



Community service leave and the National Employment Standards

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, investigate workplace complaints, and enforce relevant Commonwealth workplace laws.

Community service leave forms part of the National Employment Standards (NES). As of 1 January 2010, the NES apply to all employees covered by the national workplace relations system, regardless of the applicable industrial instrument or contract of employment.

Terms in awards, agreements and employment contracts cannot exclude or provide for an entitlement less than the NES, and have no effect. An employer must not contravene a provision of the NES. A contravention of a provision of the NES may result in penalties of up to \$6,600 for an individual and \$33,000 for a corporation.

In addition to the NES, an employee's terms and conditions of employment generally come from an award or agreement. All references to an award or agreement in this fact sheet includes modern awards, enterprise agreements, and award or agreement-based transitional instruments.

Overview

From 1 January 2010, there is an entitlement to certain forms of community service leave under the NES.

This provides employees with a right to be absent from work to engage in prescribed community service activities, such as emergency service duties and jury service.

What is community service leave?

Employees, including casual employees, are entitled to be absent from work for the purpose of performing certain community service activities such as:

- a 'voluntary emergency management activity'
- jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory.

What is a voluntary emergency management activity?

An employee engages in a voluntary emergency management activity only if they:

- engage in an activity that involves dealing with an emergency or natural disaster
- the employee engages in the activity on a voluntary basis
- the employee is a member of, or has a member-like association with, a 'recognised emergency management body' and either:
 - the employee was requested by or on behalf of the body to engage in the activity or
 - 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.

What is a recognised emergency management body?

A recognised emergency management body is:

- a body or part of a body, that has a role or function under a plan that:
 - is for coping with emergencies and/or disasters
 - is prepared by the Commonwealth, a State or a Territory
- a fire-fighting, civil defence or rescue body, or part of such a body
- any other body, or part of a body, which substantially involves:
 - securing the safety of persons or animals in an emergency or natural disaster
 - protecting property in an emergency or natural disaster
 - otherwise responding to an emergency or natural disaster.

This would include bodies such as the State Emergency Service (SES), Country Fire Authority (CFA) or the RSPCA (in respect of animal rescue).

How much leave is an employee entitled to?

There is no set limit on the amount of community service leave an employee is entitled to.

An employee is entitled to be absent from his or her employment:

- for the time that the employee is engaged in the eligible community service activity, including reasonable travelling time associated with the activity, and reasonable rest time immediately following the activity
- if the absence is reasonable in all the circumstances (jury service is taken to always be reasonable).

Are there notice and evidence requirements?

An employee's absence from his or her employment is not covered by community service leave unless the employee complies with the notice and evidence requirements under the *Fair Work Act 2009*.

An employee who wants an absence from his or her employment to be covered by community service leave must give his or her employer:

- notice of the absence as soon practicable
- the period or expected period of absence.

An employer may require an employee, who has given notice of taking community service leave, to provide evidence that would satisfy a reasonable person that the employee is entitled to the leave.

Is there a requirement to be paid for community service leave?

Community service leave under the NES is unpaid, except in relation to jury service where an employee (other than a casual) is entitled to 'make-up pay' for the first 10 days that the employee is absent for a period of jury service. Make-up pay is the difference between any jury service pay the employee receives (excluding any expense-related allowances) and the employee's 'base rate of pay' for the ordinary hours they would have worked. Base rate of pay excludes incentive-based payments and bonuses, loadings, monetary allowances, overtime and penalty rates, or any other separately identifiable amounts.

An employer may require the employee to provide 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 and
- the total amount of jury service pay that has been paid, or is payable, to the employee for the period (even if there was no jury service payment).

If the employer requires evidence, then the employer is only required to pay the employee upon receipt of the evidence.

However, the *Fair Work Act 2009* allows State and Territory laws to continue to apply to employees where they provide more beneficial entitlements than the NES in relation to eligible community service activities. For example, the *Fair Work Act 2009* would not apply to the exclusion of a State or Territory law where it provided for a casual employee to be paid jury service pay.

Further information

The Fair Work Ombudsman has published a fact sheet on each NES entitlement. For further information on a specific NES entitlement, please see the relevant fact sheets at www.fwo.gov.au

For further information, visit www.fairwork.gov.au or contact Fair Work Online **13 13 94**.

Related Publications

Introduction to the NES

Maximum weekly hours and the NES

Requests for flexible working arrangements and the NES

Parental leave and related entitlements and the NES

Annual leave and the NES

Personal/carer's leave and compassionate leave and the NES

Long service leave and the NES

Public holidays and the NES

Notice of termination and redundancy pay and the NES

Fair Work Information Statement and the NES

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Monday to Friday, between 8.00am–6.00pm

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