

Annual Leave

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Functional Sub group Personnel/Workforce - Conditions of employment
Personnel/Workforce - Leave

Summary Consolidated annual leave policy. This policy directive will be included as a chapter of the Leave Matters Manual.

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Permanent Part-Time Employment - Public Hospital Nurses (State)
Award [PD2005_465]

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, Public Health Units, Public Hospitals

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1. INTRODUCTION

All Awards governing conditions of employment for staff employed in the NSW Health Service contain annual leave provisions. Some Awards include annual leave loading provisions while in other cases, the annual leave loading entitlements are provided by way of policy.

The policy directive should always be read in conjunction with the relevant Award as the Awards contain additional detail on the annual leave provisions. The current Awards can be accessed on the Department of Health intranet site at:

<http://internal.health.nsw.gov.au/jobs/empcond/awards.html>.

The Determination of Conditions of Subsidy requires (to the extent permitted by law) non-declared affiliated health organisations to comply with policy directives dealing with the terms and conditions of employment of staff employed in the NSW Health Service and to provide to staff the same conditions of employment as those set out in industrial instruments applicable to staff employed in the NSW Health Service.

2. SCOPE

This policy directive describes the annual leave and annual leave loading entitlements of staff employed in the NSW Health Service.

The entitlements vary from Award to Award. This policy directive summarises the main annual leave and annual leave loading provisions as well as providing additional information on the application of the entitlements.

3. PURPOSE

The purpose of this policy directive is to:

- ensure staff employed in the NSW Health Service are aware of their annual leave and annual leave loading entitlements
- provide entities within the public health system with information on the application of the annual leave and annual leave loading provisions
- consolidate the information previously provided in a number of policy directives.

4. DEFINITIONS

A **Division of the NSW Health Service** is established under s116(4) of the *Health Services Act 1997* and consists of the group of staff employed in or in connection with an area health service, a statutory health corporation, or a declared affiliated health organisation; in connection with the provision of ambulance services; or in connection with public health organisations providing corporate and other health support services to those public health organisations.

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Employer means any person authorised to exercise the functions of the employer of staff to which this policy applies.

NSW Health Service consists of those persons who are employed under Chapter 9, Part 1 of the *Health Services Act 1997* by the Government of New South Wales in the service of the Crown. For the purposes of this policy directive, members of the Health Executive Service are excluded.

Public health system includes area health services, declared affiliated health organisations in respect of their recognised establishments or services, statutory health corporations, the Ambulance Service of NSW, Institute for Medical Education and Training, Health Technology, Health Support and any administrative unit or division under the control of the Director-General or Health Administration Corporation in which staff of the NSW Health Service are employed.

5. ACCOUNTABILITIES

Employees have a responsibility to provide appropriate notice of their intention to take annual leave. Employees must apply for annual leave in accordance with established procedures.

Entities within the public health system:

- have a responsibility to ensure employees are aware of their annual leave entitlements
- should not unreasonably refuse an employee's application for annual leave and should ensure that annual leave does not accumulate beyond the limits recommended by this policy directive
- are responsible for the accurate application, assessment, calculation and payment of annual leave and annual leave loading entitlements
- are to ensure that employees' leave records are accurate and complete.

6. RELATED POLICIES

- Leave Administration (PD2006_093)
- Staff Mobility (PD2006_096)

7. ANNUAL LEAVE ENTITLEMENT

7.1 Full Time Employees

In accordance with the *Annual Holidays Act 1944* all full time staff employed in the NSW Health Service are entitled to a minimum of four weeks' annual leave in respect of each completed year of service.

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Some Awards provide for full time staff who regularly work on Sundays and public holidays as part of their rostered hours, to receive additional annual leave, up to a maximum of one week, calculated on the number of Sundays and public holidays actually worked in their employment year. Awards may also provide for employees to elect to receive additional annual leave in lieu of penalty rates for working on public holidays. Some Awards covering employees in the Ambulance Service of NSW Division provide for additional pay during periods of annual leave eg ambulance officers who are shift workers are entitled to six weeks leave with eight weeks pay.

Each Award should be checked to determine the entitlements to additional annual leave.

Temporary staff receive annual leave on the same basis as permanent employees. Temporary staff employed for less than 12 months are paid the monetary value of pro rata annual leave at the conclusion of their engagement.

7.2 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 in the proportion that their ordinary hours of work bear to full 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 that receive an adjusted hourly rate and are commonly referred to as “old part time employees” are entitled to the provisions of the *Annual Holidays Act 1944*. Part time staff are entitled to four weeks annual leave per year based on the number of hours worked per week.

These old part time employees are not entitled to the additional annual leave of up to one week that may accrue to full time and permanent part time employees working on Sundays and public holidays. However, in some Awards, old part time employees that work at least 30 hours per week over five days per week can elect to receive extra annual leave in lieu of penalty rates for work on public holidays.

The part time allowance that is applicable to old part time employees is paid during periods of annual leave.

Some Awards state that when determining the ordinary pay of permanent part time employees for the purposes of annual leave, that this is to be calculated on the basis of the average weekly ordinary hours worked over the 12 months’ qualifying period. Where Awards are silent on this matter, the same principle should be applied to all part time employees. That is, if part time employees are requested or required to work

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hours in addition to their contracted hours, annual leave payments should be based on the average weekly ordinary hours worked over the 12 months' qualifying period.

8. PAYMENT ON TERMINATION

The *Annual Holidays Act 1944* provides in section 4 that on termination an employee is entitled to payment in lieu of all annual leave accrued but not taken. It does not affect the obligation of an employer to give, and an employee to take, annual holidays in accordance with section 3 of the Act. It means that should annual leave not be taken as required, an employee forfeits the right to take the entitlement as leave but retains the right to payment in lieu of such leave upon termination.

Section 4(3) of the *Annual Holidays Act 1944* provides that an employee whose employment is terminated prior to the expiration of a period of 12 months from their date of appointment or their last anniversary date of appointment, shall be 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. It should be noted that casual and temporary staff are also entitled to payment of the monetary value of pro rata annual leave at the conclusion of each engagement.

Some Awards include additional provisions related to pro rata payment of annual leave on termination. For example, nurses who work on a seven day basis receive an amount based on 6/46th of ordinary pay rather than 1/12th. Similarly, pro rata payment for additional leave accrued for working on Sundays or public holidays may also be due. Each Award should be carefully checked for the provisions on payment of annual leave on termination.

Where a terminating employee is on 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. The fact that the employee had not worked for the whole time and was in receipt of workers' compensation for that unworked period is not relevant to the calculation of the employee's pro rata entitlement. The employee's ordinary rate of pay for the whole of the period is applicable.

8.1 Staff Mobility

The public sector mobility arrangements provide that if an employee ceases to be employed in the NSW Health Service and immediately commences employment in another NSW public sector service they may elect to transfer their annual leave entitlement to the new employer rather than being paid the monetary value of the leave. More information can be found in the policy directive on staff mobility.

Non-declared affiliated health organisations are not part of the NSW Health Service and are not covered by the public sector mobility provisions. Special arrangements allowing for the transfer of leave entitlements apply in relation to the movement of staff between

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non-declared affiliated health organisations and the NSW Health Service. More information can be found in the policy directive on staff mobility.

9. TAKING OF ACCRUED ANNUAL LEAVE

Generally, annual leave accrues at the end of each year of employment. If the employer and employee agree, the annual leave may be taken wholly or partly in advance.

The *Annual Holidays Act 1944* provides that annual leave accrued is to be taken within six months of its falling due. The Act prescribes that approval must be given by the Industrial Registrar for the postponement of taking of annual leave beyond six months of the leave falling due. This provision is binding upon the employer unless the particular Award states otherwise.

Some NSW Health Service Awards refer to the *Annual Holidays Act 1944* and so the provisions described above apply. 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. The Public Hospitals (Medical Superintendents) (State) Award and the Hospital Scientists (State) Award have different deferral provisions. Each Award should be checked to determine what provisions are applicable.

The purpose of annual leave is to give employees a period of recreation and rest for the year so that they return to work refreshed and reinvigorated; this purpose cannot be achieved if leave is not taken. It should be noted that no payment in lieu of annual leave is permitted except in respect of accrued leave due at the date of termination of services.

The leave credits of all employees should be regularly reviewed so as to ensure that, where necessary, leave accrued from previous years is taken without delay.

Every endeavour must be made to allow each employee to take leave at or near the anniversary of employment, but this must be subject to the convenience of the employer (ie the right is reserved to postpone or defer the taking of leave by an employee where the welfare of the service, or of its patients, would be adversely affected if the leave was taken at that time).

It is recognised that there may, on occasions, be sound reasons for deferring the taking of accrued leave entitlements (eg depleted staff numbers, necessity for key personnel to be available for particular duties at specific times, etc.). However, the basic intention and spirit of the *Annual Holidays Act 1944* should be observed and annual leave should not be allowed to accumulate beyond a reasonable period.

The Department of Health has determined that, as a matter of policy, employers may agree to a request to defer annual leave up to a maximum of 12 months from it

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becoming due (thus effectively giving an employee the opportunity to accrue leave up to a maximum of two years). Approval for the accumulation by an employee of accrued leave beyond this limit should be given only in exceptional circumstances.

Change in Hours of Work

Employees that move from full time to permanent part time or vice versa are not to have their services terminated.

The Department of Health has determined that where a full time employee transfers to permanent part time they are to be requested to take any outstanding annual leave that is owing as soon as possible. Employees must be able to take the leave and such leave must be taken within 12 months from the date of transfer to the new employment arrangement. The leave being transferred is to be taken and paid at the full time weekly rate.

Employees who are permanent part time and who take up full time employment are to take all accrued annual leave at the time of transfer to the new arrangement and prior to commencing full time hours.

10. NOTICE OF ANNUAL LEAVE

In most cases it is necessary for the employer to give employees not less than one month's notice of the date on which they shall enter on annual leave. The Operational Ambulance Officers (State) Award and the Ambulance Service of NSW Superintendent/Operational Managers (State) Award provide that at least six months notice shall be given to employees.

In larger establishments it may be necessary to ensure that employees commence annual leave on the due date as determined by their anniversary of commencement of service. In any case, it is desirable that a leave roster be drawn up for each department so that employees know when their period of leave is to be taken. Arrangements should ensure that all employees receive equitable consideration over a period in respect of school vacations. Leave may be taken in more than one period during the year.

All staff wishing to apply for annual leave must, at least one month prior to the commencement of the leave, complete an application for annual leave and submit it to the manager/supervisor/department head, to enable the leave to receive appropriate formal approval before commencement.

11. RECREDITING OF LEAVE

Periods of less than one week shall not be recredited for an employee who is sick while on annual leave.

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Employees who are incapacitated for one week or more while on annual leave may apply to have the period of incapacity recredited to their annual leave entitlement and debited against their accrued sick leave entitlement, if any. However, this provision does not apply to employees 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 credit of sick leave entitlement. Where such entitlement is less than the total of the period for which a claim is made, the recredit of annual leave shall not exceed the available sick leave.

12. PUBLIC HOLIDAYS

The *Annual Holidays Act 1944* states that where any special or public holiday to which the employee is entitled occurs during the four weeks annual leave provided by the Act, the period of the leave shall be increased by one day or one half day in respect of the special or public holiday.

Some Awards covering staff of the NSW Health Service also include provisions relating to special or public holidays during periods of annual leave. In some cases these provisions differ from those under the *Annual Holidays Act 1944*. Awards should be checked to ascertain the entitlement applicable to particular classifications.

13. ACCRUAL OF ANNUAL LEAVE DURING LEAVE WITHOUT PAY

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

14. RELIEVING HIGHER GRADE PRIOR TO TAKING ANNUAL LEAVE

Employees who have acted continuously for one year or more in the same higher graded position and who, due to extraordinary circumstances continue to act in that position are eligible for payment of the higher duties allowance for any annual leave which is taken during the further period of relief.

15. ANNUAL LEAVE LOADING

The annual leave loading provisions described in this section do not apply to staff employed in the Ambulance Service of NSW Division of the NSW Health Service under the following Awards:

- Ambulance Service of NSW Administrative and Clerical Employees Award
- Ambulance Service of NSW Superintendent/Operational Managers' (State) Award
- Operational Ambulance Officers (State) Award

Those Awards should be consulted in order to determine annual leave loading entitlements.

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For other staff employed in the NSW Health Service, the method of calculating and paying annual leave loading is set out below. However, individual Awards should also be examined to ascertain the exact annual leave loading provisions applicable to particular employees.

1. Employees, **other than shift workers**, shall be granted an annual leave loading equivalent to 17½% of four weeks ordinary salary.
2. The maximum annual leave loading payable is an amount equivalent to 17½% of four 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 pro rata for the broken period in the same proportion as the period of annual leave taken bears to four weeks.
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 this clause. (Note: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance – see paragraph 8).
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* or an Award.
6. The loading is to be calculated in relation to any period of annual holiday to which the employee becomes entitled and where such a holiday is given and taken in separate periods, then in relation to each such separate period.
7. The loading is the amount payable for the period or the separate period, as the case may be, at the rate per week of 17½% of the appropriate ordinary weekly time rate of pay prescribed by Award, agreement or determination for the classification in which the employee is employed, subject to the maximum amount of loading not exceeding the amount specified in paragraph 2.
8. No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when he or she would have become entitled under the *Annual Holidays Act 1944* or an Award to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with paragraph 7, applying the Award rates of pay payable on that day.
9. 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.

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10. Staff who cease working in the NSW Health Service and who commence working immediately in another public sector service may be entitled to transfer their annual leave loading entitlement under the public sector mobility arrangements. See the policy directive on 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 the policy directive on staff mobility for more information.

11. Employees who transfer between Divisions of the NSW Health Service will retain their accrued annual leave loading entitlements.
12. Upon retirement 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 so qualifying, shall be paid the loading which would have been payable had such leave been taken.

No payment is made for proportionate annual leave loading in respect of periods of employment which are less than 12 months.

13. Students and trainees who are employed for the purpose of completing a training course leading to a qualification which allows the employee to be employed in a trained capacity, and medical officers, who are not given the opportunity to renew their contract of employment at the end of the training period, or at the end of the annual appointment in respect of medical officers, are deemed to have had their services terminated by the employer for a reason other than misconduct. In these circumstances the trainee, student or medical officer is entitled to the payment of the annual leave loading in accordance with paragraph 12.

14. Provided that where such trainee or medical officer:

- (a) has no annual leave due at the time of termination by reason of having taken it in advance;

and

- (b) did not receive any annual leave loading payment at the time of taking such leave

then such a 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 under paragraph 13 had the annual leave not been taken in advance.

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15. The effect of paragraph 13 is that a payment of an annual leave loading to trainees and students at the completion of the training period is to be made where the employer cannot employ the student or trainee in a trained capacity.
16. The provisions outlined in paragraphs 13 and 14 shall only have effect if the trainee does not continue to be employed in the NSW Health Service.
17. Broken service during a year does not attract the annual leave loading, eg. 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 foregoing conditions.
18. The annual leave loading is to be calculated on the salary or wage rate payable for the leave when taken, ie new rates granted by Award, agreement, determination, increment, etc during the period of leave are to be taken into account unless otherwise prescribed and, if necessary, retrospective adjustment of the loading is to be made.

The rate of payment shall 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 in relation to Skilled Trades classifications where some allowances are included when calculating the annual leave loading.

19. Part time employees who satisfy the foregoing conditions are eligible for the annual leave loading.
20. The annual leave loading is not payable to trainees who are paid by way of allowance and not by salary or wages.
21. **Shift Workers:** Unless determined otherwise, shift workers proceeding on annual leave are to be paid in respect of the leave taken, the shift and weekend penalty rates relating to ordinary time that they would have earned had they not taken the annual leave, or the annual leave loading in accordance with this section, whichever is the more favourable.

Each Award should be checked to determine the maximum period of annual leave on which shift and weekend penalties can be paid. Generally, the additional annual leave of up to one week that accrues for work on Sundays and/or public holidays does attract penalty rates. 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.

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16. ENQUIRIES

Any enquiries regarding this policy directive should be directed to the human resource personnel in the relevant health service. Only human resource personnel in the health service are to contact the Department.