



Motor Traders' Association of NSW Information Guide

Community Service Leave

The Fair Work Act 2009 (the Act) and the National Employment Standards (NES) set out the standards for all employees with regards to community service leave. The Vehicle Manufacturing Repair Services and Retail Award 2010 (Vehicle Award) and the Clerks – Private Sector Award 2010 (Clerks Award) provide that the NES must be referred to in determining entitlements to with respect to this type of leave.

Employee entitlements

An employee who engages in an eligible community service activity is entitled to be absent on unpaid leave (except for the first 10 days of jury service) from his or her employment for a period of time when the employee engages in the activity, the reasonable travelling time associated with the activity a reasonable rest time immediately following the activity. The Act defines an eligible community service as follows:

1. Jury service (including attendance for selection), or
2. A voluntary emergency management activity, providing:
 - a) The employee engages in an activity that involves dealing with an emergency or natural disaster, and
 - b) The employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly derives some monetary or non-monetary value from the activities),
 - c) The employee is a member of, or has a member-like association with a recognized emergency management body, and
 - d) Either:
 - i. The employee was requested by or on behalf of the body to engage in the activity, or
 - ii. No such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made

A *recognised emergency management body* is defined in the Act as a body or part of a body set up by Commonwealth, State or Territory to cope with emergencies, natural disasters, firefighting, civil defence or rescue body, and any other body with a substantial purpose of securing safety of persons, animals, protecting property or otherwise responding in an emergency or natural disaster.

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Notice and evidence requirements

The employee must give notice of the absence. The notice must be provided as soon as practicable (which may be at a time after the absence has started). The notice must provide the period, or expected period, of the absence.

An employee who has given his/her employer notice of an absence must, if required, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity. Failure to comply with these requirements means that the absence is not community service leave.

Payment to employees (other than casuals) on jury service

The employer is required to pay employees other than a casual employee the employee's base rate of pay for any absence on jury service up to a period of 10 days less any government payments received by the employee for jury service.

Under the Act, the 'base rate of pay' is the rate of pay payable to an employee for their ordinary hours of work, excluding:

- a) Incentive based payments and bonuses,
- b) Loadings,
- c) Monetary allowances,
- d) Overtime or penalty rates, and
- e) Any separately identifiable amounts

Therefore, only over-award payments that relate to ordinary hours of work are included.

The employer may require the employee to give the employer evidence that would satisfy a reasonable person that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled. Jury service pay includes an amount paid for jury service but excludes amounts that are received as expense-related allowances. Evidence may also be requested of the total amount (even if nil) of jury service pay that has been paid, or is payable, to the employee for the period.

If the evidence is not provided the employer is not required to make any payment to the employee. Upon receipt of the evidence the employer may reduce the payment by any amount of payment received by the employee as jury service pay.

State and Territory laws are not excluded

Section 112 provides that the Act will not operate to exclude legislation that provides employee entitlements under State or Territory laws with respect to eligible community service leave, where such laws provide more beneficial entitlements.

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Members who require further assistance utilising this information should contact MTA's Employment Relations Department (02) 9016 9000.

This Information Guide is provided by the Motor Traders' Association of New South Wales for its Members. Information provided is intended to be a guide only. Specific advice should be sought by calling 02 9016 9000.