a legal order.
PD2023_045 December-2023	Deputy Secretary People, Culture and Governance	Reissued to update parental leave provisions, including the Commonwealth Paid Parental Leave Scheme.
PD2023_006 February-2023	Deputy Secretary People, Culture and Governance	Reissued to update provisions for parental leave and leave for employees experiencing domestic and family violence.
PD2022_006 March-2022	Deputy Secretary People, Culture and Governance	Reissued to include changes to parental leave, to incorporate enquiries from local health districts and leave provisions relating to multiple assignments.
PD2019_010 December 2019	Deputy Secretary People, Culture and Governance	Reissued to include additional leave provisions for Former Australian Defence Force Personnel and Support for Employees Experiencing Domestic and Family Violence.
PD2018_046 December-2018	Deputy Secretary, People, Culture and Governance	Reissued to include additional leave provisions for the purposes of altruistic surrogacy.
PD2018_036 September-2018	Deputy Secretary, People, Culture and Governance	Reissued to include enhanced provisions relating to Defence Reserve Service leave.
PD2017_028 August-2017	Deputy Secretary, People, Culture and Governance	Policy Directive reviewed to incorporate enquiries and comments from local health districts, and including additional leave provisions.
PD2014_029 September-2014	Deputy Secretary, Governance, Workforce and Corporate	Separate leave policies consolidated into one Policy Directive covering leave matters for the NSW Health Service. Leave matters for Ministry of Health and other public service employees are dealt with separately.
PD2011_041 PD2009_070 PD2009_050 PD2008_051 PD2007_031 PD2006_097 PD2006_096 PD2006_095 PD2006_094 PD2006_092 PD2006_091 PD2006_089 PD2006_043 PD2006_040 PD2006_006	Director-General	Separate Policy Directives.

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## Contents

<b>1. Background.....</b>	<b>7</b>
1.1. About this document.....	7
1.2. Key definitions .....	7
1.3. Legal and legislative framework .....	8
<b>2. Annual Leave .....</b>	<b>9</b>
2.1. Full time employees.....	9
2.2. Part time employees .....	9
2.3. Payment on termination.....	10
2.4. Taking of accrued annual leave .....	10
2.5. Excess accrued annual leave.....	10
2.5.1. Change in hours of work .....	11
2.5.2. Recruiting employees within NSW Health .....	11
2.5.3. Taking excess accrued annual leave.....	12
2.6. Notice of annual leave .....	12
2.7. Re-crediting of annual leave in case of sickness.....	12
2.8. Public holidays and annual leave .....	13
2.9. Accrual of annual leave during leave without pay.....	13
2.10. Relieving in higher grade prior to taking annual leave.....	13
2.11. Annual leave loading and shift allowances and weekend penalties while on annual leave	13
2.11.1. Annual leave loading .....	13
2.11.2. Payment of shift allowances and weekend penalties .....	15
<b>3. Sick Leave .....</b>	<b>15</b>
3.1. Sick leave eligibility .....	16
3.1.1. Sick leave eligibility and accrual .....	16
3.1.2. Payment for sick leave taken .....	17
3.1.3. Sick leave without pay.....	18
3.2. Managing sick leave .....	18
3.2.1. Notification of absence .....	19
3.2.2. Evidence of sickness and incapacity .....	19
3.2.3. Managing imminent health and safety risks .....	20
3.2.4. Long term and/or serious illness or injury .....	20
3.2.5. Review points for sick leave absences .....	21

3.2.6.	Managing sick leave absence concerns .....	22
3.2.7.	Workers compensation and leave .....	23
<b>4.</b>	<b>Family and Community Services Leave and Personal Carers Leave .....</b>	<b>24</b>
4.1.	Family and community services leave (FACS) .....	24
4.1.1.	Granting of FACS leave .....	25
4.1.2.	FACS entitlement .....	25
4.1.3.	Additional FACS leave for bereavement purposes .....	26
4.1.4.	Use of other leave entitlements – FACS .....	26
4.2.	Personal carer's leave .....	26
4.2.1.	Personal carer's entitlement to use sick leave .....	27
4.2.2.	Use of other leave entitlements for carer purposes .....	28
4.3.	Flexible work practice alternatives to FACS or personal carer's leave .....	28
4.3.1.	Use of make-up time .....	28
4.3.2.	Time off in lieu of payment of overtime .....	29
4.4.	Casual employee entitlements .....	29
4.4.1.	Bereavement Entitlement .....	29
4.4.2.	Personal/carer's entitlement .....	29
<b>5.</b>	<b>Parental Leave .....</b>	<b>29</b>
5.1.	Paid parental leave entitlements (effective 2 August 2024) .....	32
5.1.1.	Parent with responsibility for care of child associated with the birth, adoption, altruistic surrogacy or ongoing placement of a child or young person subject to a legal order .....	32
5.1.2.	Bonus Paid Parental Leave .....	32
5.2.	Notice requirements .....	33
5.3.	Evidence requirements .....	33
5.4.	Concurrency of paid parental leave .....	34
5.5.	Flexibility in taking leave .....	34
5.6.	Additional Provisions for Altruistic Surrogacy and Ongoing Placement Arrangements .....	35
5.7.	Award and policy provisions .....	35
5.7.1.	Unpaid parental leave .....	36
5.7.2.	Illness associated with pregnancy .....	36
5.8.	Rate of pay for parental leave .....	36
5.8.1.	Higher duties .....	37
5.9.	Effect of part time leave without pay .....	37
5.9.1.	Further parental leave .....	37
5.10.	Other leave .....	38
5.11.	Right to request .....	38

5.12. Access to reduced hours for employees following parental leave.....	39
5.12.1. Returning to work on reduced hours.....	39
5.12.2. Applying for return to work on 'reduced hours' .....	39
5.13. Parental leave implications – superannuation .....	39
5.14. Leave accrual and increments .....	40
5.14.1. Full pay and half pay leave .....	40
5.14.2. Full time unpaid leave .....	40
5.14.3. Part time unpaid leave .....	40
5.15. Right to return to previous position .....	40
5.16. Other provisions.....	40
5.16.1. Leave in the event of a miscarriage .....	41
5.16.2. Leave in the event of a pre-term birth .....	41
5.16.3. Leave for employees undergoing fertility treatment .....	42
5.16.4. Commonwealth paid parental leave .....	42
5.16.5. Communication arrangements during leave .....	43
5.16.6. Keeping in touch days .....	43
5.16.7. Support for breastfeeding.....	43
<b>6. Development and Study Leave .....</b>	<b>44</b>
6.1. Eligibility for leave .....	45
6.2. Applicable development and study activities .....	46
6.2.1. Seminars, conferences and short courses .....	46
6.2.2. Tertiary study.....	46
6.3. Applying for leave .....	47
6.4. Assessing the application .....	48
6.5. Approval and review processes .....	48
6.6. Taking approved leave .....	49
6.7. Leave accrual .....	49
6.8. Payment for leave.....	49
6.9. Workers compensation.....	49
6.10. Financial assistance .....	49
6.11. Withdrawal from course of study .....	50
6.12. Completion of studies .....	50
<b>7. Long Service Leave.....</b>	<b>50</b>
7.1. Long service leave provisions under NSW Health Awards .....	50
7.2. Effect on other leave entitlements .....	51

7.3.	Long service leave on termination .....	52
7.4.	Qualifying service for the accrual of long service leave.....	52
7.4.1.	Continuous service .....	52
7.4.2.	Broken service.....	52
7.4.3.	Leave without pay .....	52
7.4.4.	Previous part-time service.....	53
7.4.5.	Combinations of full time and permanent part time service .....	53
7.4.6.	Prior NSW Government, Commonwealth Government or other recognised service....	53
7.5.	Part time and casual employees – Long service leave provisions.....	53
7.5.1.	Continuous casual service – Employees under the Health Employees’ Conditions of Employment Award .....	54
7.6.	Re-crediting long service leave .....	54
7.7.	Minimum periods of long service leave .....	54
7.8.	Notice of long service leave .....	55
7.9.	Former provisions for long service leave .....	55
7.9.1.	Accelerated accrual.....	55
7.9.2.	Broken service.....	56
7.9.3.	Prior part time service .....	56
7.9.4.	Part time employees.....	56
7.10.	Assessment and calculation of long service leave entitlements.....	56
<b>8.</b>	<b>Leave Without Pay .....</b>	<b>57</b>
8.1.	Granting of leave without pay .....	57
8.2.	Effect on salary increments .....	58
8.3.	Effect on leave entitlements .....	58
8.3.1.	Long service leave .....	58
8.3.2.	Other leave .....	58
8.3.3.	Effect of part time leave without pay .....	59
<b>9.</b>	<b>Christmas Closedown .....</b>	<b>59</b>
<b>10.</b>	<b>Observing Days of Religious Significance .....</b>	<b>59</b>
<b>11.</b>	<b>Government Sector Employees Contesting Elections .....</b>	<b>60</b>
<b>12.</b>	<b>Special Leave.....</b>	<b>60</b>
12.1.	Attendance at State Super Retirement Preparation Seminars.....	60
12.2.	Blood donors.....	60
12.3.	Bone Marrow Donors.....	60
12.4.	Jury Duty.....	61
12.5.	National Aborigines and Islanders Day Observance Committee (NAIDOC) Week .....	61



12.6. Olympic and Commonwealth Games.....	62
12.7. Leave for former Australian Defence Force (ADF) personnel .....	62
12.7.1. Sick leave for war caused disabilities .....	62
12.8. Volunteer members of emergency organisations .....	62
12.8.1. Emergency volunteers .....	62
12.8.2. Declared emergencies .....	63
12.8.3. Proof of attendance .....	63
12.8.4. Rest period .....	63
12.8.5. Emergency services courses .....	64
12.9. Attendance at court.....	64
12.9.1. In an official capacity .....	64
12.9.2. Proceedings arising from work-related assault.....	64
12.9.3. In a private capacity .....	64
12.10. Support for employees experiencing domestic and family violence.....	65
<b>13. Leave to Undertake Defence Force Duties.....</b>	<b>66</b>
13.1. Defence Reserve Service .....	66
13.2. Commonwealth Defence Employer Support Payment (ESP) Scheme .....	68
13.3. Further information .....	68
<b>14. Trade Union Leave .....</b>	<b>68</b>
14.1. Trade union activities regarded as on duty .....	68
14.2. Trade union leave activities .....	69
14.3. Trade union training courses .....	69
14.4. Trade union on loan arrangements .....	70
14.5. Period of notice for trade union activities .....	71
14.6. Access to facilities by trade union delegates .....	71
14.7. Travelling and other costs of trade union delegates .....	71
14.8. Responsibilities of the trade union delegate .....	72
14.9. Responsibilities of the trade union .....	72
14.10. Responsibilities of workplace management.....	72
<b>15. Leave Management .....</b>	<b>73</b>
15.1. Leave as service.....	73
15.2. Recording of leave.....	74
15.2.1. Annual leave.....	74
15.2.2. Sick leave .....	74
15.2.3. Long service leave .....	75

15.3. Employees transferring within the NSW Health Service.....	75
15.4. Higher duties prior to taking leave.....	75
15.5. Multiple assignments .....	75
15.5.1. Multiple assignments within a single organisation in the Public Health System .....	75
15.5.2. Multiple assignments across different organisations in the Public Health System .....	76
<b>16. Allocated Days Off, Annual Leave and Debiting of Leave .....</b>	<b>76</b>
16.1. Annual leave .....	76
16.2. Sick leave.....	77
16.3. Leave without pay .....	77
16.4. Allocated days off (ADOs) .....	77
16.4.1. Nurses and midwives .....	78
<b>17. Methodology of Calculation of Entitlement – Public Holidays .....</b>	<b>79</b>
<b>18. Staff Mobility .....</b>	<b>79</b>
18.1. Government sector staff mobility.....	79
18.1.1. Up to two months break – Effect on leave .....	80
18.1.2. Annual (recreation) leave .....	80
18.1.3. Long service (extended) leave .....	81
18.1.4. Non-declared affiliated health organisations .....	81
18.1.5. Prior service in community health and Fifth Schedule Hospitals .....	82
18.1.6. Medical officers with the Surf Life Saving Association .....	82
18.1.7. Nursing services in private hospitals .....	82
18.1.8. Health Service Senior Executives .....	82
18.1.9. Sick leave .....	83
18.1.10. Maternity, adoption, parental leave.....	83
18.1.11. Access to forfeited sick leave.....	83
18.2. Accumulated allocated days off.....	83
18.3. NSW Health Service financial arrangements.....	84
18.3.1. Transferor Agency of the NSW Health Service .....	84
18.3.2. Transferee Agency of the NSW Health Service .....	84
18.3.3. Transfer of leave – affiliated health organisations (AHOs).....	84
18.3.4. Cash management .....	85
18.4. Health Service Senior Executives .....	85
18.4.1. First appointment as an Executive – Accrued Leave .....	85
18.4.2. Notional salary .....	86

## 1. Background

### 1.1. About this document

This Policy Directive summarises leave entitlements, administration and management for employees of the NSW Health Service. The entitlements vary and reflect differing [Award](#) provisions.

This Policy Directive must be read in conjunction with the relevant Award. Where Award provisions differ from those in this Policy Directive, the relevant Award takes precedence.

While this Policy Directive sets out various leave provisions, employees can also access information on their accrued leave through the StaffLink application.

### 1.2. Key definitions

<b>Additional leave</b>	Additional annual leave granted to eligible employees who are rostered to work and do work on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes, depending on the number of Sundays/public holidays worked. The relevant <a href="#">Award</a> will specify who is eligible to accrue additional leave.
<b>Casual employee</b>	Refer to the definition outlined in the relevant <a href="#">Award</a> .
<b>Government Sector</b>	All of the following (other than any service in which employees are excluded by Section 5 of the <a href="#">Government Sector Employment Act 2013</a> [NSW]); the Public Service, the Teaching Service, the NSW Police Force, the NSW Health Service, the Transport Service of NSW, any other service of the Crown (including the service of any NSW government agency), the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed by the regulations for the purposes of this definition.
<b>Health Service Senior Executive</b>	Described in Part 3 of Chapter 9 of the <a href="#">Health Services Act 1977</a> (NSW) as amended by the <a href="#">Government Sector Employment Legislation Amendment Act 2016</a> (NSW).
<b>NSW Health Agency</b>	Includes all public health organisations, the Ambulance Service of NSW and all other bodies and organisations within the public health system, where employees of the NSW Health Service are employed.
<b>NSW Health Service</b>	All persons employed under Chapter 9, Part 1 of the <a href="#">Health Services Act 1997</a> (NSW) in the NSW public health system.

<b>Old Part time employees</b>	Employees employed as at 20 September 1994 and who receive an adjusted hourly rate. Reference is to be made to the relevant <a href="#">Award</a> .
<b>Ongoing placement arrangement</b>	The placement of a child or young person who is subject to a legal order of the Children’s Court of NSW or Federal Circuit Court of Australia with an authorised foster carer, authorised relative/kinship carer or suitable person on an ongoing basis.
<b>Part time employees</b>	An employee who is engaged in a less than full time capacity. Permanent part time employees are entitled to the same leave provisions as full-time employees however it is calculated on a pro-rata basis aligned to their part-time hours.  Different Award provisions apply for “Old Part Time” employees.
<b>Part Time Leave Without Pay</b>	An arrangement where a full-time employee may apply and be approved to work part time for a defined period. The employee retains their full-time status. A Permanent part time employee may also apply and be approved to reduce their working hours for a defined period. The employee retains their original part-time status. Such arrangements are also referred to as “Reduced Hours”.
<b>Public Service</b>	Those persons employed under Part 4 of the <a href="#">Government Sector Employment Act 2013</a> (NSW) by the Government of NSW in the service of the Crown, consisting of employees of Departments (Part 1 of Schedule 1 of the Act), Executive agencies (Part 2 of Schedule 1) and Separate Public Service Agencies (Part 3 of Schedule 1). The Public Service does not include the NSW Health Service; different leave provisions apply.
<b>Reduced hours</b>	Employees who have approval to work fewer hours per week, without losing their substantive employment status, such as when returning from parental leave.
<b>Working Carers</b>	Employees who provide ongoing unpaid care and support to persons who need help because of disability, terminal, chronic or mental illness or ageing while the employee also undertakes paid work.

### 1.3. Legal and legislative framework

In addition to the [Long Service Leave Act 1955](#) (NSW) and the [Annual Holidays Act 1944](#) (NSW), [Awards](#) covering staff employed in the NSW Health Service contain leave provisions. Other relevant legislation referenced in this Policy Directive includes:

- 
- *Defence Reserve Service (Protection) Act 2001* (Cth)
  - *Fair Work Act 2009* (Parts 6-3: Parental Leave; and 6.4: Termination on Unlawful Grounds) [Cth]
  - *Government Sector Employment Act 2013* (NSW)
  - *Government Sector Employment Regulation 2014* (NSW)
  - *Health Services Act 1997* (NSW)
  - *Health Services Regulation 2008* (NSW)
  - *Industrial Relations Act 1996* (NSW)
  - *Paid Parental Leave Amendment (Flexibility Measures) Act 2020* (Cth)
  - *Surrogacy Act 2010* (NSW)
  - *Work Health and Safety Act 2011* (NSW)
  - *Workers Compensation Act 1987* (NSW).

NSW Health also has an obligation under the [Carer's \(Recognition\) Act 2010](#) (NSW) to demonstrate due regard to the NSW Carer's Charter in human resource policies. The NSW Health website [Support for Carers](#) page provides a range of resources that provide system-wide guidance on responding to the needs of carers across the NSW public health system.

## 2. Annual Leave

This Section does not apply to Health Service Senior Executives whose leave conditions are set out in NSW Health Policy Directive *NSW Health Service Senior Executive Arrangements* ([PD2019\\_002](#)).

Annual leave must be taken at full pay, however during periods of parental leave, refer to [Section 5.10 – Other leave](#) and the relevant [Award](#).

### 2.1. Full time employees

In accordance with the [Annual Holidays Act 1944](#) (NSW) all full time employees are entitled to a minimum of four weeks' annual leave in respect of each completed year of service.

The relevant [Award](#) is to be checked to determine entitlements to additional annual leave.

**Temporary employees** receive annual leave on the same basis as permanent employees. Employees employed for less than 12 months are paid the monetary value of pro rata annual leave at the conclusion of their engagement if not taken during the period of employment.

### 2.2. Part time employees

Two types of part time employees are employed in the NSW Health Service. Each group has different annual leave entitlements.

*Permanent part time employees* are entitled to the same annual leave provisions as full time employees calculated on a pro-rata basis aligned to their part-time hours. This includes an

entitlement to the provisions for additional annual leave for working on Sundays and public holidays where relevant.

*Part time employees who receive an adjusted hourly rate* (commonly referred to as “old part time employees”) are entitled to the provisions of the [Annual Holidays Act 1944](#) (NSW). Old part time employees are entitled to four weeks annual leave per year based on the number of hours worked per week; they are not entitled to the additional annual leave of up to one week that may accrue to other employees working on Sundays and public holidays. The relevant [Award](#) is to be checked for additional provisions for old part time employees.

### 2.3. Payment on termination

The [Annual Holidays Act 1944](#) (NSW) provides that on termination an employee is entitled to payment in lieu of all annual leave accrued but not taken.

An employee whose employment terminates prior to the expiration of a period of 12 months from their date of appointment or their last anniversary date of appointment, is entitled to a pro rata payment for annual leave, such payment to be calculated on the basis of 1/12th of the employee’s ordinary pay for that period of employment per month of employment.

Temporary employees are also entitled to payment of the monetary value of pro rata annual leave at the conclusion of each engagement unless [Subsection 2.5.2 – Recruiting employees within NSW Health](#) applies.

Some [Awards](#) include additional provisions related to the pro rata payment of annual leave on termination (for example, the Public Health System Nurses’ and Midwives’ (State) Award).

Where a terminating employee is receiving workers compensation payments for part of the period since annual leave last fell due, the employee’s pro rata payment in respect of annual leave is to be calculated on the basis of the ordinary pay for the whole of the period in question.

### 2.4. Taking of accrued annual leave

The [Annual Holidays Act 1944](#) (NSW) provides that annual leave “shall be taken by the worker before the expiration of a period of six months after the date upon which the right to such holiday accrues”.

Some NSW Health Service [Awards](#) refer to the *Annual Holidays Act 1944* (NSW) and so the provision described above applies. Other Awards set out provisions for the taking of leave, usually that annual leave must be given and taken within six months of it becoming due but that deferral for a further six months may occur by mutual agreement. Relevant [Awards](#) are to be checked to determine what provisions are applicable.

Payment in lieu of annual leave is not permitted, except in respect of accrued leave due at the date of termination of services, or where there are Award provisions enabling “additional annual leave” to be paid out.

### 2.5. Excess accrued annual leave

It is recognised that there may, on occasions, be sound reasons for deferring the taking of accrued leave entitlements (e.g. necessity for key staff to be available for particular duties at



specific times, etc.) however annual leave credits of all employees are to be regularly reviewed to ensure that, where necessary, leave accrued from previous years is taken without delay. This includes “additional” annual leave.

The Ministry of Health requires the ongoing maintenance of accrued annual leave balances to maintain these to 30 days or less. This reflects the requirements of Treasury Circular TC16/03 Managing Accrued Recreation Leave Balances. The balance of 30 days refers to full-time employees. Part-time employees will have an adjusted balance, depending on their part-time arrangement.

Note: a direction to take pro-rata leave is not a part of this requirement. Refer to [Subsection 2.5.3 – Taking excess accrued annual leave](#).

**A range of strategies can be implemented to effectively manage excessive annual leave, including:**

Preparing and agreeing upon an appropriate plan to reduce excess accrued annual leave

Making sure that annual leave plans are reviewed and discussed at performance review meetings

Setting targets and appropriate strategies to reduce excessive annual leave, within reasonable timeframes

Ensuring flexibility in dealing with individual circumstances, including proactive strategies for taking of leave at a later time (e.g. special event, overseas holiday)

Where appropriate, directing employees to take leave where their annual leave balance is above 30 days and appropriate processes for notice have been followed

Considering the service implications of any plans to reduce leave balances

Seeking advice and support from Human Resources/Workforce on complex and long term leave matters

In developing strategies, health agencies are to take into consideration the employee's wellbeing while also balancing operational requirements. Unreasonably long timeframes for taking excessive annual leave must be avoided, unless such timeframes have been discussed and agreed.

### **2.5.1. Change in hours of work**

Where an employee changes their hours of work from full time to part time, or from part time to full time, managers are to review the employee's leave balances and discuss options with them to reduce annual leave liability where possible before commencing the changed hours of work.

This includes the option to cash out any ‘additional annual leave’ if permitted by the relevant Award. Refer to NSW Health Information Bulletin *Cashing Out Accrued Additional Annual Leave* ([IB2021\\_039](#)) for further information.

### **2.5.2. Recruiting employees within NSW Health**

Employees moving within the NSW Health Service retain the same employer, therefore all leave entitlements transfer and annual leave balances cannot be paid out. However, prior to

commencement of an employee with the new Health agency, the hiring manager can enquire about the employee's leave balance and can discuss options with them to attempt, where possible, to minimise any excess annual leave liability they bring to the new agency. This may include:

- Delaying start date, asking the individual to take annual leave with their current organisation prior to separation from their previous role
- The current organisation accommodating situations where the outgoing employee requests to take leave to reduce their excessive leave prior to their last day
- Reminding the employee of the option of cashing out "additional leave" prior to leaving the previous organisation
- Preparing a leave plan to reduce their balance transferred from the other organisation upon commencement of duty.

### **2.5.3. Taking excess accrued annual leave**

Subject to [Award](#) conditions, managers may direct employees on leave, with appropriate notice, as part of the management of excessive annual leave balances. Where the Award is silent on notice requirements, a notice period of one month is appropriate.

While pro rata annual leave is required by the Ministry to be included in the calculation of excess annual leave balances, an employee is only to be directed to take the excessive annual leave balance that they have become entitled to.

## **2.6. Notice of annual leave**

The relevant [Award](#) is to be checked in relation to the applicable notice period for taking annual leave. In circumstances where the Award is silent, employees should provide one month's notice of the intention to take Annual Leave, unless there are extenuating circumstances that prevent such notice.

## **2.7. Re-crediting of annual leave in case of sickness**

Periods of less than one week (i.e. five working days) will not be re-credited for an employee who is sick while on annual leave.

Employees who are incapacitated for five working days or more while on annual leave may apply upon return to duty to have the period of incapacity re-credited to their annual leave entitlement and debited against any accrued sick leave entitlement. This provision does not apply to employees who do not return to work or who are on leave prior to retirement, resignation or termination.

Such an application must be supported by a medical certificate stating the period of incapacity, and the employee must have an untaken sick leave entitlement. Where such entitlement is less than the total of the period for which a claim is made, the re-credit of annual leave cannot exceed the available sick leave.



## 2.8. Public holidays and annual leave

The [Annual Holidays Act 1944](#) (NSW) states that where any special or public holiday to which the employee is entitled occurs during their four weeks of annual leave, their leave must be increased by one day or one half day in respect of the special or public holiday.

Some [Awards](#) also contain provisions relating to public or special holidays during periods of leave. These provisions also apply for periods of additional annual leave.

## 2.9. Accrual of annual leave during leave without pay

Periods of leave without pay in excess of 28 consecutive calendar days are not to be counted as service for the purpose of accrual of annual leave.

## 2.10. Relieving in higher grade prior to taking annual leave

Employees who have acted continuously for one year or more in one or more roles at a higher grade, and who continue to act in a higher graded role are eligible for payment of the higher duties allowance for any annual leave which is taken during the further period of higher duties.

Some [Awards](#) include different provisions related to relieving in higher grade duties prior to taking annual leave (for example, the *Public Health System Nurses' and Midwives' (State) Award*).

## 2.11. Annual leave loading and shift allowances and weekend penalties while on annual leave

Entitlements to be paid Annual Leave Loading and Shift and Weekend Penalties for annual leave are contained in the [Annual Holidays Act 1944](#) (NSW) and the provisions of the relevant [Award](#). Reference needs to be made to both, to determine exact entitlements. Those entitlements take precedence over the provisions of this Policy.

Without limiting this exclusion, the annual leave loading provisions described in this Section do not apply to employees under the *Ambulance Service of New South Wales Administrative and Clerical Employees (State) Award*, the *Operational Ambulance Managers (State) Award* or the *Operational Ambulance Officers (State) Award*. Reference should be made to the relevant Award provisions referred to in this paragraph.

### 2.11.1. Annual leave loading

Where the applicable awards do not classify employees as day workers or shift workers, annual leave loading applies. Unless otherwise provided in the applicable Award, the method of calculating and paying annual leave loading is set out below. However, individual [Award](#) are to be examined to ascertain the exact annual leave loading provisions applicable to particular employees.

- 1) Employees, **other than shift workers**, are to be granted an annual leave loading equivalent to 17½% of four weeks' ordinary salary, subject to point 2 below.
- 2) The maximum annual leave loading payable is an amount equivalent to 17½% of four

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weeks' ordinary salary using the maximum Clerk Grade 12 Public Service salary.

- 3) Where annual leave is taken in broken periods, the annual leave loading and the maximum amount are calculated on a pro rata basis for the broken period.
- 4) Before employees are given and take their annual holiday or where, by agreement between the employer and the employee, the annual holiday is given and taken in more than one period, then before each such separate period, the employer shall pay the employee a loading determined in accordance with the provisions of this subclause (Note: this subclause does not apply where an employee takes an annual holiday wholly or partly in advance – see point 6 below).
- 5) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the [Annual Holidays Act 1944](#) (NSW) or an Award.
- 6) No loading is payable to an employee who takes an annual “holiday” or “leave: wholly or partly in advance; provided that, if their employment continues until the day when they would have become entitled under the *Annual Holidays Act 1944* (NSW) or an Award to an annual “holiday” or “leave”, the loading then becomes payable in respect of the period of such holiday.
- 7) The annual leave loading is not payable when an employee is paid the monetary value of annual leave to the employee's credit on resignation.
- 8) Employees who cease working in the NSW Health Service and who commence working immediately in another government sector agency may be entitled to transfer some of their annual leave loading entitlement under the government sector mobility arrangements. This is because annual leave loading is dealt with differently for staff employed under the Crown Employees (Public Service Conditions of Employment) Award. See [Section 18 – Staff Mobility](#) for more information.

Employees who move between the NSW Health Service and a non-declared affiliated health organisation and who are entitled to elect to transfer their annual leave to the new employer will also have their annual leave loading entitlement transferred. See Section 18 – Staff Mobility.

Employees who transfer between NSW Health Service Agencies will retain their accrued annual leave loading entitlements, as there is no capacity to have annual leave paid out.

Upon retirement, medical retirement, completion of temporary contract or termination by the employer for any reason other than misconduct, an employee who has qualified for an annual leave loading by completing 12 months' service, but who has not taken annual leave since qualifying, will be paid the loading that would have been payable had such leave been taken. This also applies in circumstances where employment ceases due to the death of an employee. No payment is made for proportionate annual leave loading for periods of employment less than 12 months.

- 9) Trainees who are employed for the purpose of completing a training course leading to a qualification that allows the employee to be employed in a trained capacity, and employees covered by the *Public Hospital Medical Officers Award* whose employment terminates are entitled to the payment of the annual leave loading, provided that where the trainee or medical officer:

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- a. Has no annual leave due at the time of termination by reason of having taken it in advance.
  - b. Did not receive any annual leave loading payment at the time of taking such leave. The trainee or medical officer shall be entitled on termination to the payment of an annual leave loading equivalent to that which would have been received had the annual leave not been taken in advance.
- 10) Broken service during a year does not attract the annual leave loading, e.g. if an employee resigns and is subsequently re-employed during the same year, only the service from the date of re-employment attracts the annual leave loading subject to the above conditions.
- 11) The annual leave loading is to be calculated on the ordinary salary or wage rate payable for the leave when taken. New rates granted by Award, determination, increment, etc., during the period of leave are to be taken into account unless otherwise prescribed. If necessary, retrospective adjustment of the loading is to be made. The rate of payment must not include any other allowances, penalty or disability rates, commission, bonuses, incentive payments, overtime rates or any other payments prescribed by Awards. An exception to this is the Skilled Trades classifications where some allowances may be included when calculating the annual leave loading.
- 12) Part time employees who satisfy the above conditions are also eligible for the annual leave loading.
- 13) The annual leave loading is not payable to trainees who are paid by way of allowance and not by salary or wages.

### **2.11.2. Payment of shift allowances and weekend penalties**

Many health awards classify employees as day workers or shift workers. They provide that shift workers are entitled to either an annual leave loading as set out in [Subsection 2.11.1 – Annual leave loading](#) or the shift allowances and weekend penalty rates relating to ordinary time (other than in respect of public holidays) that they would have earned had they not taken the annual leave, whichever is the more favourable.

Each [Award](#) is to be checked to determine the maximum period of annual leave on which shift and weekend penalties can be paid. Under some Awards, shift and penalty rates do not apply to the additional annual leave of up to one week that accrues for work on Sundays and/or public holidays. Shift and weekend penalty rates are not payable on annual leave that an employee elects to receive in lieu of penalty rates for working on public holidays.

## **3. Sick Leave**

This Section does not apply to Health Service Senior Executives whose leave conditions are set out in NSW Health Policy Directive *NSW Health Service Senior Executive Service Arrangements* ([PD2019 002](#)).

Employees are eligible for sick leave when ill or injured. Sick leave is not to be used when absences are not connected with ill health or injury.

**Sick leave absences require active management to ensure that:**

In line with work health and safety obligations, employees who are ill or injured do not pose a risk to their own health, safety or wellbeing, nor to others at the workplace.

There is minimum disruption to service provision, and organisational viability is secured.

Employee entitlements are appropriately managed.

Attendance at work is encouraged.

### 3.1. Sick leave eligibility

#### 3.1.1. Sick leave eligibility and accrual

**Subject to the exemptions below, an employee is eligible for paid sick leave when they:**

Are incapacitated in the performance of duties by a physical or psychological illness, an injury, or an illness or injury associated with pregnancy or childbirth (but not pregnancy/childbirth itself).

Risk further impairment to their health by reporting for duty.

Undergo treatment by a registered health service provider as specified under [Subsection 3.2.2 – Evidence of sickness and incapacity](#) where reasonable notice, depending on the circumstances was provided and an appointment could not be obtained outside their normal working hours; or the treatment was urgently needed; or they are attending legitimate therapy, training, counselling or rehabilitation and provide evidence of need and attendance.

Would, as determined by the relevant manager under the advice of a registered medical practitioner, jeopardise the health, wellbeing or safety of others by their presence in the workplace, for example by exposing others to a communicable disease.

**Exemptions:**

Casual employees have no entitlement to paid sick leave.

Any absence for reasons of sickness or incapacity in the first three months of employment will be regarded as sick leave without pay. There is no provision for the back-pay of sick leave taken in the first three months of service once the employee becomes eligible for paid sick leave

*Note:* This does not apply where an employee is able to transfer entitlements under the provisions outlined in [Section 18 – Staff Mobility](#), (i.e. moving between the NSW Health Service and other NSW government sector services) or for employees transferring within the NSW Health Service<sup>1</sup> who maintain their accumulated sick leave balance regardless of which Health Agency they are currently working in. In these circumstances, they are entitled to the same sick leave entitlements prior to transfer.

The relevant [Award](#) is to be referred to in determining whether there are any other specific provisions governing sick leave.

<sup>1</sup> *The Health Employees' Conditions of Employment (State) Award* (CI 18(f)) prescribes that service greater than three months in any hospital is counted as service for calculation of accumulated sick leave, noting that "hospital" is defined under the Award as that stated in the *Health Services Act 1997* (NSW).

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***After the first three months of service***

Employees become eligible for a full year's entitlement of paid sick leave on the first day of the fourth month of employment. In subsequent years further paid sick leave is available on the anniversary of employment.

Paid sick leave is cumulative and there is no limit to the total accumulation. The monetary value of accumulated paid sick leave is not payable on termination.

Leave without pay (including sick leave without pay and parental leave without pay) in excess of 28 consecutive calendar days does not count as service for the purposes of sick leave accrual.

***Full-time employees***

Individual [Awards](#) must be consulted to determine the amount of paid sick leave available.

***Transferred public service employees***

The sick leave entitlements of employees who transfer from the NSW Public Service to the NSW Health Service are dealt with at Schedule 3 of the [Health Administration Act 1982](#) (NSW). These employees are entitled to the same leave entitlements prior to transfer.

***Part-time employees***

Part time employees are eligible for paid sick leave on a pro rata basis.

***Temporary employees***

Temporary employees employed for periods not exceeding 13 weeks have no entitlement to paid sick leave.

Temporary exempt employees engaged for a continuous period in excess of 13 weeks are entitled to sick leave in the same manner as permanent full-time and part time employees.

***Additional sick leave***

Once the 76-hour entitlement has been exhausted in any one year and no entitlement has been carried over from previous years, an additional four hours is to be paid even though no credit exists.

**3.1.2. Payment for sick leave taken**

***All employees***

Sick leave is to be paid at the ordinary rate of pay. Penalty rates (including public holiday penalties), shift allowances, and any other additional allowances are not to be included in payment for sick leave.

***Part time employees***

Part time employees who receive a part time loading are entitled to their part time loading on any paid sick leave. The part time loading is also payable where an employee rostered to work a weekend shift takes paid sick leave (the weekend penalties are not payable).

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### ***Public holidays***

An employee who is rostered for duty on a public holiday but takes sick leave is not entitled to any of the usual benefits associated with public holidays. If they are eligible for paid sick leave, they will be paid one day's sick leave, and their sick leave balance will be debited for the number of rostered hours.

### ***Debit of sick leave – 38-hour week***

For employees employed under a 38-hour week agreement, sick leave is debited on rostered hours (except those employed under the conditions of the Public Health Service Employees Skilled Trades (State) Award, which is to be referred to in respect of these employees). Leave is to be debited on the basis of the actual hours rostered to be worked.

### **3.1.3. Sick leave without pay**

Employees may take sick leave without pay if they have exhausted their paid sick leave entitlement, noting that an employee can elect to use other forms of paid leave in these circumstances. Refer to [Section 3.2 – Managing sick leave](#) – other forms of leave utilised in lieu of available sick leave are counted in the management of sick leave. This includes personal carer's leave.

Sick leave without pay counts as service for the accrual of:

- Annual leave
- Long service leave provided the employee has completed at least 10 years' service
- Further sick leave with pay, provided such leave will not be granted during the period of the sick leave without pay

Unless sick leave without pay exceeds 28 consecutive calendar days. Refer to [Subsection 8.3.2 – Other leave](#).

Absence on Sick leave without pay is subject to the same notification and evidence requirements as paid sick leave and will also be taken into account for the management of an employee's sick leave record.

## **3.2. Managing sick leave**

Local processes for managing sick leave must reflect the following elements:

- There must be systems to track, report and manage the taking of sick leave. This includes when other forms of leave are taken to cover for sickness absence (e.g. sick leave without pay, personal carers leave, annual leave, or long service leave).
- Managers must monitor and review sick leave absence levels. For example, conducting a return to work interview is one way to understand reasons for sick leave and how best to support employees in managing their illness or injury.

All employees must be made aware of the relevant organisation's sick leave processes, including how sick leave is to be notified (having regard to requirements contained in some Awards), to whom and when absences are to be reported, the need to complete leave forms for sick leave absences and the circumstances in which medical certificates are required.



### **3.2.1. Notification of absence**

Employees are to notify of their absence prior to or at the beginning of the day of absence or rostered shift. Supervisors/managers are responsible to set and communicate expectations regarding notification of sick leave. While they are the primary contact for notification, they are to identify other appropriate person(s) and/or positions of a senior capacity to be secondary contacts in circumstances where they are unavailable.

Employees are required to contact their supervisor/manager or secondary contact, and to indicate the reason for absence and estimated length of sick time. Employees are to make contact personally, except in circumstances where the illness/injury prevents them from doing so.

In these cases, an appropriate person is to contact the manager on the employee's behalf. Where the absence extends beyond the period discussed in the initial notification, the employee must again contact their manager.

### **3.2.2. Evidence of sickness and incapacity**

Evidence of sickness and incapacity is usually not required for absences of two days or less, unless there are particular circumstances involved, including where excessive sick leave is being actively managed.

For periods of sick leave of up to one week, evidence of sickness and incapacity is required and must be signed by an appropriate registered health service provider such as a dentist, optometrist, chiropractor, osteopath, physiotherapist, oral and maxilla-facial surgeon, nurse practitioner, or at the Secretary's discretion, another registered health service provider. Other persons listed in the relevant Award for particular classifications may also certify the sick leave.

For periods of sick leave that exceed one week, the evidence of sickness and incapacity must be in the form of a medical certificate from a registered medical practitioner.

Any evidence and the circumstances through which it has been provided must be sufficient to assure a reasonable person that the employee was sick and incapacitated for the relevant period and could not attend work.

Generally, medical certificates or other evidence will indicate the date on which the employee was examined, provide an assessment of the level of the employee's incapacity and the date the employee is likely to be able to return to work. Medical certificates or other supporting evidence/documentation may also indicate whether an injured or partially incapacitated employee could return to work on reduced/altered duties, and which duties must not be undertaken on return.

Online medical certificates issued without an examination and/or consultation with a medical practitioner are generally not supported. This does not apply to telehealth appointments with the employee's treating medical practitioner.

Some discretion is to be applied for employees in remote or rural areas or where employees may be unable to access a consultation with a medical practitioner in a timely manner.

### 3.2.3. Managing imminent health and safety risks

Where there are concerns that an employee has an illness or injury that may pose an imminent risk to their own health or safety, or the health and safety of others at the workplace, appropriate action must be taken. The available options include:

- Directing the employee to proceed on sick leave where symptoms indicating illness or injury have been observed and/or
- Requesting the employee to seek medical advice from a registered medical practitioner

A direction to proceed on sick leave for observable symptoms is a reasonable action in addressing immediate health and safety risks. In some circumstances, medical advice may not be required as some conditions (such as seasonal cold, headache etc) are likely to self-resolve in one or two days.

Where an employee has no paid sick leave entitlement, they will proceed on sick leave without pay or they may be able to use any available annual or long service leave.

Where advice from a registered medical practitioner is obtained and subsequently confirms that the employee is fit for duty, and a direction to proceed on leave was unnecessary, they must be re-credited with any paid leave taken or reimbursed for salary for any period of unpaid sick leave in excess of two days, given that it is not unreasonable to expect that observable symptoms to have resolved in that time.

Where advice from a registered medical practitioner subsequently confirms that the employee is unfit for duty, due to a non-work related illness or injury, reference is to be made to [Subsection 3.2.4 – Long term and/or serious illness or injury](#) below, the agency's local non-work related injury management process and the [Procedures for Managing Non Work Related Injuries or Health Conditions](#). (Note: This Procedure does not apply for illness or injury that is being managed under an active Workers Compensation claim.)

Where an employee refuses to seek medical advice, the employer's duty of care and responsibilities under Work Health and Safety (WHS) legislation is to be discussed.

The employee's written consent must be obtained to discuss their prognosis with the provider of the medical certificate. As a last resort, the employee may be referred for independent medical assessment.

### 3.2.4. Long term and/or serious illness or injury

Agencies must have processes that include steps for the management of long-term and/or serious illness or injury and incapacity, including requirements for regular contact with the employee and review points for assessing their capability of returning to pre-illness or injury duties.

Such steps are to include return to work programs and return to work interviews, with records of any agreed actions placed on the employee's personal file. Where practicable, the return to work program is to be made available for employees with significant non-work related illnesses or injuries.

Where there are concerns about the employee's fitness to carry out their duties, action may include seeking the employee's written consent to discuss their prognosis with the provider of



the medical certificate or referring them for a further medical assessment. After the assessment, options may include, but are not limited to, return to work on normal or reduced hours/duties, job redesign, work in an alternative position temporarily or permanently, continued absence or medical retirement.

Reference must be made to the agency's local non-work related injury management process and the [Procedures for Managing Non Work Related Injuries or Health Conditions](#). (Note: This Procedure does not apply for illness or injury that is being managed under an active Workers Compensation claim).

Any local processes must be consistent with the Department of Premier and Cabinet Procedures for Managing Non Work-related Injuries or Health Conditions. Human Resources/Workforce can also provide assistance and advice on how best to manage long term and/or serious non work related illness, injury or incapacity.

### **3.2.5. Review points for sick leave absences**

There must be appropriate review points in place for sick leave absences, including, as a minimum, points assessing:

- Absences within the first three months of employment (where three separate absences without a medical certificate are to be considered unsatisfactory)
- Frequent short term absences - managers may initiate discussions with the employee concerned after five separate unsupported absences prior to an unsatisfactory level (eight unsupported absences in any 12 months) being reached.
- Long term absences suggesting serious incapacity requiring a review of ongoing employment
- Absences displaying trends, in which case managers may initiate discussions with employees once an unreasonable trend has been identified. (This discussion can occur whether the absences are supported or unsupported by medical certificate/s). For example, this may include the following (subject to the specific circumstances which must be taken into account):
  - Recurring patterns of absences immediately before or after a public holiday, before/after a period of approved leave, on particular day(s) of the week or sick leave absences at the same time each year.
  - Large periods of absence taken prior to retirement
  - Recurring patterns of absence close to when the employee may work overtime.
  - Recurring patterns of absence which appear to relate to specific roster arrangements
  - Recurring patterns of absence which appear to be directly related to the employee's approved secondary employment.
  - Patterns of absence that regularly use excessive amounts of paid and unpaid sick leave entitlements (excluding those relating to chronic medical conditions).

In all cases, the employee concerned is to be provided an opportunity to discuss their reasons for the absence levels. Appropriate documentation must be kept of any discussion or agreed actions following a review of an employee's sickness absence record.

### **3.2.6. Managing sick leave absence concerns**

Concerns about sick leave absences must be managed with regard to procedural fairness for the employee, and with the use of non-disciplinary meetings with the employee in the first instance (including when counselling and/or advising a requirement to produce medical certificates for further absences, or referral for fitness or medical assessment if appropriate).

Counselling must always precede any sanctions and must include clear indications of the next steps that are to be taken. For continued unacceptable sick leave absences, two formal written warnings are to be issued prior to consideration of any other disciplinary action. The following process applies:

The first warning letter will confirm that the employee has been advised of the sick leave procedures and of the implications of unsatisfactory attendance. The employee must be provided with details of the attendance record and the unsatisfactory amount or trend of that leave. They must be advised that their attendance will be monitored for a specific period of time (no more than six months unless exceptional circumstances warrant) and that improvement is expected over that time. Consequences of no improvement needs to also be advised to the employee.

Where there is improvement before the expiration of the review period nominated in the first warning letter, the monitoring of attendance is to revert to normal.

Where no improvement is noted before the expiration of the review period nominated in the warning letter, or a further two unsupported absences occur, a second warning letter is to be issued (in the case of where absences occur during the first three months of employment, a further unsupported absence within three months will trigger the second warning letter).

The second warning letter will refer to the initial warning and advise that no or insufficient improvement has been demonstrated. The employee is to be advised that unless their attendance record improves, other disciplinary action may be taken. The employee is to be given an opportunity to discuss reasons for continued absence and possible strategies to deal with the problem.

Where attendance remains unacceptable after the second letter, the record is to be reviewed by an appropriately delegated officer and consideration given to other disciplinary action, including the possibility of termination.

Formal warnings are *not appropriate* where an employee's chronic illness or injury is resulting in high levels of sick leave (refer to [Subsection 3.2.4 – Long term and/or serious illness or injury](#)).

Formal warnings *may not be appropriate* where the employee's overall attendance record has been considered satisfactory. An assessment may identify whether the absences in the preceding year were a result of abnormal sick leave or indicate the commencement of a trend. It may be preferable to discuss the issue with the employee, and keep their attendance record under review to assess any improvement. The outcome of the discussion is to be recorded.

Human Resources/Workforce can provide assistance and advice on how best to manage unsatisfactory sick leave absences, including the potential escalation of a matter to a disciplinary process, or referring the employee for a medical assessment as to their fitness for duty.

### 3.2.7. Workers compensation and leave

Where an employee suffers a work-related injury or illness, they are entitled to lodge a claim for workers compensation. While liability is being determined in relation to a claim lodged for workers compensation, on production of an acceptable medical certificate, an employee can apply for weekly payments utilising accrued leave including sick leave, annual leave and long service leave, until a workers' compensation decision is made or accrued leave is extinguished.

Section 49 of the [Workers Compensation Act 1987](#) (NSW) states that workers' compensation weekly benefits will be paid to the employee even if they have received or are entitled to receive allowance or benefit for holidays, annual leave or long service leave. In cases where annual leave or long service leave has been paid, no reinstatement of leave will be processed.

Injured employees are to receive this advice at the lodgement of the claim so they can elect whether to utilise their annual and/or long service leave with the knowledge that leave taken will **not be reinstated** to the leave balance.

Section 50 of the [Workers Compensation Act 1987](#) (NSW) refers specifically to sick leave and states that where a worker has been paid sick leave for a period and this then becomes a period of accepted workers compensation, the sick leave must be reimbursed and the payment made as for workers compensation.

NSW Health is committed to the recovery and return to work of its injured workers. This is based on current research and the view that getting back to work after a work-related injury is an important step in a person's recovery, and the sooner this step can be taken safely, the better. Getting back to work means workers can return to a normal life with less disruption to family, work and social life and provide improved employment and financial security.

Planning a safe return to work must always be a collaboration between the worker, their employer, being the worker's supervisor/ manager and the Return to Work Coordinator or Injury Management Advisor, the treating medical and allied health practitioners in conjunction with the Treasury Managed Fund (TMF) Claims Service Provider, to identify suitable duties and any required modifications to the workplace. The early intervention process followed by NSW Health is a coordinated approach to address all issues that may be limiting a worker's ability to return to work.

For further information, employees are to refer to local injury management processes and contact the Workers Compensation and Recovery Team or Human Resources/Workforce Team in their organisation for further assistance.

#### ***Sick Leave "Top-Ups"***

Should an employee apply for top-up of their weekly workers compensation benefit entitlements via paid sick leave, this must be granted, ensuring award provisions are being met as required.

Currently all public health [Awards](#) include the following provision:

*“An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to accident pay, or workers compensation; provided, however, that where an employee is not in receipt of accident pay, an employer shall pay to an employee, who has sick leave entitlements under this clause, the difference between the amount received as workers compensation, and full pay. The employee’s sick leave entitlement under this clause shall for each week during which such difference is paid, be reduced by the proportion of hours which the difference bears to full pay. On the expiration of available sick leave, weekly compensation payments only shall be payable.”*

## 4. Family and Community Services Leave and Personal Carers Leave

This Section does not apply to Health Service Senior Executives. Provisions in relation to casual employees are set out in [Subsection 4.4 – Casual employee entitlements](#) below.

Family and Community Services Leave (FACS) and Personal Carer’s Leave are two separate leave types.

The use of FACS leave is generally for unplanned or situations of pressing necessity to attend to family commitments. FACS leave can also be accessed for community service obligations.

FACS leave has broader application as it can be accessed for a range of personal and community service obligations.

An important distinction between the two leave types is that Personal Carer’s Leave enables an employee to access their sick leave where they are required to provide care for members of their family or household who are sick or injured.

### 4.1. Family and community services leave (FACS)

FACS leave is a leave option available to employees for the purpose of taking time off work to address unplanned personal issues relating to family commitments. In addition, FACS leave may be granted to address approved community service responsibilities that may arise from time to time.

The [Awards](#) set out the definitions that apply to FACS leave:

**"relative"** means a person related by blood, marriage or affinity

**"affinity"** means a relationship that one spouse because of marriage has to blood relatives of the other

**"household"** means a family group living in the same domestic dwelling.

#### 4.1.1. Granting of FACS leave

FACS leave is available to be granted to employees in unplanned situations of pressing necessity that may include, but are not limited to, the following:

- On compassionate grounds, following the death of a relative (for example to arrange and/or attend a funeral of a relative)
- To provide care and support for a sick or elderly relative or household member
- To accompany a relative to a medical appointment where there is an element of emergency
- Care of a child where usual arrangements have been unexpectedly disrupted
- Adverse weather conditions/natural disasters that give rise to issues of transport to work, or that threaten the employee's or their family's life and/or property. In circumstances where a natural disaster has been declared, and FACS leave is exhausted, also refer to [Subsection 12.8.2 – Declared emergencies](#)
- Employees who are experiencing domestic violence (also refer to [Subsection 12.10 – Support for employees experiencing domestic and family violence](#))
- Employees prevented from attending their normal work location due to a major transport disruption.

FACS leave may also be granted in the following circumstances where there is not an element of pressing necessity. Wherever possible, such appointments or duties are to be scheduled or performed outside of normal working hours.

- Attendance at court by the employee, for reasons other than criminal charges, will be assessed on an individual basis (also refer to [Subsection 12.9 – Attendance at court](#)).
- Attendance at parent-teacher meetings and education week activities
- For reasons related to the performance of community service by the employee e.g. in matters relating to citizenship; to office holders in local government (other than as mayor) for attendance at meetings, conferences or other associated duties
- Representing Australia or NSW in a major amateur sport other than in the Olympic Games or Commonwealth Games. Provisions for leave to attend Commonwealth or Olympic games are set out in [Subsection 12.6 – Commonwealth or Olympic Games](#).

Applications for FACS leave are to include the reason(s) for the absence and the employer may require that supporting documentation be provided, so proper consideration can be given to the employee's request for leave. Relevant documentation may include a medical certificate, statutory declaration, death/funeral notice or other relevant evidence to support the application for the leave and its duration.

#### 4.1.2. FACS entitlement

A full time employee is entitled to Provision A or Provision B, whichever method provides the greater entitlement:

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**Provision A**

Three working days during the first year of service, and thereafter six working days in any period of two years; OR

**Provision B**

One working day on a cumulative basis effective from 1 January 1995, for each year of service after two years' continuous service, less any FACS taken by the employee since 1 January 1995.

For the purposes of calculating entitlements under Provision (A) or (B) above is based on the full time working hours as per the relevant Award. The rate at which FACS leave is paid out and utilised must be on actual hours absent from the rostered shift.

FACS Leave is available to part time employees on a pro rata basis, based on the average number of hours worked per week, i.e. a working day are to consist of one-fifth of the employee's average weekly hours during the preceding 12 months or during the employee's period of employment whichever is the lesser period. Refer to the Information Sheet on the [NSW Health Intranet](#) for examples of FACS entitlements.

**4.1.3. Additional FACS leave for bereavement purposes**

Where FACS Leave has been exhausted, additional paid FACS leave of up to two days may be granted on a discrete "per occasion" basis to an employee on the death of a relative or member of a household. Consideration of the employee's individual circumstances is to be taken into account when determining the amount of leave applicable.

**4.1.4. Use of other leave entitlements – FACS**

An employee may be granted other leave entitlements for reasons related to family responsibilities, or community service by the employee. An employee may elect, with the consent of the employer, to take annual leave, long service leave or leave without pay, noting that where the employee has excess annual leave the employee may be requested to reduce the excess annual leave prior to accessing other leave types.

**4.2. Personal carer's leave**

Personal/carer's leave allows for the flexible use of other leave entitlements (including sick leave) for employees to fulfil carer responsibilities for family or household members who are sick, injured or frail.

Working Carers who provide ongoing unpaid carer support may also access certain leave entitlements where their carer responsibilities fall outside specific Award provisions (for example, the ability to use sick leave for carer purposes is subject to the conditions set out in [Subsection 4.2.1 – Personal carer's entitlement to use sick leave](#) below).

The personal/carer's leave described in this Section is available to permanent and temporary (full time and part time) staff but is not available to casual staff. Casual employees' entitlements to personal carer's leave are detailed in [Subsection 4.4 – Casual employee entitlements](#).



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#### **4.2.1. Personal carer's entitlement to use sick leave**

The entitlement to use sick leave for personal carer's leave is subject to the employee being responsible for the care and support of a person who is ill injured or frail and who needs the employee's care and support. The person requiring the care and support is defined as:

- A spouse or de facto spouse of the staff member
- A child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or spouse or de facto spouse of the staff member
- A relative of the staff member who is a member of the same household.

An employee, other than a casual or other employee who receives a loading in lieu of sick leave, who has responsibilities in relation to a person who needs their care and support is entitled to use the untaken sick leave, from that year's annual sick leave entitlement, to provide care and support for such persons when they are ill.

In addition to the current year's grant of sick leave available above, sick leave untaken from the previous three years may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.

In special circumstances, additional sick leave may be granted. This grant can only be taken from sick leave untaken prior to the period referred to above. Where an employee has excessive annual leave, then such excessive leave is to be used prior to the granting of additional sick leave.

The employee must provide evidence that the illness, injury or frailty of the person concerned requires care by another person. The employee has the right to choose whether a medical certificate or statutory declaration is provided as evidence.

The employee is not required to state the exact nature of the relevant illness, injury or frailty on either a medical certificate or statutory declaration.

The employee is to give notice prior to the absence or the intention to take leave, including the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone of such absence at the first opportunity on the day of absence.

In normal circumstances, the employee must not take personal carer's leave where another person has taken leave to care for the same person.

The use of sick leave for personal/carer purposes would not usually be appropriate in cases where the person is under professional care, for example under professional care in hospital. However, the specific circumstances are to be taken into account to establish whether the employee's presence is required to provide care and support. This may include supporting documents or advice from relevant clinicians, to determine eligibility to use personal carer's leave in these situations.

#### 4.2.2. Use of other leave entitlements for carer purposes

NSW Health recognises and values working carers, and provides a range of options to support employees in combining their carer responsibilities and work.

An employee may elect, with the consent of the relevant manager, to take:

- Annual leave
- Long service leave
- Leave without pay

for the purpose of providing care and support to the person concerned.

#### 4.3. Flexible work practice alternatives to FACS or personal carer's leave

As an alternative to, or in conjunction with FACS or personal carer's leave, there may be agreed work practices that permit employees to vary their work arrangements to enable them to combine paid employment with their family, community or carer responsibilities. Also refer to the document Considering Requests for Flexible Work on the [NSW Health Intranet](#) and the NSW Health Guideline *Flexible Work (More than one way to work)* ([GL2023\\_020](#)).

Where practicable, policy and procedures as described in [Subsection 4.3.1 – Use of make-up time](#) regarding use of make-up time may, with the consent of the manager be implemented which provide employees with the opportunity to:

- Be absent from the workplace for short periods of time (e.g. two hours) and be able to make up the time either earlier or later on the same day, or during the following week or month
- Exchange shifts or part shifts with co-workers
- Access to time off in lieu of overtime is for the purpose of caring for a prescribed person. The provisions at [Subsection 4.3.2 - Time off in lieu of payment of overtime](#) regarding time in lieu of overtime are applicable only in relation to those employees who have an entitlement to overtime.

##### 4.3.1. Use of make-up time

An employee may elect, with the consent of their manager, to work “make up time” where the employee takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of ordinary hours provided in the relevant [Award](#) at the ordinary rate of pay.

An employee on shift work may elect, with the consent of the relevant manager to work “make-up time” (under which the employee takes time off during ordinary hours and works those hours at another time) at the shift work rate which would have been applicable to the hours taken off.



### 4.3.2. Time off in lieu of payment of overtime

An employee may elect, with the consent of their manager, to take time off in lieu of payment of overtime. Such election by the employee must occur as soon as practicable after the overtime is completed, and prior to any payment being forwarded for processing. The relevant [Award](#) is to be checked on conditions applying to the conditions applying to time off in lieu of overtime.

## 4.4. Casual employee entitlements

### 4.4.1. Bereavement Entitlement

Casual employees are entitled to be absent from work, upon the death in Australia of a relative or member of a household.

The employee and relevant manager will agree on the period the employee will be entitled not to be available to work or to be absent from work. In the absence of agreement, the employee is entitled to be absent from/not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

There must not be a failure to re-engage a casual employee because they accessed the entitlements provided for in this part. The rights to engage or not engage a casual employee are otherwise not affected.

### 4.4.2. Personal/carer's entitlement

Subject to the evidentiary and notice requirements in [Subsection 4.2.1 – Personal carer's entitlement to use sick leave](#), casual employees are entitled to be absent from work, not be available to attend work, or to leave work if they need to care for a person concerned who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.

The employee and the relevant manager will agree on the period the employee will be absent from work/entitled not to be available to attend work. In the absence of agreement, the employee is entitled to be absent from /not available to attend work for up to 48 hours (i.e. two days) per occasion. A casual employee is not entitled to any payment for the period of non-attendance.

There must not be a failure to re-engage a casual employee because they accessed the entitlements provided for in this part. The rights to engage or not to engage a casual employee are otherwise not affected.

## 5. Parental Leave

This Section does not apply to Health Service Senior Executives or to casual employees.

Enhanced Paid Parental Leave provisions came into effect on 1 October 2022 ([M2022-08 Paid Parental Leave – Parent with responsibility for care associated with the birth, adoption, altruistic surrogacy or permanent out-of-home care placement of a child](#)) which introduced

additional provisions for Altruistic Surrogacy and Permanent Out-of-Home Care Arrangements.

This has now been further enhanced to apply to children born or adopted or placed into an ongoing placement arrangement on and from 2 August 2024 ([M2024-07 Parental Leave - Parent with responsibility for care associated with the birth, adoption, altruistic surrogacy or ongoing placement of a child or young person subject to a legal order](#)). The Enhanced Parental Leave Provisions Frequently Asked Questions document on the [NSW Health Intranet](#) are to be read in conjunction with the provisions of this Section.

The enhanced arrangements extend certain provisions beyond those contained in NSW Health Awards. The intent of the Paid Parental Leave arrangements is to help families to better balance work and family life, enable both parents to care for their children and support women to return to the workforce.

The [Awards](#) still contain provisions relating to maternity, adoption and parental leave entitlements, and are to be referred to where they address matters not covered by the Premiers Memorandum.

**Definition of “Partner”:** includes a spouse, de facto partner, former spouse or former de facto partner. De facto partner means a person who is the employee’s partner, who lives with the employee on a bona fide domestic basis, although not legally married to the employee.

### *Summary of Entitlements (effective 1 October 2022)*

Leave Type	Entitlement	Eligibility	Details
<b>Paid Parental Leave</b> – Parent with responsibility for the care of their child.	14 weeks paid	At least 40 weeks’ continuous service (at the expected date of the birth, adoption, surrogacy or ongoing placement of a child or young person subject to a legal order.	<p>Payment on a normal fortnightly basis or in advance in a lump sum or payment at the rate of half pay over a period of 28 weeks.</p> <p>Flexible payment using a combination of full pay and half pay for the duration of paid parental leave; where taken in a manner other than a single continuous period.</p> <p>Leave must be taken within the first 24 months from the date of birth, adoption or surrogacy.</p> <p>Paid parental leave may commence for the pregnant parent prior to the expected date of birth as provided in the relevant Award.’</p>

**Leave Matters for the NSW Health Service**

<b>Bonus Paid Parental Leave</b>	2 weeks	Both parents must have exhausted their paid parental leave.	Single parents or parents whose partner has no employer-provided paid parental leave are eligible for the bonus leave. Flexible payment using a combination of full pay and half pay for the duration of paid parental leave; where taken in a manner other than a single continuous period.
<b>Special Pre-term parental leave</b>	Birth occurs prior to 37 weeks gestation	At least 40 weeks' continuous service (at the expected date of the birth)	The parent with the caring responsibility is entitled to paid special pre-term parental leave from the date of birth of the child (or children from a multiple birth) up to the end of 36 weeks. Only one employee can take the special pre-term parental leave where the employees are part of a couple. Immediately following the period of paid special pre-term parental leave, and at the commencement of 37 weeks, paid parental leave as detailed above starts.
<b>Fertility Treatment Leave</b>	5 days paid leave per calendar year	No service requirement	The leave is not cumulative and can be taken in part days, single days or consecutive days. The leave is not available to the partner of the employee undergoing the fertility treatment.
<b>Miscarriage leave</b>	5 days per miscarriage event	No service requirement	The employee or partner of an employee who has suffered a miscarriage is entitled to the leave. It is to commence from the date of the miscarriage and is to be taken in one continuous block.

<b>Unpaid Parental Leave</b>	12 months leave of which up to 16 weeks is paid leave, and the remainder unpaid.		Available for employees who are entitled to paid parental leave. A further unpaid period of parental leave of no more than 12 months can be approved, with the total amount being not more than 24 months from the date of birth.  Available for employees who are not entitled to paid parental leave (e.g. do not meet service requirements) - They are entitled to unpaid parental leave of not more than 12 months.
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## **5.1. Paid parental leave entitlements (effective 2 August 2024)**

### **5.1.1. Parent with responsibility for care of child associated with the birth, adoption, altruistic surrogacy or ongoing placement of a child or young person subject to a legal order**

An eligible employee will have completed at least 40 weeks' continuous service (at the expected date of the birth, adoption, surrogacy or ongoing placement) and is entitled to 14 weeks' paid parental leave if the leave is associated with:

- The birth of a child (or children from a multiple birth) of the employee, the employee's partner or the employee's legal surrogate, or the adoption of a child (or children) under 18 years old by the employee or the employee's partner or the ongoing placement of a child (or children) under 18 years old in permanent out-of-home care by the employee or their partner; and
- The employee has or will have responsibility for the care of the child.

Generally, paid parental leave is to be taken in a single continuous period within the first 24 months from the date of birth, adoption, surrogacy or ongoing placement arrangement.

Paid parental leave may commence for the pregnant parent prior to the expected date of birth as provided in the relevant Award Reference should also be made to [Subsection 5.5 – Flexibility in taking leave](#).

### **5.1.2. Bonus Paid Parental Leave**

An eligible employee is entitled to an additional two week bonus paid parental leave where both parents have exhausted any paid parental leave offered by their employer. Employees who are single parents or whose partners do not have access to or are ineligible for employer-paid parental leave, will receive the full two weeks of bonus paid leave. The two weeks bonus leave is in addition to the 14 weeks paid parental leave as outlined in [Subsection 5.1.1 – Parent with responsibility for care of child associated with the birth, adoption, altruistic surrogacy or ongoing placement of a child or young person subject to a legal order](#).

The intent of the bonus leave is to encourage employees to use their available parental leave entitlements. For this reason, the bonus leave cannot be taken in advance, nor is it paid out on termination. Bonus leave can be applied for at the same time as the original parental leave application, however the bonus leave can only be taken when the employee has exhausted their initial parental leave entitlement.

## 5.2. Notice requirements

The employee must provide appropriate notice (as per the relevant Award ) prior to the expected commencement of the leave, stating:

- the period of leave being sought, including the anticipated date of return to duty; and
- that the employee will have responsibility for the care of their child for the period during which they are seeking the paid parental leave.

The employee must notify the employer as soon as possible of any changes to their circumstances that will or is likely to affect their eligibility for paid parental leave prior, or throughout the period of payment.

## 5.3. Evidence requirements

To access paid parental leave, the employee must provide evidence of the birth, adoption, altruistic surrogacy or ongoing placement arrangement:

- for birth-related leave: a medical certificate or birth certificate showing the expected or birth date of the child; or
- for adoption-related leave: an integrated birth certificate, or certificate of adoption; or
- for altruistic surrogacy-related leave: documentary evidence of the altruistic surrogacy agreement and a statutory declaration advising of the intention to make application for a parentage order as required under the *Surrogacy Act 2010* (NSW). A copy of the parentage order as soon as practicable after it is granted; or
- For ongoing placement-related leave, provision of a confirmation of placement letter from the Department of Communities and Justice (DCJ) or their accredited designated agency.

To access bonus paid parental leave, the employer needs to be satisfied that an employee's partner has or will have either exhausted their paid parental leave or does not have access to employer-paid parental leave. Evidence required includes:

- A letter from the partner's employer confirming paid parental leave has or will have been exhausted or confirming the partner does not have an entitlement to employer-funded parental leave; or
- A statutory declaration from the employee confirming their partner has or will have exhausted their paid parental leave or that their partner does not have access to employer-funded paid parental leave. Please note [Who can witness a statutory declaration](#).

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## **5.4. Concurrency of paid parental leave**

Paid Parental Leave may be taken concurrently, except in circumstances where both parents are employed in the same NSW Government Sector workplace and operational requirements may prevent the leave being taken at the same time.

Where both parents are employed in the same NSW Government Sector workplace, they may take four weeks concurrently with their partner. Employees may request to take more than four weeks of paid parental leave at the same time as their partner. The employer will consider this request, and may not agree to their request on reasonable business grounds.

## **5.5. Flexibility in taking leave**

The employer and employee may agree for the employee to use paid parental leave entitlements at any time within the first 24 months from the date of birth, adoption, altruistic surrogacy or ongoing placement arrangement.

An employee may request:

- To use their paid parental Leave in a manner other than a single continuous period
- Flexible payment of paid parental leave using a combination of full pay and half pay for the duration of their paid leave; where taken in a manner other than a single continuous period.
- To take more than four weeks of paid leave concurrently with their partner

Employees are to lodge their application for flexible leave arrangements in advance (with at least six weeks' notice) so that adequate consideration can be given to their request and to establish arrangements that can be put in place to accommodate the request.

As an example, managers may request consideration of arrangements that will not adversely impact rostering and/or backfill arrangements, while balancing this with the needs of the employee's personal and family circumstances. Implementation of flexible arrangements in taking the leave are always by agreement.

Employers must genuinely and fairly consider requests for flexibility. The employer may refuse the request where there are compelling business reasons to do so. These include business grounds related to the impact on the employer's workplace including, but not limited to, excessive cost, lack of adequate replacement staff, loss of productivity or impact on service delivery. The employer will provide their response to the employee's request within 21 days.

Should the employer agree to paid parental leave in a manner other than a single continuous period, the period of leave must not extend beyond the first 24 months from the date of the birth, adoption, altruistic surrogacy or ongoing placement arrangement, and will not be extended by any periods of public holidays that occur within the period of leave.



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## **5.6. Additional Provisions for Altruistic Surrogacy and Ongoing Placement Arrangements**

Employees in altruistic surrogacy arrangements and ongoing placement arrangements have an entitlement to take 12 months unpaid parental leave.

They also have the right to request extended parental leave and return to work on a part time basis.

Where an employee takes paid parental leave in respect of an ongoing placement arrangement and later adopts, becomes the legal guardian or cares for the child (or children) or young person/s under a different legal order, the employee is not entitled to access a further period of paid parental leave.

In the event that an ongoing placement arrangement ceases, and the employee no longer had responsibility for the care of the child/children, the employee must notify the employer as soon as practicable. At the cessation of an ongoing placement arrangement, the remaining period of Paid Parental Leave ceases, and the employee must speak to their employer about alternative leave arrangements and/or a return-to-work date.

## **5.7. Award and policy provisions**

Certain Maternity and Adoption Leave provisions (as per the relevant [Award](#)) continue to apply. These include where the above provisions on paid parental leave set out above are silent.

Eligible employees who are adopting a child through an altruistic surrogacy arrangement are entitled to 14 weeks' paid parental leave. In this case, the surrogate who gives birth would be entitled to maternity leave, providing that the surrogate also has the required continuous service.

Temporary full time employees who have been employed for periods of 40 continuous weeks or more prior to the expected date of birth, adoption, altruistic surrogacy or permanent out-of-home placement, are also entitled to paid parental leave. Where the temporary contract expires during the period of paid parental leave, the monetary value of the remaining period is paid on termination.

Paid birth-related parental leave for the birthing parent can commence up to 14 weeks before the anticipated date of birth of the child. It is not compulsory for an employee to take this period off work. However, if an employee decides to work during the nine weeks prior to the date of birth it is subject to the employee being able to satisfactorily perform the full range of normal duties or being able to undertake suitable alternative duties.

Where an employee takes paid parental leave due to a permanent out-of-home care arrangement, and later adopts the child (or children), they are not eligible to access a further period of paid parental leave in connection with the adoption.

Note: There is no transfer of entitlements for the purposes of paid parental leave for interstate or Commonwealth service.

### **5.7.1. Unpaid parental leave**

Eligible employees who are entitled to paid parental leave and who have responsibility for their child, are also entitled to a further period of unpaid leave which means a total of no more than 24 months in total.

Employees who are not entitled to paid parental leave (i.e. they have not completed 40 weeks' continuous service) are entitled to unpaid parental leave of up to 12 months from the birth, adoption, surrogacy or ongoing placement arrangement.

### **5.7.2. Illness associated with pregnancy**

If, because of an illness associated with their pregnancy, an employee is unable to continue to work then they can elect to use any available paid leave (sick, annual or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid parental leave, but because of illness, is on paid or unpaid sick leave, annual leave or long service leave prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences birth-related paid parental leave with the normal provisions applying.

Employees who have elected to continue to work prior to the expected date of birth, and who take sick leave (unrelated to the pregnancy) during that time, are entitled to utilise sick leave under the normal provisions. In these circumstances, there is no requirement to commence paid birth-related parental leave nine weeks prior to the expected date of birth.

## **5.8. Rate of pay for parental leave**

Eligible employees must be paid parental leave at their ordinary rate of pay. Payments may be made, on a normal fortnightly basis, in advance in a lump sum, or at the rate of half pay over 28 weeks.

Full time employees are paid full time hours during the leave. Permanent part time employees are paid at their contracted part time hours (excepting when average hours are utilised).

Employment records must accurately reflect the hours worked for the purposes of salary and leave accrual. If a permanent part time employee regularly and consistently works either in excess of or less than their contract hours which essentially become the employee's true hours of work, then appropriate action is to be taken to adjust those number of specified hours on a permanent basis.

It is acknowledged that in some cases, permanent part time employees may work hours in excess of their contracted hours on a regular basis but due to the nature of the work, these hours cannot be offered on a permanent basis. In these circumstances, the payment for parental leave is to be made at the average hours worked over the preceding 40 weeks.

Employees must be informed of their correct hours of work and understand the impact that a variation to their hours has on salary payments and leave accruals.



### 5.8.1. Higher duties

Employees who have acted in a higher duties position/s for 12 months or more immediately before taking paid parental leave are entitled to receive the higher duties allowance for the paid portion of their parental leave, up until the conclusion of the approved specified acting period.

### 5.9. Effect of part time leave without pay

Where an employee is on part time leave without pay when they commence paid parental leave the rate of payment is determined as follows:

- If they commenced the part time leave without pay 40 weeks or less before starting the parental leave they are paid at their substantive rate.
- If they commenced the part time leave without pay more than 40 weeks before starting the parental leave:
  - Where their part time hours have remained constant over the leave without pay period, they are paid at the part time rate.
  - Where part time hours have varied over the leave without pay period, they are paid at a rate based on the average hours worked over the preceding 40 weeks.

In the case of varying hours, the weekly payments to apply to the paid leave are calculated by the following formula:

Total hrs worked over				
40 weeks prior to leave payment during paid	x	Normal weekly Rate of Pay	=	Weekly leave period
Normal weekly hours over 40 weeks				

#### 5.9.1. Further parental leave

The [Awards](#) contain provisions on the rate of payment to apply when an employee commences a subsequent period of maternity or adoption leave while on maternity or adoption leave or on a return to work on a part time/reduced hours basis following maternity or adoption leave. The same principles are applied in situations where an employee is on paid parental leave and commences a subsequent period of such leave during the currency of the initial period of leave.

- Where an employee becomes pregnant while on birth-related parental leave, a further period of paid parental leave will be granted. If an employee enters on the second period of parental leave during the currency of the initial period of leave, then any residual parental leave from the initial entitlement ceases.
- An employee who commences a subsequent period of paid parental leave while on unpaid parental leave is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on parental leave).
- A full time employee who commences a subsequent period of paid parental leave during the first 12 months of a return to duty on a part-time/reduced hours basis is

entitled to be paid at their substantive full time rate for the subsequent period of parental leave.

- An employee who commences a subsequent period of paid parental leave more than 12 months after returning to duty on a part-time/reduced hours basis, will be entitled to paid parental leave for the subsequent period of parental leave at their part-time/reduced hours rate.

Health agencies must have processes in place to manage transitions from part time/reduced hours arrangements to full time arrangement so that the Award provisions set out above are applied.

Also refer to [Subsection 5.12.2 – Applying for return to work on ‘reduced hours’](#).

## 5.10. Other leave

There is no express requirement under [M2022-08](#) to take paid parental leave first when combining parental leave with other forms of leave. However, the Memorandum must be read in conjunction with the relevant [Award](#) to make sure that there is no express requirement for the sequence of leave that must be followed.

An employee may take any accrued annual leave or long service leave (or any part of it) or accrued ADOs to supplement their unpaid parental leave. The total period of leave cannot be extended beyond 24 months from the date of birth or adoption of the child (or the commencement of parental leave if taken by the birth parent prior to

Annual leave can only be taken at half pay when it is combined with a period of half pay parental leave to enable the employee to remain on full pay for that period. Annual leave cannot be taken at half pay in any other circumstance. It should be noted that half pay annual leave to supplement parental leave only attracts pro-rata leave loading, not penalties.

## 5.11. Right to request

The [Award](#) contain provisions whereby employees may request:

- To extend the period of unpaid parental leave for a further continuous period of up to 12 months
- To return from a period of parental on a part time basis until the child reaches school age\*. Children can start kindergarten at the beginning of the school year if they turn five before 31 July in that year. By law, all children must be enrolled in school by their sixth birthday.

Such requests are to be considered having regard to the employee’s circumstances and, provided the request is genuinely based on the employee’s parental responsibilities, may only refuse the request on reasonable business grounds related to the effect on the workplace or to services being provided. Such reasonable business grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on patient care.

*\* The Public Health System Nurses’ and Midwives’ (State) Award does not limit the time for which a request for part time work may be made.*

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## **5.12. Access to reduced hours for employees following parental leave**

### **5.12.1. Returning to work on reduced hours**

Applications from employees seeking access to reduced hours following a return from parental leave are to be approved, and where possible the reduced hours will be available in the person's substantive role.

The options may include working reduced hours each day over a five day period with rearrangement of work routines as required; implementing a Temporary Individual Rostering Arrangement (TIRA), job sharing, working from home, and teleworking or, in the case of a manager, a senior staff member providing management support on the times where the returning manager is not on duty.

Providing the returning employee is agreeable, another option is to return them to a different position at an equivalent level.

Consideration of requests for working reduced hours and the outcome of these requests are to be documented by the Health Service Facility. Employees who have had requests denied are to be advised of appeal mechanisms, which may include the NSW Health Policy Directive *Resolving Workplace Grievances* ([PD2016\\_046](#)), the relevant [Award](#) or health agency policies relating to flexible work.

### **5.12.2. Applying for return to work on 'reduced hours'**

The following applies to applications for a return to work on reduced hours:

- Employees are required to apply for part time leave without pay to reduce their full time weekly hours of work. The balance of unworked hours will be recorded as unpaid parental leave.
- Employees who return from parental leave under this arrangement do so for a specific period and retain their substantive hours with the right to convert to those hours at the end of the approved period of part time work, with appropriate notice being given to the employer.
- Salary and other conditions of employment are applied on a pro rata basis during the period of part time work.
- Employees retain their substantive status as full time staff and as such are not entitled to payment of any part time allowance.

## **5.13. Parental leave implications – superannuation**

The implications of parental leave on superannuation are complex and depend on the individual circumstance in each case. For this reason, employees are encouraged to contact their superannuation scheme for advice in relation to their particular situation and requirements for employer and personal contributions.

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## 5.14. Leave accrual and increments

### 5.14.1. Full pay and half pay leave

Periods of full pay parental leave count in full (pro rata for permanent part time employees) for leave accrual and incremental progression.

Periods of half pay parental leave count for leave accrual and incremental progression on a pro rata basis. Sick leave is to be adjusted on the anniversary of employment following the employee's resumption of duty after the leave.

Leave on half pay is paid leave at a reduced rate and is not a combination of full pay leave and no pay leave. As such, periods of half pay leave must not be combined with any subsequent period of unpaid leave when determining the effect, if any, such period of unpaid leave has on an employee's entitlements.

Public holidays that occur during periods of full pay or half pay parental leave are paid at the rate of the leave i.e. either full pay or half pay.

### 5.14.2. Full time unpaid leave

Refer to [Section 8 – Leave Without Pay](#) or information on the effect of full time unpaid leave on increments and leave accrual.

### 5.14.3. Part time unpaid leave

Employees who return to duty on a part time basis by taking part time leave without pay accrue leave entitlements on a pro rata basis. See [Subsection 8.3.3 – Effect of part time leave without pay](#).

## 5.15. Right to return to previous position

An employee returning from parental leave has the right to resume in their substantive role.

If the substantive role no longer exists, the employee is entitled to be placed in an equivalent position nearest in status at the same salary to that of their substantive role and for which they are capable or qualified. Where no equivalent role exists, the employee will be managed in accordance with the NSW Health Policy Directive *Managing Excess Staff of the NSW Health Service* ([PD2012\\_021](#)).

If the role held prior to commencing leave was that of an acting or higher duties nature, the circumstances surrounding return to that role would need to be addressed. There is no entitlement to that position in any permanent sense.

Where an employee suffered a risk or illness associated with their pregnancy and was transferred to a more suitable position or to alternate duties prior to the commencement of maternity leave, they are to return to their substantive position.

## 5.16. Other provisions

The relevant [Award](#) is to be consulted in relation to the following matters:

- 
- Circumstances when an employee will have to work the 40 weeks' qualifying service to be eligible for paid leave (refer to [Subsection 8.3.2 – Other leave](#))
  - Portability of service for entitlement to paid leave
  - Provisions for replacement employees
  - Illness associated with pregnancy
  - Transfer to a more suitable position
  - Leave to apply in the case of stillbirth<sup>2</sup>

#### 5.16.1. Leave in the event of a miscarriage

**Miscarriage** means a pregnancy that ceases prior to 20 weeks gestation or, where the number of weeks is unknown, the baby weighed less than 400g.

Where an employee and/or the partner of an employee miscarries, the employee(s) is entitled to five days paid special miscarriage leave on each occasion a pregnancy ceases by way of miscarriage. Part time employees receive the leave on a pro-rata basis.

Leave will commence from the date the miscarriage occurs and is to be taken in one continuous block of leave. Following a period of special paid miscarriage leave, employees may access existing accrued entitlements e.g. sick leave as required.

When accessing paid special miscarriage leave, the employee must provide notice as soon as reasonably practicable stating:

- The period of leave being sought; and
- The anticipated date of return to duty.

To access paid special miscarriage leave, evidence to support the application will include:

- A medical certificate or ultrasound result, or
- An early loss certificate issued by NSW Registry of Births, Deaths & Marriages.

#### 5.16.2. Leave in the event of a pre-term birth

**Pre-Term Birth** means the birth of a live child prior to 37 weeks gestation

**Full-Term Birth** means the birth of a live child at 37 weeks onwards.

Where an employee or the partner of an employee gives birth to a pre-term child, the parent with caring responsibility is entitled to paid special pre-term parental leave from the date of birth of the child (or children from a multiple birth) up to the end of 36 weeks.

Immediately following the period of paid special pre-term parental leave and at the commencement of 37 weeks, paid parental leave of up to 14 weeks in accordance with the relevant Award will apply to the parent with responsibility for the child.

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<sup>2</sup> As per the Award, the birthing parent can access parental leave and/or sick leave. The non-birthing parent can access available sick or FACS leave. They are not entitled to paid parental leave in the event of a stillbirth.

Eligible employees are those who have, or would have, if not for the pre-term birth, completed 40 weeks' continuous service at the expected due date. Where employees are in a couple, only one parent may access paid special pre-term birth leave.

Leave will commence from the date the pre-term birth occurs and must be taken in one continuous block of leave up to the end of 36 weeks. Paid special pre-term leave must not be taken with any other form of leave available to the employee.

In the event of the death of a pre-term child (or children) during a period of paid special pre-term parental leave, the remaining portion of the leave ceases and paid parental leave up to 14 weeks commences.

When accessing paid special pre-term parental leave in the event of a pre-term birth, the employee must provide notice as soon as reasonably practicable stating:

- The period of paid special pre-term parental leave being sought up to the end of 36 weeks, and
- The details of all other types of leave (paid or unpaid) to be taken or proposed to be taken following the period of paid special pre-term parental leave including Paid Parental Leave.

To access paid special pre-term parental leave in the event of a pre-term birth, the employee is to provide evidence such as:

- A medical certificate, showing the expected due date; and
- A statutory declaration or medical certificate confirming primary caring responsibility; and
- A medical certificate showing the actual date of birth of the child; or
- Birth certificate showing the date of birth of the child.

### **5.16.3. Leave for employees undergoing fertility treatment**

**Fertility Treatment** means the following assisted reproductive treatments: Intrauterine insemination (IUI), In vitro fertilization (IVF) and Intracytoplasmic sperm injection (ICSI).

Where an employee is absent from work to undergo fertility treatment, the employee is entitled to up to five days paid special fertility treatment leave per calendar year. Part time employees receive the leave on a pro-rata basis.

Leave is non-cumulative and can be taken in part-days, single days or consecutive days. Paid special fertility treatment leave is not available to a partner of a person undergoing fertility treatment.

To access paid special fertility treatment leave, the employee may be required to provide a medical certificate confirming the fertility treatment.

### **5.16.4. Commonwealth paid parental leave**

The Commonwealth government-funded Paid Parental Leave (CPPL) scheme provides financial support for parents while they are on leave from work caring for a newborn or recently adopted child.



This leave is separate from the 14 weeks of employer-funded paid parental leave. Employees are required to check their eligibility and make a claim with Service Australia separately.

It is noted that eligible staff receive the payment for the Commonwealth government-funded Parental Leave Pay according to their normal pay cycle. No lump sum or half-pay option is available for this payment.

NSW Health Information Bulletin *Commonwealth Paid Parental Leave* ([IB2023\\_046](#)) outlines major changes to CPPL for children born or adopted from 1 July 2023.

Further information on CPPL is available at [Services Australia](#).

#### **5.16.5. Communication arrangements during leave**

NSW Health encourages employees on parental leave to stay connected to their organisation through regular news and updates. This can be helpful in alerting employees to organisational changes and technological advances, but also for training and job opportunities that might be available. Employees are to notify their manager of a change of contact details during their leave.

#### **5.16.6. Keeping in touch days**

Keeping in Touch Day provisions are applicable for parents with a child born or adopted prior to 1 July 2023.

For children born or placed after 1 July 2023, if an employee is receiving CPPL any 'keeping in touch day' must be paid by the employer (that is, the Government will no longer pay for an employee to work when they are on Government CPPL) unless for an allowable reason.

Further information on Keeping in Touch Days is available at [Services Australia – Keeping In Touch](#).

#### **5.16.7. Support for breastfeeding**

Employees may be granted up to a total of one hour as a paid lactation break during an eight hour working day. This can be taken as an hour-long break, or several shorter breaks. This time allowance includes travelling time for those who take a lactation break away from the work site.

An employee working four hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes.

Suitable local workplace arrangements are required to cater for employees who have returned to work following maternity leave and who are breastfeeding. Use of a suitable, private space and location is to be made available for employees to breastfeed or express milk.

Other suitable facilities, such as refrigeration, must be provided where practical. Where it is not practical to provide these facilities, discussions between management and employee will take place to attempt to identify reasonable alternative arrangements to accommodate the employee's lactation needs.

## 6. Development and Study Leave

NSW Health supports the professional and career development of its employees. This Section provides information to managers and employees on applying for and assessing applications for development and/or study leave, as well as how leave is administered and processed.

This Section does not apply to Health Service Senior Executives, nor to Medical Officers, Career Medical Officers or Staff Specialists where other specific Award provisions apply. Reference should also be made to the [Staff Specialists Determination](#) and the NSW Health Policy Directive *Training, Education and Study Leave (TESL) for Staff Specialists* ([PD2019\\_043](#)).

Reference is to be made to the relevant [Award](#), which may contain more specific provisions. In these circumstances, the Award takes precedence.

**Development** leave may be granted to attend external learning and development activities, such as conferences, seminars and short courses where the employee is not considered to be on duty.

**Study** leave includes leave to undertake tertiary studies at an educational institution, and includes leave for examinations.

An educational institution is any institution accredited to provide tertiary qualifications in accordance with the Australian Qualifications Framework (AQF).<sup>3</sup> This includes universities, TAFE institutions and registered training organisations (RTOs).

Leave is not required for the following types of employer-supported learning activities that are undertaken on a routine basis and at which employees are considered to be “on duty” such as:

- NSW Health courses or development activities
- Development activities identified and approved in the employee’s development plan
- Mandatory training and education.

Mandatory training and education means training and/or education in a defined subject matter that must be undertaken by specified employees of a NSW Health entity due to:

- A legislative requirement
- A requirement to be accredited under the National Safety and Quality Health Service Standards (NSQHSS)
- A requirement under a Policy Directive issued by the Ministry of Health.

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<sup>3</sup> AQF levels 1-4 (Certificate); 5 (Diploma); 6 (Advanced Diploma; Associate Degree); 7 (Bachelor Degree) 8 (Bachelor Honours Degree; Graduate Certificate, Graduate Diploma); 9 (Master’s Degree); 10 (Doctoral Degree).

The following table is a summary of leave for development and study.

Type	Benefit	Leave
Mandatory training/education	Directly beneficial to the organisation to meet legislative, accreditation requirements or as required in a Policy Directive.	Not required, as employee is on duty
In-house or employer arranged	Benefit to employee and meets identified organisational needs	Not required, as employee is on duty
Conference, seminar or short course	Benefit to employee and potential benefit to organisation	Development leave may be approved or may be considered to be on duty
Tertiary education or other registered training provider	Benefit to employee and potential benefit to organisation	Study leave may be approved
Personal development	Benefit to employee	No leave under this Section available

## 6.1. Eligibility for leave

Leave for development and study activities is at the discretion of the organisation, but is to be made equitably available to all eligible employees within NSW Health.

Both permanent and temporary employees (whether full-time or part-time) are eligible to apply for leave. Part-time employees may apply for leave on a pro-rata basis.

Casual employees are not eligible for this form of leave.

Leave may be granted to an employee where they can demonstrate that the development activity or course of study:

- Relates directly to the employee's duties and/or
- Relates to disciplines/skill areas in NSW Health and/or
- Has been identified in the employee's development plan as supporting their career development, **and**

The proposed leave absences:

- Can be accommodated within the current and expected duties and workload of the employee, and
- Will not adversely affect the proper functioning of the employee's work area.

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## **6.2. Applicable development and study activities**

### **6.2.1. Seminars, conferences and short courses**

Employees may be granted leave (and/or financial assistance) for attendance at seminars or short courses if not considered to be on duty. The amount of leave and/or financial assistance available is at the discretion of the organisation.

Seminars and short courses that are external to the NSW Health Agency are to be recorded in rostering and payroll systems as “Short Course Leave External”.

Conferences external to the Health Agency are to be recorded in rostering and payroll systems as “Conference Leave External”.

### **6.2.2. Tertiary study**

All employees are encouraged to pursue skills and qualifications in accordance with their development plan. Areas of skill shortages are to be identified and strategies developed to address them, including releasing employees from rostered shifts where there are not alternative and feasible attendance options.

Tertiary Study leave is to be recorded in rostering and payroll systems as “Tertiary Study Leave”.

#### ***Face to Face Courses***

The amount of leave granted is at the discretion of the organisation. As a guide, in respect of attendance at an educational institution, employees may be granted 50% of compulsory attendance times (for example at tutorials, lectures or workshops), up to a maximum of four hours per week per semester or term.

Leave for face to face courses are to be recorded in rostering and payroll systems as “Tertiary Study Leave”.

#### ***Distance or Online Education***

The equivalent amount of leave available if the course was delivered on a face-to-face basis may be granted to employees completing accredited courses via alternative delivery options, such as correspondence or online. The amount of leave granted, particularly in circumstances where equivalence to face-to-face courses cannot be confirmed, is at the discretion of the organisation, up to a maximum of four hours per week per semester or term.

Distance (including online) Education courses are to be recorded in rostering and payroll systems as “Tertiary Study Leave”.

#### ***Residential programs***

The amount of leave to attend a compulsory residential program is based on the specific requirements of the course and is to be negotiated at the time of application for leave.

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***Thesis/Research or combination thesis/research/coursework***

Periods of leave may also be granted to employees undertaking degrees by thesis, research, coursework, or a combination of these.

The amount of leave is based on four hours per week for each academic year of study. An academic year for these purposes is considered to be a calendar year of full-time study. The number of weeks in an Academic Year may vary, depending on the university attended.

The amount of leave granted is discretionary, and is to be discussed with the employee prior to commencing such studies. Where an employee is undertaking the study on a part-time basis, the periods of leave will be granted on a pro-rata basis.

***Examinations***

The amount of leave to attend examinations for tertiary study is based on the specific requirements of the individual course. Pre-examination leave is to be granted to employees where it is considered appropriate and there is no direct impact on the provision of services. Employees may be granted up to five days examination leave per calendar year for time taken to travel to an exam during work hours and/or to sit an exam during work hours.

Any examinations associated with tertiary study or distance education is to be recorded as “*Examination Leave*”.

***Travel***

With prior approval, employees may undertake necessary travel during working hours to attend lectures, tutorials, exams and other course-related activities that occur outside of working hours. Travel is not a separate leave item, but is included in the approved hours for study and/or examination leave.

### **6.3. Applying for leave**

Employees who wish to apply for development or study leave must first discuss with their manager the current expected duties and workload for their position, along with the expected workload associated with the development or study activity.

It is important that all issues are canvassed to ensure work is not impacted and the employee is able to plan appropriately to meet their study commitments. Discussions must also focus on the leave that may be available, and how it can be taken to minimise the impact of the employee’s absence from the workplace.

Following this discussion, the employee must complete their organisation’s application form before commencing any development activity or enrolling in a course of study.

Applications for study leave must be made before each semester and must include:

- A copy of the course outline, including details of the subjects/units to be taken, and
- The study leave plan indicating how and when leave entitlements, if approved, will be taken for that semester.

The application must be submitted to the manager with delegation for approval. Applications must be submitted in a timely manner, preferably at least four weeks prior to commencement of the course or semester, to allow for appropriate consideration of the request.

Applications **cannot** be made for failed or repeated subjects.

Local procedures must be put in place regarding the management of applications for and approval of development and/or study leave, ensuring that appropriate documentation is maintained including rostering/payroll information and approval of development and/or study leave using the relevant StaffLink procedures and forms such as the *Study Leave Application Form*.

## 6.4. Assessing the application

The delegated manager must confirm that:

- The amount of development and/or study leave applied for is within the entitlement allowable
- Any additional leave required is supported, and
- The proposed leave plan will not impact negatively on the duties and workload of the employee or the functioning of the employee's work area.

Assessments are to be made on the basis of the eligibility criteria (see [Subsection 6.1 – Eligibility for leave](#)).

## 6.5. Approval and review processes

Managers considering development and study leave applications are to seek advice from their respective Human Resources/Workforce team for further assistance if required.

Health Agencies are to provide for an approval and review process which is communicated to all employees. There is to be a response to an application for development or study leave within 21 days of receipt. If the leave is not approved:

- The reason for non-approval is to be clear and in writing to the employee.
- The employee is to be advised of the availability of a review process.
- Advice is timely to allow the employee to consider alternative arrangements, such as using recreation leave, leave without pay, etc.

Where leave is not approved, and an employee has appealed this decision, a review is to be undertaken in accordance with the Agency's local processes. The review process is to be completed within 14 days.

Where the delegated manager approves the application for leave, the employee is informed of the approval in writing. The original application and approval documents must be forwarded to local Human Resource/Workforce units for placement on the employee's personal file.

Employees retain their entitlement to approved leave even if they move positions to another area of NSW Health during the approved leave period. A copy of the written approval must be provided in these circumstances.



## **6.6. Taking approved leave**

The employee's manager is responsible for approving leave applications and must check the applications against the approved development or study leave plan before approving leave applications.

Once the leave detailed in the leave application and leave plan has been approved, the manager must enter the leave progressively into the relevant rostering/payroll system.

Study or examination leave is to be taken from the date of approval or from the nominated date of commencement of studies, whichever is later.

Rather than being taken on a week-to-week basis, leave is available to be taken over the course of study in amounts mutually agreeable between the employee and relevant manager.

Employees who are granted development or study leave for part of a day are expected to work for the remainder of the day or to cover any additional absence with other forms of approved leave. For employees on standard hours, the normal start and finish time at the work location is to be used to calculate the amount of leave and the balance of hours on duty or other leave taken.

## **6.7. Leave accrual**

Leave associated with tertiary studies may be accrued up to a maximum of five days per semester or term and may be accrued until the last examination of the academic year, or the last attendance day of the academic year if there is no final examination.

## **6.8. Payment for leave**

Leave approved for the purposes of development or study is to be paid at the employee's ordinary rate of pay, in relation to the payment of ordinary hours, and excluding penalty rates.

## **6.9. Workers compensation**

Given the variety of situations in which employees undertake development activities or study, specific advice regarding coverage of workers' compensation will be provided at the local level.

## **6.10. Financial assistance**

Fees associated with development or studies required by the organisation is to be paid for by the organisation. For example, if the employee is required to attend a conference, complete a course or gain a qualification to meet role requirements, the organisation would pay for such attendance.

Employees are responsible for meeting all fees/costs associated with tertiary studies, and fees associated with other educational activities unless scholarships or other forms of financial assistance are available.

### 6.11. Withdrawal from course of study

If an employee withdraws or discontinues a subject/unit and/or course, they must notify their manager as soon as practicable. Any leave taken after the date of discontinuation or withdrawal will then be processed as recreation leave or leave without pay.

### 6.12. Completion of studies

Upon completion of tertiary studies, a copy of the qualification and transcript is to be provided for placement on the employee's personal file.

## 7. Long Service Leave

This Section does not apply to Health Service Senior Executives.

The current long service leave provisions are set out in the relevant [Awards](#) and in the [Long Service Leave Act 1955](#) (NSW).

### 7.1. Long service leave provisions under NSW Health Awards

This Section also does not apply to employees under the Ambulance Service of New South Wales Administrative and Clerical Employees (State) Award, the Operational Ambulance Managers (State) Award or the Operational Ambulance Officers (State) Award.

These awards refer to the provisions of the *Government Sector Employment Act 2013* (NSW) and the regulations made thereunder as amended from time to time. Reference is to be made to the relevant [Awards](#).

The rights of employees employed at the date at which the current provisions came into operation have been preserved; therefore, when such employees apply for long service leave, it must be determined which set of provisions is more favourable to the employee in the particular circumstances, and long service leave must be paid accordingly. Further information on the former provisions is included at [Subsection 7.8 – Notice of long service leave](#).

An employee with an entitlement to long service leave may elect to access the entitlement on full pay, on half pay or on double pay. Further information on the impact on other leave entitlements is in [Subsection 7.3 – Long service leave on termination](#).

#### *Full time employees*

Full time employees are eligible for two months' long service leave (LSL) after ten years' service and then five months' long service leave for each ten years' service thereafter.

A table translating long service leave entitlements to days of entitlement is set out in an Information Sheet available on the [NSW Health Intranet](#).

Employees with at least seven years' service and less than ten years' service are entitled to proceed on a proportionate period of long service leave on the basis of two months' long service leave for ten years' service.

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### ***Employees with Permanent Part Time Service***

Employees with permanent part time service are entitled to long service leave based on the actual period of service. However, the payment due for the long service leave is at an adjusted monetary rate (pro-rata) based on the full time equivalent period of leave.

Employees with permanent part time service are able to elect to take their long service leave at an adjusted monetary rate (LSL-Average Hours) or at their current rostered hours (LSL-Rostered Hours).

The effect of a particular election will vary for individuals, based on their specific service and current roster pattern. However, in general, the following may apply:

- *LSL – Average Hours* – provides the same amount of LSL days off that a full time employee would receive, but the paid hours per week are reduced to reflect the FTE service.
- *LSL – Rostered Hours* - provides the same number of paid LSL hours per week as the current rostered hours per week, but the days of LSL may be depleted quicker. Entitlements may not be depleted quicker where the employee is currently working less hours than the average hours.

Neither election will alter, replace or reduce the LSL entitlement provided by the relevant Award. Rights of Private Practice (RPP) drawings under the *Staff Specialists' Determination 2015* will also be paid in accordance with the individual's election.

### ***Public Holidays***

When taking long service leave, if the employee would otherwise have had a rostered shift fall on a public holiday during the period, the amount of long service leave to be deducted is reduced by one day for the public holiday.

### ***Higher Grade Duties***

Employees who have acted continuously for one year or more in one or more roles at a higher grade, and who continue to act in a higher graded role are eligible for the payment of the higher duties allowance for any long service leave which is taken during the period of higher duties.

Some [Awards](#) include different provisions related to relieving in higher grade duties (for example, the Public Health System Nurses' and Midwives' (State) Award).

## **7.2. Effect on other leave entitlements**

When an employee elects to access their long service leave entitlement, other leave entitlements will accrue as follows:

- For each period of long service leave taken on full pay – all other leave entitlements accrue at the employee's ordinary rate.
- For each period of long service leave taken on double pay – all other leave entitlements accrue at the employee's ordinary rate.

- For each period of long service leave taken on half pay – annual leave entitlements accrue at half the employee's ordinary rate, while all other leave entitlements accrue at the employee's ordinary rate.

### 7.3. Long service leave on termination

Subject to any staff mobility provisions, on termination from the NSW Health Service, an employee is entitled to receive the monetary value of all long service leave accrued and not taken at the date of termination.

Employees who have completed at least five years' service and less than seven years' service and whose services are terminated by the employer for any reason other than serious and wilful misconduct, or who resign their employment on account of illness, incapacity or domestic or other pressing necessity, are entitled to a pro rata payment for long service leave on the basis of two months' leave for ten years' service.

The taxation of long service leave paid on termination differs depending on when the long service was accrued. Employees should seek advice from the Australian Taxation Office or their tax agent about the taxation implications.

### 7.4. Qualifying service for the accrual of long service leave

#### 7.4.1. Continuous service

All full time and permanent part time continuous service in the NSW Health Service counts towards the accrual of long service leave.

For the purpose of this Section, continuous service has the same meaning as in the Schedule 2 of the [Government Sector Employment Regulation 2014](#) (NSW).

#### 7.4.2. Broken service

The relevant [Award](#) is to be consulted in the case of broken service in the NSW Health Service to check whether it counts towards the accrual of long service leave.

#### 7.4.3. Leave without pay

For an employee with less than ten years' service, leave without pay does not count as service towards long service leave.

Once an employee has completed ten years' net service (i.e. excluding any leave without pay), leave without pay of less than six months' duration counts as service for long service leave.

Leave without pay in excess of six months' duration does not count as service for the accrual of long service leave. This means none of the leave without pay counts as service for long service leave purposes.

This provision applies to leave without pay taken after the commencement of the current long service leave provisions. See the Information Sheet on the [NSW Health Intranet](#) for the relevant date for each [Award](#).

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These provisions apply when an employee takes sick leave without pay, or maternity, adoption or parental leave without pay.

#### **7.4.4. Previous part-time service**

The part time service that this Section applies to is commonly referred to as “old part time”.

*Note:* Permanent part time service attracts the same long service leave entitlements as full time service on a pro-rata basis.

The provisions of each [Award](#) are to be consulted when assessing previous part time service (where it is not permanent part time service).

Generally, where [Award](#) allow recognition of previous part time service, this service must be the equivalent of at least two days per week and the part time service must merge without a break with the subsequent full time or permanent part time service. The part time service is converted to a full time equivalent and recognised accordingly.

#### **7.4.5. Combinations of full time and permanent part time service**

Employees who have a combination of full time and permanent part time service are entitled to long service leave based on the actual period of service. The payment due for the long service leave is at an adjusted monetary rate based on the full time equivalent period of leave.

For example, an employee with 10 years’ full time service and five years’ permanent part time service (at 0.5 full time equivalent) would have 15 years’ service (or 12 years 6 months on a full time equivalent basis). If the employee was to take their full long service leave entitlement they would be paid at the rate which applies to leave which accrues for 12 years 6 months service i.e. 3 months 7½ days.

#### **7.4.6. Prior NSW Government, Commonwealth Government or other recognised service**

Refer to [Section 18 – Staff Mobility](#) for information about when prior service is counted towards long service leave.

### **7.5. Part time and casual employees – Long service leave provisions**

Reference is to be made to the various Awards for the provisions that apply to part time employees commonly referred to as “old part time employees”. Permanent part time employees are entitled to the same long service leave provisions as full time staff but on a pro rata basis.

Refer to [Subsection 7.10 - Assessment and calculation of long service leave entitlements](#) for provisions for part time employees who are eligible for long service leave and who were employed when the long service leave provisions in [Awards](#) were varied in the early 1970s.

Part time staff not covered by the savings provisions and casual staff may be entitled to the provisions of the [Long Service Leave Act 1955](#) (NSW) or any other relevant Determination.

Part time employees covered by the Health Services Union derive their long service leave entitlements from Determination 15 of 2005. Further information about the provisions of the Determination can be found in the NSW Health Information Bulletin *Old Part-Time Employees* ([IB2017\\_039](#)).

#### **7.5.1. Continuous casual service – Employees under the Health Employees’ Conditions of Employment Award**

Employees employed under the Health Employees’ Conditions of Employment Award who have previous continuous casual service are entitled to the following long service leave provisions:

##### ***Casual employees***

Casual employees employed in continuous employment (continuous casual service) are entitled to long service leave provided the provisions of the *Long Service Leave Act (LSL Act)* are met.

##### ***Permanent/temporary Full-Time and Permanent/Temporary Part-Time Employees with previous continuous casual service***

Employees who have a period of continuous casual employment which merges immediately and without break with permanent full time or permanent part time employment, will have the period of continuous casual service counted as service under Clause 17 of the *Health Employees’ Conditions of Employment Award*, provided the continuous casual employment merges immediately and without a break with the permanent full-time or permanent part-time employment.

Refer to the NSW Health Information Bulletin *Recognition of continuous casual service – Health Employees’ Conditions of employment (State) Awards* ([IB2018\\_011](#)) for further information.

#### **7.6. Re-crediting long service leave**

Employees who are incapacitated for a period of at least one week (i.e. five working days) while on long service leave may apply to have the period of incapacity re-credited to their long service leave entitlement and debited against their balance of sick leave.

Employees who take long service leave immediately prior to retirement, resignation or termination are not eligible for a re-credit of leave on account of illness.

Employees must support their application with a medical certificate stating the period of incapacity. The entitlement to have long service leave credited is limited to the credit of sick leave available.

#### **7.7. Minimum periods of long service leave**

While there is no legislative or [Award](#) restriction governing minimum periods of long service leave, in NSW Health the usual practice is for long service leave to be granted for periods of seven days or more, provided that the employee has accrued an entitlement to long service leave.



Where an employee and the relevant manager agree, a period of seven days' long service leave may be taken by an employee, noting that seven days equates to one week, and long service leave accrues over calendar days.

While the taking of long service leave is by mutual agreement between an employee and the relevant manager, where an employee has accrued the appropriate entitlement it must be ensured that there are no unnecessary constraints on that leave being taken at a particular time, provided appropriate notice has been provided.

## **7.8. Notice of long service leave**

Employees wishing to apply for long service leave must, at least one month prior to the commencement of the leave, complete an application for long service leave and submit it to the relevant manager. In exceptional circumstances, a shorter period of notice may be approved.

## **7.9. Former provisions for long service leave**

The long service leave provisions were altered substantially in the early 1970s. The exact date at which they were changed varies and current [Awards](#) include reference to the relevant dates (refer to the Information Sheet on the [NSW Health Intranet](#)).

The former long service leave provisions in the relevant [Award](#) are to be consulted. A table setting out the long service leave entitlements under the former provisions is included in an Information Sheet on the [NSW Health Intranet](#).

An employee's entitlement to long service leave comes from either the former or the current provisions, not a combination of the more attractive elements of each.

### **7.9.1. Accelerated accrual**

Under the former provisions, some [Awards](#) included an accelerated accrual of service for long service leave for employees in hospitals in climatic zones.

Some [Awards](#) preserve this provision for employees who were employed on the date the conditions changed and either had service in hospitals in the climatic zones prior to the date the conditions changed; or who were employed in such a hospital at the date the conditions changed.

Employees covered by the Public Health System Nurses' and Midwives' (State) Award and the Health Employees Conditions of Employment (State) Award who were employed when the current provisions were introduced and who had or were having service accrued at the accelerated rate and who subsequently resigned and were later re-employed, also retain the option of having long service leave accrue under the former provisions. This applies even though there has been a break in the continuity of service.

A list of facilities that formerly attracted the accelerated recognition of service is listed in an Information Sheet on the [NSW Health Intranet](#).

### 7.9.2. Broken service

Under former provisions, in some [Awards](#) broken service could be counted towards long service leave more readily than it can now. This entitlement to count broken service towards long service leave is preserved for employees who were employed at the date that the condition changed. The long service leave clauses in current [Awards](#) refer to this savings provision where relevant.

Conversely, some [Awards](#) are now more generous in terms of recognising broken service than they were under the previous conditions when all service had to be continuous.

### 7.9.3. Prior part time service

Under former provisions in some [Awards](#), part time and full time service was aggregated to determine the length of service for long service leave. The current requirement for continuity and a minimum of two days per week for previous part time service did not apply.

Current [Awards](#) must be checked as some provide that an employee who was full time on the date that the current provisions were introduced and who had prior part time service, may be granted long service leave under the former provisions if they are more favourable.

### 7.9.4. Part time employees

Under current [Awards](#), part time employees are entitled to long service leave under the [Long Service Leave Act 1955](#) (NSW). Under former Award provisions, part time employees were entitled to the accelerated accrual rate if they had service in the hospitals in the climatic zones.

Although the old formulae for calculating part time long service leave differ for each Award, the basic steps of the calculation are:

- Convert the period of part time service to a proportion of full time service (odd days of part time service are counted for calculating the full time equivalent service)
- Calculate the long service leave entitlement (refer to an Information Sheet on the [NSW Health Intranet](#)). Once the full time equivalent service is calculated, any odd days are disregarded when determining the long service leave entitlement
- Calculate payment for the entitlement at the full time rate of pay excluding the part time loading.

*Note:* The part time service referred to above does not include permanent part time service, which attracts the same long service leave entitlements as full time service on a pro rata basis.

## 7.10. Assessment and calculation of long service leave entitlements

The assessment and approval of long service leave claims for payment at the time of an employee's resignation or termination is the responsibility of the employing health agency. This includes certifying an employee's prior service, accurately assessing their entitlement,

maintaining adequate records of their applications, correctly calculating the monetary value of the employee's entitlement and making the necessary payments in a timely manner.

Claims for long service leave must include consideration of previous service, previous long service leave taken or paid to the employee and any periods of leave without pay.

Statutory declarations are to only be accepted as a verification of previous service when every other avenue of confirmation of the period of service has been thoroughly investigated. Every attempt to confirm a period of service, as shown on a statutory declaration, must have been made before leave is granted.

When an employee is claiming previous government service under Schedule 2 of the [Government Sector Employment Regulation 2014](#) (NSW), they are to obtain a statement from their previous employer indicating:

- The employee's date of commencement and termination of employment
- Details of any long service leave taken during employment or paid on termination
- Details of any leave granted, such as leave without pay, which is not counted as service for long service leave
- The reason for termination.

When the long service leave is determined, it will be expressed in months and days. This entitlement must then be converted to a calendar period of leave and the appropriate payment calculated.

## 8. Leave Without Pay

This Section sets out provisions under which employees may be granted leave without pay, details the effect of leave without pay on incremental progression and the accrual and/or entitlement to other forms of leave. Employees are to refer to their respective Health agency for leave approvals.

This Section does not apply to Health Service Senior Executives.

Employees may also be entitled to, or may have the right to request, full time or part time unpaid parental leave. The relevant [Award](#), and the Section in this Policy Directive on parental leave, provides further information.

### 8.1. Granting of leave without pay

Employees may be granted up to three years' leave without pay subject to the following conditions:

- Valid and sufficient reason for the leave must be shown and the relevant manager must be satisfied that the employee intends to resume duty at the conclusion of their leave.
- In the case of superannuation contributions, the relevant superannuation provider is to be contacted for advice. Employees seeking leave without pay in excess of six months may be required to pay not only their own contributions but the employer's liability for

the whole period. Satisfactory arrangements must be made for the employee to pay such contributions as required.

- Employees with annual leave and/or long service leave to credit may conserve such leave when granted leave without pay. However, employees are required to take excess annual leave or accrued ADOs before taking leave without pay.
- The conduct and services of the employee is to be satisfactory.
- Where leave without pay is taken, salary is to be reduced by the monetary equivalent of the actual hours rostered.

Where a public holiday or proclaimed local holiday occurs during their period of leave without pay, the employee must not be credited with the holiday.

## 8.2. Effect on salary increments

Salary increments are subject to deferral by the full amount of leave without pay taken where the period of such leave exceeds 28 consecutive calendar days from the first day of leave without pay.

This provision also applies when an employee takes sick leave without pay and maternity, adoption or parental leave without pay.

## 8.3. Effect on leave entitlements

### 8.3.1. Long service leave

Refer to [Subsection 7.4 – Qualifying service for the accrual of long service leave](#) for information on the qualifying service for the accrual of Long Service Leave.

The same provisions apply when an employee takes leave without pay for reasons related to sickness, maternity, adoption or parental leave.

### 8.3.2. Other leave

Leave without pay in excess of 28 consecutive calendar days does not count as service for the purposes of leave entitlements for which a condition of eligibility is a period of service e.g. sick leave, annual leave and paid parental leave. [Subsection 16.4 – Allocated days off \(ADOs\)](#) sets out the implications of leave without pay on Allocated Days Off.

This provision also applies when an employee takes sick leave without pay and unpaid parental leave.

In relation to eligibility for paid parental leave, once an employee has completed 40 weeks' continuous service, any subsequent leave without pay does not affect the employee's eligibility for paid leave except if they take more than 40 weeks' leave without pay, in which case they are required to again work the 40 weeks' continuous service to be eligible for paid parental leave. In this context, leave without pay does not include sick leave without pay, parental leave without pay or leave without pay associated with an illness or injury compensable under the [Workers Compensation Act 1987](#) (NSW).

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### **8.3.3. Effect of part time leave without pay**

For periods of part time leave without pay of more than four weeks, annual leave and sick leave accrue on a pro rata basis and incremental progression will be based on the hours worked per week.

For employees who have less than ten years' service, only the hours worked each week count as service toward eligibility for long service leave. The period of service is converted to the full time equivalent and credited accordingly.

Once an employee has worked ten years' net service, any periods of part time leave without pay of six months or less are counted in full as service for long service leave entitlements.

Employees who have ten years' net service or more and who take more than six months' part time leave without pay, have only the hours they work each week counted as service for long service leave entitlements.

The time periods referred to above are in relation to the period of the part time leave without pay, not the full time equivalent. For example, four weeks' part time leave without pay means four calendar weeks at less than full time hours.

## **9. Christmas Closedown**

The Christmas Close down encourages all areas of the government sector not involved in the delivery of front-line services to shut down over the Christmas/New Year period. Employees not involved in the delivery of essential services are to be encouraged to take full advantage of the close down period and managers are encouraged to release employees wherever possible.

Subject to operational requirements and the relevant Award, employees may be required to clear excess annual leave during the close down period, as per notice requirements outlined in the respective [Award](#).

The dates of the Christmas Close down are advised in the Public Sector Industrial Relations, NSW Treasury Circular and communicated across NSW Health by way of an Information Bulletin. Local Health Districts may vary the shut down period, in accordance with operational and service delivery requirements. This variation is to be consistent with the two week close-down period and is subject to consultation.

## **10. Observing Days of Religious Significance**

NSW Health is committed to accommodating the culturally diverse nature of its workforce by providing leave and flexible work arrangements to observe days of religious significance.

Multicultural NSW provides a guide to days of religious significance to assist in consideration of leave applications.

Employees must seek the approval of their manager at least one month in advance where possible to take their accrued leave for religious reasons.

Applications for this leave are to be accommodated wherever possible, subject to operational requirements and subject to the employee providing their manager with notice as set out above and sufficient information about the leave sought.

## 11. Government Sector Employees Contesting Elections

The provisions for employees contesting State elections are contained in Section 71 of the [Government Sector Employment Act 2013](#) (NSW).

## 12. Special Leave

This Section provides detail on special leave available to permanent or temporary employees. These entitlements are not available to casual staff or Health Service Senior Executives.

Special Leave may also be made available due to emergency situations (for example a declared bushfire or flood emergency or during a pandemic). These provisions are not defined in this Policy Directive, as they will be specific to the situation and will be time-limited. Where Special Leave is available in such circumstances, this will be communicated to all employees through the NSW Health Intranet and/or information bulletins.

### 12.1. Attendance at State Super Retirement Preparation Seminars

This Section applies to employees who are members of the State Authorities' Superannuation Scheme or the State Superannuation Scheme.

Employees who are members of either of the above schemes, and who are invited by State Super (SAS Trustee Corporation) to attend a retirement preparation seminar are eligible for up to two days' special leave to attend such seminars (including reasonable travelling time).

### 12.2. Blood donors

Employees may be granted special leave to donate blood to the Australian Red Cross Blood Transfusion Service. The amount of leave granted is restricted to the time reasonably necessary to travel to and from the local Blood Collection Centre and to recuperate after the employee has given blood.

Leave of absence is subject to all essential services being able to be maintained during the employee's absence.

### 12.3. Bone Marrow Donors

Special sick leave (a separate entitlement from sick leave) will apply for employees, who are called upon to donate bone marrow, for the ordinary working time lost in attending bone marrow donation procedures.



Special sick leave in this instance is limited to five days on each occasion and is subject to the production of a medical certificate. Additional leave, if required, may be accessed from leave credits for sick leave, annual leave or long service leave, or taken as leave without pay.

## **12.4. Jury Duty**

The following procedures apply where employees are summoned for jury duty:

1. On receipt of a jury summons, the employee is to immediately advise the relevant manager. They are to submit an application for special leave where applicable, prior to attending jury duty, attaching the Sheriff's or Registrar's notification of their required attendance.
2. An employee who is on jury duty at a time when they would otherwise be required for duty is to be granted special leave.
3. The employee maintains their full normal wage/salary during jury duty and cannot claim an attendance fee from the Court. They can however claim out of pocket expenses from the Court.
4. The Sheriff or Registrar, on an employee being discharged from jury duty, will certify particulars of their attendance at Court, including any fees paid. The employee on returning to duty must present this certificate to the relevant manager.
5. When the attendance for jury duty occurs during leave of absence from the normal work place (e.g. on rostered leave, annual leave, etc.) the employee is to inform the Sheriff or Registrar that the attendance occurred during a period when they were not required for duty including if necessary, the reason. The Sheriff or Registrar will then pay jury fees which can be retained by the employee.
6. Where jury duty carries over a non-working period to a working period, fees for the non-working period may be retained and special leave will be granted in respect of the working period subject to production of a certification from the Sheriff or Registrar.

## **12.5. National Aborigines and Islanders Day Observance Committee (NAIDOC) Week**

An employee who identifies as an Indigenous Australian may be granted up to one day's special leave per year to enable them to participate in NAIDOC Week celebrations. The dates for NAIDOC Week are advised by Information Bulletin each year.

Leave can be taken at any time during NAIDOC Week, or the employee may seek approval to take the special leave outside the proclaimed period if, due to work commitments, they are not able to take the special leave within the designated week or as some communities choose to celebrate NAIDOC outside the designated week.

No penalty rates are payable for special leave granted under this Section. Applications for this leave are to be accommodated wherever possible, provided the employee provides their manager with reasonable notice and details or evidence of attendance where possible of the NAIDOC event in which they are participating.

## **12.6. Olympic and Commonwealth Games**

Employees selected as competitors or officials at the Commonwealth or Olympic Games are entitled to up to four weeks' special leave to participate in the Games. The same concessions may be granted to competitors or officials taking part in the equivalent Games for athletes with disabilities.

## **12.7. Leave for former Australian Defence Force (ADF) personnel**

Up to 6½ working days' special leave is available to ADF services personnel in any period of 12 months, for the following purposes:

- Attending a hospital or visiting a medical officer for review
- Attending a hospital to report for periodical examination or attention in connection with a war caused disability
- Obtaining, replacing or having repaired an artificial limb or member, prosthesis or surgical appliance
- Attending the Department of Veterans' Affairs in connection with claims made for military pensions.

### **12.7.1. Sick leave for war caused disabilities**

A war caused disability is an injury or illness resulting from armed service in a recognised war zone. Injury or illness resulting directly or indirectly from service in the armed forces but not in a war zone is not regarded as war caused.

Employees who are former armed services personnel and who have an accepted war caused disability, receive an additional annual entitlement of 15 days per calendar year non-cumulative. This is an additional grant of leave to be applied only to absences directly related to the war caused disability, and is separate from the annual sick leave, entitlement.

To be eligible for the additional leave, the employee must provide a statement from the Department of Veterans' Affairs to the effect that the illness or injury is as a result of service in a recognised war zone.

## **12.8. Volunteer members of emergency organisations**

The provisions of this Section do not apply where an employee is considered to work in an emergency situation and/or their absence could jeopardise the proper functioning of the work unit. Applications for leave under these provisions can be declined where the leave may jeopardise the functioning of a critical work unit and/or create unnecessary risk to other employees or patient care.

### **12.8.1. Emergency volunteers**

An employee may be granted paid leave of up to five days in any period of 12 months when called upon to assist as a volunteer member of one or more of these organisations:

- 
- The State Emergency Services
  - The Volunteer Rescue Association of NSW (or affiliated groups)
  - The Rural Fire Service
  - The Wireless Institute Civil Emergency Network
  - The Cave Rescue Squad
  - Marine Rescue NSW
  - Bush Search and Rescue

Where the voluntary organisation remunerates the employee for their work performed, they are not to also be paid by NSW Health.

### **12.8.2. Declared emergencies**

Where an emergency is declared under any relevant legislation or by the Governor, employees who volunteer to assist in the emergency are to be granted leave with no upper limit to the leave. Leave granted during declared emergencies is not to count towards the five day upper limit specified above.

Where an emergency is declared, for example a declared natural disaster, employees directly affected by the emergency, and whose FACS leave is exhausted, may be granted up to five days' special leave. The granting of this leave is at the organisation's discretion where the absence is absolutely necessary (refer [M2023-03 Declared Natural Disasters – Leave Provisions and Other Information](#) and [Declared Natural Disasters](#)).

### **12.8.3. Proof of attendance**

An application for volunteer leave must be accompanied by a statement from the local or Divisional Controller, the Fire Controller, Deputy Fire Controller or the Police, certifying the times of attendance. The leave application will indicate the period and area of attendance together with the name of the organisation to which the volunteer member belonged.

### **12.8.4. Rest period**

Where a person remains on emergency duty for several days, they may be granted special paid leave to allow them reasonable time for rest before returning to normal duties, except in situations where the days off coincide with the employee's normal rostered days off duty.

Where a person does not remain on emergency duty for several days but assists in an emergency service at such time as it would be unreasonable to expect them to report for duty at the normal time, then up to one day of leave for rest purposes may be granted.

In the case of an emergency other than a declared emergency, this leave is to be included in the general limit of five days in any period of 12 months.

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### **12.8.5. Emergency services courses**

Where the Director of State Emergency Services considers it essential that an employee attend a course, every effort must be made to release the person from duty. Where the person is so released, the necessary absence from work is regarded as being on duty.

The Director of the State Emergency Services may also nominate other persons, whose attendance is not regarded as essential, to attend courses, training or lectures. In these circumstances special leave may be granted for the time they are necessarily absent from duty. A certificate of attendance is necessary.

In addition, emergency volunteers nominated to attend courses that are approved or organised by the Rural Fire Service may be granted leave to attend up to ten working days in any period of 12 months.

Applications are to be supported by written approval of the Rural Fire Service. Approval for leave is subject to the employee's absence not impacting on the provision of services and written confirmation of attendance being provided.

## **12.9. Attendance at court**

### **12.9.1. In an official capacity**

When an employee is subpoenaed or called as a witness in an official capacity to attend court on behalf of the Crown (State or Commonwealth) they are regarded as being on official duty and may not keep any monies paid to them by the court. Such payment must be paid to NSW Health.

The employee is entitled to be paid all necessary expenses incurred in consequence of being subpoenaed or called as witness, including travelling expenses if it is necessary to travel to attend court. These expenses must be met by NSW Health.

When employees are subpoenaed or called as a witness in an official capacity on behalf of a party other than the Crown, they are still regarded as on official duty and may not keep any monies paid to them as witnesses. Out-of-pocket expenses are to be met by the party concerned. A claim for the cost of salary paid during the period an employee so subpoenaed is absent from their duties is to be submitted to the party concerned.

### **12.9.2. Proceedings arising from work-related assault**

An employee who attends a police station or a court, either as the victim or Health Agency's nominated support person, for proceedings arising out of a work-related assault, will be considered to be on-duty for the time they are completing these actions.

### **12.9.3. In a private capacity**

When an employee is subpoenaed or called as witness in a private capacity on behalf of the Crown (State or Commonwealth), they must be granted special leave with pay. They may not keep any monies paid to them as witnesses but must pay the whole of such payment to NSW Health. The cost of travelling and subsistence expenses in such cases will be met by the Attorney General's Department or Commonwealth Government, as the case may be.

When an employee is subpoenaed or called as witness in a private capacity on behalf of a party other than the Crown, they must be granted leave without pay or annual leave, as available, and they may retain all monies paid to them as witnesses.

## **12.10. Support for employees experiencing domestic and family violence**

As from 1 January 2023, NSW government sector employees, (including casual staff), who are experiencing domestic and family violence have access to 20 days' paid domestic and family violence leave per calendar year. This leave is non-cumulative and can be taken in part-days, single days or consecutive days. Note: This leave is not pro-rated for part-time or casual employees.

This leave can be accessed without the need to exhaust other existing leave entitlements first.

Where there is an existing arrangement for paid domestic and family violence leave in an industrial instrument, NSW government sector employees will have access to the more beneficial arrangement (but not both).

Leave is to be available for employees experiencing domestic and family violence, for purposes including:

- Seeking safe accommodation
- Attending medical, legal, police or counselling appointments relating to their experience of domestic and family violence
- Attending court and other legal proceedings relating to their experience of domestic and family violence
- Organising alternative care or education arrangements for their children
- Other related purposes approved by the agency head or their delegate.

The process for employees to access paid domestic and family violence leave must not be onerous. When approving leave, the approver needs to be satisfied, on reasonable grounds, that domestic and family violence has occurred, and may require proof such as:

- A provisional, interim or final Apprehended Violence Order (AVO)
- A certificate of conviction
- A family law injunction
- A medical certificate
- A statutory declaration
- An agreed document issued by the Police Force, a court, a domestic violence support service or a member of the legal profession.

Managers and Human Resources/Workforce officers are to manage documentation in a sensitive manner. Any documentation sighted is to be returned to the employee unless the employee requests otherwise. Any documentation that is not returned to an employee must be handled in accordance with NSW privacy legislation and other applicable legislation (e.g.

*State Records Act 1988* [NSW]). The employer must not store information about an employee's experience of domestic and family violence on the employee's personnel file or on data bases that can be accessed by other employees. Domestic and family violence leave taken by an employee should not be identified as such on the employee's pay slip.

### ***Casual staff***

A casual staff member can take a period of paid domestic and family violence leave for the hours for which the casual staff member is rostered to work. The employer is not required to pay the casual staff member for un-rostered hours.

### ***Access to leave for employees providing support and/or care to a family or household member***

Access to leave has been extended to employees providing care and support to a member of their family or household experiencing domestic and family violence. They can access existing leave entitlements such as Family and Community Service Leave and Sick Leave to care for a family member. The reason for the leave must fit within the definitions of Family and Community Service Leave, Sick Leave to care for a family member and Carers Leave.

Other initiatives to support victims of domestic and family violence to continue to participate in the workforce include:

- Flexible working arrangements, including changes to start and finish times
- Changes to an employee's work location, where practicable
- Changing an employee's work email address and/or phone number
- Employee assistance provider support to employees and their immediate families
- Workplace support and role adjustments.

If an employee seeking to access leave or other support does not feel comfortable or safe disclosing their experience of domestic and family violence to their direct manager, they may disclose to an alternative manager or directly to the Human Resources / Workforce section of the agency.

Further information is available at [M2022-13 Support for Employees Experiencing Domestic and Family Violence](#) and NSW Health Information Bulletin *Domestic and family Violence* [IB2022\_047]).

## **13. Leave to Undertake Defence Force Duties**

This Section outlines the amount of leave an eligible employee is entitled to when undertaking any form of Defence Service and is to be read in conjunction with the [Defence Reserve Service \(Protection\) Act 2001](#) (the Act).

### **13.1. Defence Reserve Service**

Paid and unpaid Defence Reserve Service leave is available to employees who are members of the Australian Defence Force Reserves.



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### ***Paid Defence Reserve Service Leave***

Paid leave is available to Reservists for the purposes of rendering certain types of Defence Reserve service, including:

- Initial recruit training
- Compulsory annual training
- Attendance at schools and/or classes of instruction
- Compulsory parades conducted by the employee's unit.

The maximum amount of paid leave that may be granted during a period of 12 months commencing on 1 July each year is 24 working days on full pay.

### ***Defence Reserve Service with Top Up Pay***

Where additional leave is required for a Reservist to attend compulsory annual training, at a school, class of instruction or compulsory parade for a period that exceeds the annual paid leave set out above, employees may be granted leave with top up pay.

Top Up Pay is the difference between the Reservist's pay paid by the Commonwealth Department of Defence and what they would ordinarily receive at work.

During a period of Defence Reserve Service Leave with Top Up Pay, the employee will continue to accrue sick leave, annual and long service leave entitlements and superannuation contributions will continue to be made at the normal rate.

*Note:* Access to paid leave and top up pay does not apply to training undertaken during period of Continuous Full Time Service.

### ***Unpaid Defence Reserve Service leave***

Where a Reservist seeks leave for full time or part time Reserve service that is not covered by the annual entitlement, employees will be granted leave without pay. This includes when a Reservist undertakes Continuous Full Time Service.

A Reservist may also elect to take other forms of accrued leave for the purpose of undertaking this service. Applications for this leave will be assessed on a case by case basis.

### ***Leave for medical examinations***

Up to one day's special leave may be granted to Reservists to attend medical examinations and tests required for acceptance as volunteer part time members of the Australian Defence Forces.

### ***Implications***

Where there are serious or legitimate concerns over the implications of releasing an employee for Defence service for a particular period of time or at a particular time, an alternative appropriate time may be negotiated that is mutually convenient to both parties.

The Defence Force will attempt to accommodate such concerns wherever possible. However, if a more acceptable arrangement cannot be negotiated, the Act provides that it is

an offence for an employer to hinder or prevent an employee from rendering Defence service and that it is an offence to discriminate against them on such grounds.

### **13.2. Commonwealth Defence Employer Support Payment (ESP) Scheme**

The ESP Scheme is designed to compensate employers for the absence of employees on Defence service. Further information on the scheme, including the ESP Scheme's current rate of compensation and how to apply can be obtained from the [Defence Reserves Support](#) website, or by phone on 1800 803 485.

### **13.3. Further information**

Employees and managers are to refer to the Information Sheet (Defence Reserve Leave Guidelines) available on the [NSW Health Intranet](#).

## **14. Trade Union Leave**

This Section excludes Health Service Senior Executives.

This leave applies to trade union activities undertaken by employees. These provisions do not apply if more generous provisions are provided for in an [Award](#).

Except as specified in this Section or in [Awards](#), employees who are accredited trade union delegates, or who act as employee representatives, are to do so in their own time, outside their normal working hours and at their own expense.

Trade union or union means a registered trade union, as defined in the [Industrial Relations Act 1996](#) (NSW) as amended from time to time.

Trade union delegate means an accredited trade union delegate responsible for their workplace and/or a person who is elected by the trade union as its representative, an executive member or a member of the trade union's council.

### **14.1. Trade union activities regarded as on duty**

A trade union delegate will be released from the performance of normal duty when required to undertake any of the activities specified below.

- Attendance at meetings of the workplace's Work Health and Safety (WHS) Committee and participation in all official activities relating to responsibilities of elected WHS Committee members at a place of work as provided for in the [Work Health and Safety Act 2011](#) (NSW) and [Work Health and Safety Regulation 2017](#) (NSW).
- Attendance at meetings with workplace management or workplace management representatives.
- A reasonable period of preparation time by agreement with management, where operational requirements allow the taking of such time, before:
  - meetings with management

- 
- disciplinary or grievance meetings with a union member that requires the presence of a delegate.
  - Giving evidence in court on behalf of the employer.
  - Appearing as a witness before the Industrial Relations Commission.
  - Representing the trade union at the Industrial Relations Commission as an advocate or as a Tribunal Member.
  - Presenting information on the union and union activities at induction sessions for new employees.
  - Distributing official union publications or other authorised material at the workplace, provided that a minimum of 24 hours' notice is given to workplace management, unless otherwise agreed between the parties. Distribution time is to be kept to a minimum and is to be undertaken at a time convenient to the workplace.

While undertaking such activities on a normal rostered day on duty, the trade union delegate will be regarded as being on duty and will not be required to apply for leave.

In circumstances where a trade union delegate is not rostered for duty or is on an allocated/additional day off and is not required by NSW Health to undertake these activities, such time will not be counted as time worked.

## **14.2. Trade union leave activities**

The granting of trade union leave with pay applies to the following activities undertaken by a trade union delegate:

- Attendance at the annual or biennial conference conferences of the trade union
- Attendance at meetings of the trade union's Executive or Councils
- Attendance at annual conference of Unions NSW and the Congress of the Australian Council of Trade Unions
- Attendance at meetings called by Unions NSW involving the union which requires attendance of a delegate
- Giving evidence before an Industrial Tribunal as a witness for the union
- Reasonable travelling time to and from conferences or meetings to which these provisions apply.

Application for leave for any of the above activities is to be accompanied by supporting details, e.g. notice of meeting.

Trade union leave with pay counts as service for all purposes.

## **14.3. Trade union training courses**

The following training courses will attract the grant of paid trade union leave:

- Accredited WHS courses and any other accredited WHS training for WHS Committee members. The providers of WHS training courses and the conditions on which paid

trade union leave for such courses will be granted is to be negotiated between the Chief Executive and the trade union

- Courses organised and conducted by the trade union or a training provider nominated by the union. A maximum of 12 working days in any period of two years applies to this training and is subject to:
  - The operational requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff
  - Payment being at the base rate, i.e. excluding extraneous payments such as shift allowances/penalty rates, overtime etc.
  - NSW Health not being responsible for any travelling and associated expenses incurred in attending such courses
  - Attendance being confirmed in writing to the relevant manager by the trade union or a nominated training provider.

Trade union leave with pay counts as service for all purposes.

#### **14.4. Trade union on loan arrangements**

Subject to the operational requirements of the workplace, on loan arrangements will apply to the following activities:

- Meetings interstate or in NSW of a Federal nature to which a union member has been nominated or elected by the trade union as:
  - An Executive Member
  - A member of a Federal Council
  - A member of a vocational or industry committee
- Briefing counsel on behalf of a trade union
- Assisting union officials with preparation of cases or any other activity outside their normal workplace at which the trade union delegate is required to represent the interests of the union
- Country tours undertaken by a member of the Executive Council of the Union
- Taking up of full time duties with the Union (excluding Elected Office)
- The following financial arrangements apply to the occasions when an employee is placed on loan to the union:
  - The trade union or delegate or an authorised union representative who services are “on loan” to the union will continue to be paid by NSW Health.
  - NSW Health will seek reimbursement from the union at regular intervals of all salary and associated on-costs, including superannuation.
  - Agreement with the union on the financial arrangements, including agreement on leave matters, must be reached before the on loan arrangement commences

and must be documented in a manner negotiated between the Chief Executive and the union.

- On loan arrangements negotiated in terms of this Section are to be regarded as service for the accrual of all leave, for incremental progression and for continuity of employment purposes
- On loan arrangements may apply to full time or part time employees and are to be kept the minimum time required. Where the trade union needs to extend an on loan arrangement, they shall approach the Chief Executive in writing for an extension of time well in advance of the expiration of the current period of on loan arrangement
  - Where the Chief Executive and the union cannot agree on the on loan arrangement, the matter is to be referred to the Secretary, NSW Health for determination after consultation with the Chief Executive and the trade union.

#### **14.5. Period of notice for trade union activities**

The Chief Executive or their nominee must be notified in writing by the union or, where appropriate, by the trade union delegate as soon as the date and/or time of the meeting, conference or other accredited activity is known.

#### **14.6. Access to facilities by trade union delegates**

The workplace will provide trade union delegates with reasonable access to the following facilities for authorised union activities:

- Communication facilities (e.g. including telephone, facsimile and email facilities)
- A notice board for material authorised by the union or access to staff notice boards for material authorised by the union
- Workplace conference or meeting facilities, where available, for meetings with members, as negotiated between local management and the union.

#### **14.7. Travelling and other costs of trade union delegates**

Except as specified in point 3 of [Subsection 14.10 – Responsibilities of workplace management](#), travel and other costs incurred by trade union delegates in the course of union activities will be paid by the union.

In respect of meetings called by the workplace management in terms of point 3 of Subsection 14.10 – Responsibilities of workplace management, the payment of travel and/or accommodation costs, properly and reasonably incurred, is to be made, as appropriate, on the same conditions as apply under Award provisions for excess fares and travelling and/or relevant policy directives.

No overtime, leave in lieu, shift penalties or any other additional costs will be claimable by an employee in respect of union activities covered by paid trade union leave or trade union on duty activities provided for in this policy directive.

The on loan arrangements must apply strictly as negotiated and no extra claims in respect of the period of on loan must be made by the trade union or the employee.

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## 14.8. Responsibilities of the trade union delegate

Responsibilities of the trade union delegate are to:

- Establish accreditation as a delegate with the trade union and provide proof of accreditation to the workplace
- Participate in the workplace consultative processes, as appropriate
- Follow the dispute settling procedure applicable in the workplace
- Provide sufficient notice to the relevant manager of any proposed absence on authorised trade union business
- Account for all time spent on authorised trade union business
- When trade union leave is required, to apply for that leave in advance to their manager
- Distribute trade union literature/membership forms under local arrangements negotiated between the Chief Executive and the union
- Use any facilities provided by the workplace properly and reasonably as negotiated at organisational level.

## 14.9. Responsibilities of the trade union

Responsibilities of the trade union in respect of trade union activities are to:

- Provide written advice to the Chief Executive about a union activity to be undertaken by a trade union delegate and, if requested, to provide written confirmation to the workplace management of the delegate's attendance/participation in the activity
- Meet travelling, accommodation and any other costs incurred by the trade union delegate, except as provided in point 3 of [Subsection 14.10 – Responsibilities of workplace management](#)
- Pay promptly any monies owing to the workplace under a negotiated on loan arrangement
- Provide proof of identity when visiting a workplace in an official capacity, if requested to do so by management
- Apply to the Chief Executive well in advance of any proposed extension to an on loan arrangement
- Assist the workplace management in ensuring that time taken by the trade union delegate is accounted for and any facilities provided are used reasonably and properly
- Advise of any leave taken by the trade union delegate during the on loan arrangement.

## 14.10. Responsibilities of workplace management

Where time is required for trade union activities in accordance with this Policy Directive the responsibilities of the workplace management are to:



- 
- Release the trade union delegate from duty for the duration of the trade union activity, as appropriate and, where necessary, to allow for sufficient travelling time during the ordinary working hours.
  - Advise the trade union delegate of the date of the next induction session for new employees in sufficient time to enable the trade union to arrange representation at the session.
  - Meet the travel and/or accommodation costs properly and reasonably incurred in respect of meetings called by the workplace management.
  - Where possible, provide relief in the position occupied by the trade union delegate in the workplace, while the delegate is undertaking union responsibilities to assist with the business of workplace management.
  - Re-credit any other leave applied for on the day to which trade union leave or release from duty subsequently applies. This does not apply where the trade union delegate is rostered off duty on the day they are required to perform trade union activities or is on an allocated/additional day off duty.
  - Continue to pay salary during an on loan arrangement negotiated with the union and to obtain reimbursement of salary and on-costs from the union at regular intervals, or as otherwise agreed between the parties if long term arrangements apply.
  - Verify with the union the time spent by a trade union delegate on union business, if required.
  - If the time and/or the facilities allowed for trade union activities are thought to be used unreasonably and/or improperly, to consult with the union before taking any remedial action.

## **15. Leave Management**

This Section provides instruction on the administration of leave and leave records including under what circumstances leave counts as service, how leave must be recorded, the maintenance of personal files and when higher duties allowances are payable during leave.

### **15.1. Leave as service**

All periods of paid leave are regarded as service during which time employees continue to accrue normal leave entitlements. Terminating employees may elect to have their untaken accrued annual leave paid as a lump sum or take the annual leave as service.

Where an employee elects to take the leave as service, the annual leave credit is determined as at their last day of duty. The accrued annual leave is then paid and treated as if the employee was taking the leave. The date of the expiration of the accrued annual leave becomes the last day of service. This last day of service then becomes the date for the final annual leave calculation and payment is made for untaken leave accrued to that date.

Pro rata annual leave paid as a gratuity on termination does not count as service for the calculation of long service leave. As details of service for long service leave entitlements are

taken from staff leave records, it is important that these indicate the employee's last date of actual service, noting separately the payment of pro rata leave.

## 15.2. Recording of leave

Details of all leave taken are to be recorded in electronic systems which detail the employee's service records.

### 15.2.1. Annual leave

Entitlements to annual leave are expressed differently in some [Awards](#). Managers are to seek advice from their respective Human Resources/Workforce team for further assistance as required.

Leave accruing is usually recorded on the anniversary of commencement. An interim accrual would need to be recorded when an employee wished to take all leave due on a date which did not coincide with an anniversary, or on the employee's termination, when all accrued leave due is either paid as a lump sum or is transferred to another NSW government sector service under the NSW government sector mobility provisions or to a non-declared affiliated health organisation under the arrangements provided in the [Health Services Regulation 2018](#) (NSW).

The amount of accrued annual leave for which an employee receives a lump sum payment on termination is not counted as service for the calculation of long service leave.

### 15.2.2. Sick leave

Sick leave taken is recorded on the employee's service record in hours. Computerised rostering systems will automatically update staff records when sick leave is taken and automatically provide a balance of hours due or convert sick leave taken to sick leave without pay where necessary.

Sick leave entitlements are cumulative and there is no limit to the balance which can accumulate. Unless the sick leave credit is transferred with the employee to another NSW government sector service under the NSW government sector mobility provisions or to a non-declared affiliated health organisation under the arrangements provided in the *Health Services Regulation 2008* (NSW).

Untaken sick leave balance lapses on termination of service and cannot be revived even if the employee resumes service with the same employer at a later date.

New employees are entitled to their first year's sick leave on the first day of the fourth month of employment (immediately after the three months' probation period). However, if an employee has transferred a credit of sick leave from another NSW government sector service under the NSW government sector mobility provisions or from a non-declared affiliated health organisation under the arrangements provided in the *Health Services Regulation 2008* (NSW), this is available immediately. The date of credit of further entitlements will be the anniversary of commencement with the previous organisation.

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### 15.2.3. Long service leave

Details of all long service leave taken, accrued and transferred from other organisations under the employee mobility provisions must be recorded accurately on the employee's service record.

## 15.3. Employees transferring within the NSW Health Service

When employees move within the NSW Health Service, there is no termination of service as they retain the same employer and therefore retain their accrued leave entitlements.

## 15.4. Higher duties prior to taking leave

Employees who have been undertaking higher duties continuously for one year or more in a higher graded position/s and who continue to act in that higher graded position/s, are eligible for payment of the higher duties allowance for any annual leave, long service leave, parental leave, sick leave or family and community service leave which is taken during the further period of relief.

The *Public Health System Nurses' and Midwives' (State) Award* provides that employees who act in a vacant management position continuously for more than six months are deemed conditionally appointed to that position.

## 15.5. Multiple assignments

Various Awards<sup>4</sup> prescribe benefits and the amalgamation of multiple assignments for prescribed purposes, including leave and ADOs.

Multiple assignments can only be within the same conditions Award and with the same primary conditions, for example hours of work. Staff Specialists with multiple assignments may only be amalgamed where the subsequent assignment is at the same grade and level within the Award.

The combined hours of assignments within a single organisation in the public health system must not exceed the weekly Award hours.

### 15.5.1. Multiple assignments within a single organisation in the Public Health System

The work performed in each of the employee's multiple assignments is aggregated for all purposes of the Award.

All hours worked count towards an employee's leave entitlements, and they can take that leave in any assignment.

Where an employee has multiple assignments with different rates of pay, leave taken in an assignment will be paid at the rate applicable to that assignment.

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<sup>4</sup> *Health Employees' Conditions of Employment (State) Award; Public Hospital (Professional and Associated Staff) Conditions of Employment (State) Award; Hospital Scientists (State) Award; Staff Specialists (State) Award; Public Health System Nurses and Midwives' (State) Award.*

### 15.5.2. Multiple assignments across different organisations in the Public Health System

Multiple assignments across Organisations in the Public Health System will have Award provisions applied separately to each assignment, except in relation to some leave matters.

- All service is combined for long service leave purposes
- Service in an assignment in another Organisation in the Public Health System is recognised for the purposes of parental leave.
- Service in all assignments will be recognised for the purposes of entitlements of Family and Community Services Leave and Personal Carers Leave.
- Service in all assignments will be recognised for the purposes of entitlement for Domestic and Family Violence Leave
- At the time an employee commences an assignment in another Organisation in the Public Health System, their existing leave credits will be apportioned across their assignments. Employees can elect that this not occur.
- Where an employee terminates an assignment, any leave credits held in that assignment are transferred to the remaining assignment/s.

## 16. Allocated Days Off, Annual Leave and Debiting of Leave

This Section describes payroll procedures in relation to the debiting of leave and ADOs for employees who work a 38 hour week, are entitled to ADOs and who are covered by the following [Awards](#):

- *Health Employees' Conditions of Employment (State) Award*
- *Hospital Scientists (State) Award*
- *Public Health System Nurses' and Midwives' (State) Award*
- *Public Hospital Career Medical Officers (State) Award*
- *Public Hospitals Medical Officers Award*
- *Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award.*

This Section is not applicable to Health Managers Levels 5 and 6.

### 16.1. Annual leave

Annual leave is to be credited in multiples of 38 hours for each week and in multiples of 7.6 hours for each additional day e.g. for work performed on Sundays and/or public holidays.

Annual leave is to be debited and paid in multiples of 38 hours for each complete week taken and in the proportion of 95% of actual rostered hours taken for periods of less than one week.

The same 95% proportioning applies to leave loading and annual leave shift penalties (e.g. roster for leave period is 40 hours – payment is for 38 hours' annual leave and 38 hours' loading/penalties).

This is because staff who accrue ADOs do not accrue time towards an ADO while on annual leave. The 95% proportioning ensures that the leave debit equates to the payment made and the annual leave deducted:

- a full time employee working an eight hour day is paid 7.6 hours' salary and has 7.6 hours deducted from the annual leave balance.
- a full time employee working a ten hour day is paid 9.5 hours' salary and has 9.5 hours deducted from the annual leave balance.

The 95% proportioning of annual leave debits does not apply to full time staff working under a flexible roster pattern where no ADOs are being accrued/taken. Where an employee who does not receive ADOs takes one day of annual leave, this leave will be debited according to the time worked, not at 95%.

Where payment is made in lieu of additional leave accrued for work performed on Sundays/public holidays it is to be made on the basis of 7.6 hours per day.

## 16.2. Sick leave

Sick leave is to be credited on the basis of 76 hours per year and debited on the basis of the actual hours rostered.

Up to an additional four hours' sick leave is available once the 76 hours entitlement has been exhausted in any one year and if the staff member has no sick leave entitlement carried over from previous years.

For example, if an employee who works eight hour shifts is absent on sick leave for a total of ten working days in any one year and has no sick leave carried over from previous years, they will continue to be paid an additional four hours on the tenth day of sick leave even though no sick leave credit exists.

The additional payment will not affect the subsequent year's sick leave entitlement i.e. this additional sick leave is special sick leave, not sick leave in advance.

## 16.3. Leave without pay

Where leave without pay is taken, salary is to be reduced by the monetary equivalent of the actual hours rostered.

## 16.4. Allocated days off (ADOs)

The relevant Award will specify how ADOs accrue and is to be referred to clarify entitlements.

In most instances eligible employees are entitled to 12 ADOs per year based on system calculations. This excludes employees who are working a flexible roster pattern which equates to an average of 38 hours per week over each roster cycle

Only whole days ADOs accrue for the majority of Awards; with the exception of Nurses and Midwives (see [Subsection 16.4.1 – Nurses and midwives](#)) and Skilled Trades employees.

This entitlement is implemented by granting an ADO in each 28 day roster cycle but not during the first four weeks of each year's annual leave entitlement. A year is defined as the period between two consecutive anniversary dates. However, where no annual leave is taken in any one year (e.g. during the first year of employment) an employee will be granted 13 ADOs in that year and 11 in the subsequent year.

Additionally, where an employee is granted leave without pay which covers a full 28 day cycle, no ADO is to be granted for that cycle, thus reducing their entitlement in that year to fewer than 12 ADOs. ADOs do not accrue during periods of Long Service Leave, maternity leave or workers compensation where the worker is unfit for duty.

If a rostered ADO falls during a period of sick leave, the ADO is not replaced by sick leave, but remains an ADO.

Accurate records need to be maintained to ensure the correct number of ADOs are granted in any particular year. Health agencies are responsible to ensure ADO balances do not exceed the balance provisions in the relevant Award.

Likewise, employees must utilise ADOs prior to implementing changed employment arrangements, e.g. changing from full time to part time or changing legal employers within the Health System.

Further information can be found in the [ADO Frequently Asked Questions](#).

#### **16.4.1. Nurses and midwives**

The ADO calculation for nurses and midwives is based on actual hours rostered and ensures that 5% of the hours rostered for each shift contribute towards the ADO balance. This takes into account ADO accrual processes for nurses and midwives who work shifts other than 8 hour shifts to ensure that ADO accruals are accurate, visible and up to date.

The following leave types contribute to nurses' and midwives' ADO accrual:

- Public Holiday Leave (leave granted in lieu of Public Holidays for nurses and midwives working a rotating shift)
- Public Holiday Credit (leave credited for nurses and midwives, excluding rotating shift, when they work on a public holiday).
- Extra leave (additional leave credited for working Sundays and Public Holidays)

An ADO must be taken as a full shift. The length of the shift taken will be deducted from an employee's ADO balance in hours. For example:

- 8 hour shift taken as an ADO = 7.6 hours deducted from an employee's balance
- 10 hour shift taken as an ADO = 9.5 hours deducted from an employee's balance.

Refer to NSW Health Information Bulletin *Changes to the Accrual of Additional Days Off for Nurses and Midwives* ([IB2019\\_042](#)) for further information.



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## 17. Methodology of Calculation of Entitlement – Public Holidays

Refer to the Information Sheet on the [NSW Health Intranet](#).

## 18. Staff Mobility

This Section describes entitlements and procedures for the transfer of leave when employees, including members of the Executive Services, move between the NSW Health Service and other NSW government sector services. It also deals with entitlements for employees moving between the NSW Health Service and non-declared affiliated health organisations.

These provisions do not apply to employees moving within the NSW Health Service as they retain the same employer.

Information on recognition of service with Commonwealth or interstate agencies for Long Service Leave can be found in [Subsection 18.1.3 – Long service \(extended\) leave](#).

### *Cross government sector leave arrangements*

Cross government sector leave arrangements apply where an employee has been permanently transferred between NSW government sector agencies. The cross government sector leave arrangements are found in the [Government Sector Employment Act 2013](#) (NSW) and the [Government Sector Employment Regulation 2014](#) (NSW).

The [Health Services Regulation 2018](#) (NSW) provides arrangements for the transfer of leave entitlements for persons moving from a non-declared affiliated health organisation to the NSW Health Service and vice versa.

Schedule 2 of the [Government Sector Employment Regulation 2014](#) (NSW) applies to transfers after February 2014. Schedule 3A of the *Public Sector Employment and Management Act 2002* applied to transfers that occurred between 1 January 2006 and February 2014. For transfers that occurred prior to 1 January 2006, the provisions of the [Transferred Officers Extended Leave Act 1961](#) (NSW) still apply despite the fact that this Act is now repealed.

Special arrangements apply for the cashing in of accrued annual and long service leave on first appointment to the Health Service Senior Executive (see [Subsection 18.4 – Health Service Senior Executives](#)).

The provisions of this Section are to be read in conjunction with the relevant legislation.

### 18.1. Government sector staff mobility

The cross government sector leave arrangements are subject to the employee ceasing with one NSW government sector service and commencing service immediately with another NSW government sector service or with the service being regarded as continuous.

The definitions of “continuous” and “immediately follows” in Schedule 2 of the [Government Sector Employment Regulation 2014](#) (NSW) must be considered when determining if an

employee is entitled to the provisions. Generally, under the definition of “immediately follows”, a break of up to two months is allowed between the periods of employment.

The definition of “continuous” and “immediately follows” may also be applied to employees who cease employment in the NSW Health Service at one NSW Health agency and then take up such employment at another NSW Health agency.

#### **18.1.1. Up to two months break – Effect on leave**

Where an employee does not commence duty on the next working day after ceasing a period of employment, a period of time of up to two months between ceasing and starting a new period of employment does not break continuity of service but it does not count towards the accrual of any leave entitlements. This does not apply if the employee is on approved leave during the time between the two periods of employment.

When the employee commences they retain any relevant anniversary dates for accrual of leave from the former period of employment. Future leave entitlements are adjusted to take account of any leave that is transferred or paid out on ceasing a period of employment and the time between the two periods of employment.

#### **18.1.2. Annual (recreation) leave**

An employee who ceases employment in one NSW government sector service and immediately commences employment in another NSW government sector service may elect to be paid the monetary value of accrued annual leave on termination, or have their entitlement (including the cost of leave loading of 17½% on all remaining base annual leave) transferred on commencement with the new employing organisation. Future accrual of annual leave and annual leave loading will be as per the conditions applying in the new employing organisation.

Where the employee elects to transfer their entitlements, the transferring NSW government sector service is to pay funds equivalent to the value of accrued entitlements (including the dollar value for unpaid annual leave loading and pro rata annual leave loading) to the receiving NSW government sector service.

If an employee elects to transfer their annual leave entitlement and they have in excess of 30 days to credit, the new employing organisation may require the employee to take payment for the leave in excess of 30 days.

It must also be noted that public service agencies will only accept some of the annual leave loading. NSW Health employees receive annual leave loading generally when they take leave, whereas NSW public service employees get paid out each year (at 30 November). This difference in approach results in staff not having their full annual leave loading liability transferred when a NSW Health employee moves to the NSW Public Service, as public service agencies are only accepting liability for annual leave loading from 1 December to the transfer date. Employees are to always check on what conditions apply to the transfer of annual leave and associated loading.

Special arrangements apply for the cashing out of accrued annual (recreation) leave on first appointment to the Health Service Senior Executive (see [Subsection 18.4 – Health Service Senior Executives](#) for details).

### 18.1.3. Long service (extended) leave

An employee ceasing employment in one NSW government sector service and commencing employment in another NSW government sector service may elect to be paid the monetary value of accrued long service leave on termination, or have their entitlement transferred on commencement with the new employing organisation.

An employee who moves between NSW government sector services must have their period of service recognised for the purposes of calculating long service leave, provided that the prior service is continuous and the employee's employment in the new NSW government sector service immediately follows their employment in the former organisation.

Where the employee elects to transfer their entitlement, the following must apply:

- For employees with less than five years' aggregate service, no funds transfer is required, however the years of service count towards recognised service for long service leave.
- For those employees with five years' and longer service an amount equivalent to the accrued entitlement must be transferred calculated at the salary rate applicable prior to transfer.

If an employee was previously employed in a NSW government sector service, they may elect to transfer their accrued long service leave entitlement when they commence employment in the NSW Health Service. Alternatively, they may elect to be paid the monetary value of their accrued long service leave when they cease employment with the former NSW government sector service.

#### *Employees previously employed in Commonwealth or interstate agencies*

Schedule 2 of the *Government Sector Employment Regulation 2014 (NSW)* states prior Commonwealth or interstate agency service is to be recognised when calculating an employee's long service entitlement, minus any leave paid out or eligible to be paid out on termination with that agency.

The above is subject to satisfying the relevant tests, i.e. employment with NSW Health "immediately follows".

For example, a right to long service leave exists after seven years in Queensland, so if an individual comes across from Queensland Health with five years' service, and then proceeds to work for NSW Health for a further two years, at this two year point they are entitled to the equivalent of 7/10<sup>th</sup> of 2 months' paid leave in recognition of the combined service.

The responsibility is on the employee to provide a valid statement of prior interstate service to be eligible.

For further information about whether prior service is recognised for long service leave refer to Schedule 2 of the [Government Sector Employment Regulation 2014](#) (NSW).

### 18.1.4. Non-declared affiliated health organisations

The *Health Services Regulation 2008* (NSW) provides for the arrangements for the transfer of leave entitlements (including long service leave) for persons moving from a non-declared affiliated health organisation to the NSW Health Service and vice versa.

The Regulation provides that if a person ceases employment with a non-declared affiliated health organisation and immediately commences employment in the NSW Health Service, they are taken to have the amount of any accrued long service leave to which they were entitled immediately before ceasing to be employed by the non-declared affiliated health organisation.

The same applies when someone moves from the NSW Health Service to a non-declared affiliated health organisation.

The following provisions apply in relation to the transfer of the leave:

In relation to a person's accrued long service leave entitlement, a break in employment of up to two months is allowed:

- A person may elect to be paid the monetary value of accrued long service leave rather than retaining the entitlement.
- The previous employer is liable for the cost of long service leave entitlements that had accrued up to the date of cessation of employment.
- These arrangements do not apply when a person ceases to be employed by a non-declared affiliated health organisation by the operation of an order under Section 64 of the *Health Services Act 1997* (NSW).
- Where an employee elects to transfer their entitlement to annual leave to the new employer, any annual leave loading entitlement is also transferred. The previous employer is liable for the cost of the transferred annual leave loading entitlement.

#### **18.1.5. Prior service in community health and Fifth Schedule Hospitals**

Employees who have prior service in a Fifth Schedule Hospital and who were employed in a public hospital or Area Health Service on or after 1 July 1989, have the prior service in the Fifth Schedule Hospital recognised for the purposes of long service leave.

#### **18.1.6. Medical officers with the Surf Life Saving Association**

Previous service as a medical officer with the Surf Life Saving Association can be counted as service for long service leave purposes. The service must be continuous in accordance with Schedule 2 of the [Government Sector Employment Regulation 2014](#) (NSW).

#### **18.1.7. Nursing services in private hospitals**

The *Public Health System Nurses' and Midwives' (State) Award* provides that employees under that Award are able to count previous service in a licensed private hospital towards their long service leave entitlement if the private hospital becomes a public hospital and the staff member working in the private hospital remains working at the hospital in the NSW Health Service. The service is counted at the rate of 75% of actual time served.

#### **18.1.8. Health Service Senior Executives**

Special arrangements apply for the cashing in of accrued long service (extended) leave on first appointment as a Health Service Senior Executive (see [Subsection 18.4 – Health Service Senior Executives](#) for details).

#### **18.1.9. Sick leave**

An employee who ceases employment in one NSW government sector service and immediately commences employment in another NSW government sector service retains the same amount of accrued sick leave as was accrued on termination of employment with the transferring NSW government sector service.

The future eligibility of an employee to sick leave is to include the amount accrued with the former NSW government sector service and any amount determined in accordance with the conditions in the new NSW government sector service. Under these arrangements there is no “cashing-out” of sick leave or ‘funds transfer’ for accrued sick leave.

#### **18.1.10. Maternity, adoption, parental leave**

For the purposes of determining whether an employee who ceases to be employed in one NSW government sector service and immediately commences employment in another NSW government sector service is entitled to maternity leave, adoption leave, parental leave or any other leave (other than long service leave) for which a condition of eligibility is a period of service.

The new NSW government sector service must take into account all continuous previous employment and service at the date of transfer. The entitlements are determined in accordance with the new NSW government sector service’s conditions. No transfer of funds is required in connection with this entitlement.

*Note:* There is no transfer of entitlements for the purposes of paid parental leave for interstate or Commonwealth service.

#### **18.1.11. Access to forfeited sick leave**

Employees with continuous service in a NSW government sector service who prior to 13 October 1995 moved to a new NSW government sector service and were not able to transfer their sick leave credit, may access those forfeited sick leave credits at the discretion of the employer when all current sick leave credits have been exhausted.

No payments may be effected on termination of employment.

### **18.2. Accumulated allocated days off**

Where an employee gives notice that they are intending to transfer to another NSW government sector service or to another Agency of the NSW Health Service, all reasonable steps are to be taken to eliminate any accumulated allocated days off (ADOs) prior to the last day of service.

The NSW government sector mobility provisions do not provide for the transfer of accumulated ADOs between NSW government sector services. Any accumulated ADOs remaining on an employee’s last day of service are to be paid out.

In relation to the transfer of employees between Agencies of the NSW Health Service, where there are still accumulated ADOs on their last day of service in the Agency, these are to be paid out to the employee by the Agency from which the employee is transferring.



### 18.3. NSW Health Service financial arrangements

The financial/accounting arrangements to cover the government sector mobility arrangements are set out below. These arrangements apply when employees transfer to another government sector agency (or vice versa).

These financial/accounting arrangements also apply when employees transfer to another Agency of the NSW Health Service. This type of transfer does not involve a change of employer but there is still a need to affect a transfer of the leave liability to the new Agency.

The financial/accounting arrangements also apply when employees move between the NSW Health Service and non-declared affiliated health organisations as described in [Subsection 18.1.4 – Non-declared affiliated health organisations](#).

These arrangements apply to all health organisations, as defined in the Accounts and Audit Determination.

#### 18.3.1. Transferor Agency of the NSW Health Service

The Agency of the NSW Health Service from which an employee is transferred, is to effect payment against the annual leave provision account.

The entry is as follows:	
Dr	Provision (Liability) Account
Cr	Bank

#### 18.3.2. Transferee Agency of the NSW Health Service

The Agency of the NSW Health Service to which an employee transfers is to ensure that monies are received from the former public sector employer or former Agency of the NSW Health Service or non-declared affiliated health organisation for annual leave transferred.

Alternatively, in the case of transfers from another public sector employer or in relation to employees formerly employed by a non-declared affiliated health organisation, the Agency is to ensure an acquittance is received which clearly indicates that the former employer effected payment to the individual concerned. Assuming payments are to be made to the Agency to which an employee transfers.

#### 18.3.3. Transfer of leave – affiliated health organisations (AHOs)

Transfers to and from affiliated health organisations are to be accompanied by payment of the value of both annual leave and long service leave. Noting that, unlike controlled NSW Health entities, the long service leave liability for the affiliated health organisation is not assumed by the Crown and is specifically reported as a liability by such entities in their annual financial statements.



**When effecting payment to an affiliated health organisation for long service leave, the following entries apply:**

Upon payment to the affiliated health organisation	
Dr	Receivables
Cr	Bank
Upon recoupment from Treasury via the Ministry of Health	
Dr	Bank
Cr	Receivables

**When receiving payment to an affiliated health organisation for long service leave, the following entries apply:**

Upon receipt from affiliated health organisation	
Dr	Bank
Cr	Payable
Upon payment from Treasury via the Ministry of Health	
Dr	Payable
Cr	Bank

### 18.3.4. Cash management

It remains the responsibility of management to determine the cash that needs to be made available each year to fund leave payments.

Under the principles of accrual accounting, NSW Health agencies are to determine the amount of cash required each year from the Operating Budget to meet annual leave payments inclusive of any known commitments for leave liability transferred in accordance with these arrangements.

No requests for supplementation to meet cash leave payments will be considered by the Ministry and management must therefore ensure that cash management is adequately planned in accordance with the above, e.g. for a three year period, to identify any significant movements which are likely to occur for which additional cash will be needed.

## 18.4. Health Service Senior Executives

### 18.4.1. First appointment as an Executive – Accrued Leave

Clause 42 of the [Government Sector Employment Regulation 2014](#) (NSW) provides for the payment or part payment of accrued annual (recreation) and long service leave on first appointment to an executive position if the person was previously employed in the NSW Health Service otherwise than as a Health Service Senior Executive.

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The monetary value of the leave is calculated at the rate of pay applicable immediately prior to the appointment to the executive position.

An election by the executive for the payment or part-payment of accrued leave needs to be made within 28 days of their employment as an executive.

The person retains any rights to long service, annual, sick or other leave accrued (other than that which has been paid as a gratuity as described above).

#### **18.4.2. Notional salary**

Notional salary is used for a number of purposes, including the cashing out of annual and long service leave and paying out Health Service Senior Executive entitlements on termination.

Notional salary is also used to calculate temporary assignment allowances when a non-executive is temporarily assigned to act in an executive role.

NSW Treasury advises of the Public Service Senior Executive Service notional salary, which also applies to Health Service Senior Executives. Advice in relation to the notional salary can be found at the NSW Treasury website (Circulars).