

Trade Union Activities

Document Number PD2006_097

Publication date 08-Nov-2006

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

Summary Sets out detail of authorised trade union activities and the arrangements that apply to each, including activities considered as on duty, activities attracting paid trade union leave and activities regarded as on loan. This policy directive will be included as a chapter of the Leave Matters Manual.

Replaces Doc. No. Trade Union Leave - Paid [PD2005_428]
Trade Union Activities - Loan of Services - Public Health Organisations [PD2005_447]
Trade Union Activities - Public Health Sector [PD2005_455]

Author Branch Employee Relations

Branch contact Employee Relations 9391 9357

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

Audience All staff

Distributed to Public Health System, Health Associations Unions, NSW Ambulance Service, NSW Department of Health

Review date 08-Nov-2011

File No. 05/5509-2

Status Active

Director-General

Compliance with this policy directive is mandatory.

TRADE UNION ACTIVITIES

CONTENTS

	Page
1. INTRODUCTION	2
2. SCOPE	2
3. PURPOSE	2
4. DEFINITIONS	2
5. TRADE UNION ACTIVITIES REGARDED AS ON DUTY	3
6. TRADE UNION LEAVE ACTIVITIES	4
7. TRADE UNION TRAINING COURSES	5
8. ON LOAN ARRANGEMENTS	5
9. PERIOD OF NOTICE FOR TRADE UNION ACTIVITIES	6
10. ACCESS TO FACILITIES BY TRADE UNION DELEGATES	7
11. TRAVELLING AND OTHER COSTS OF TRADE UNION DELEGATES	7
12. ACCOUNTABILITIES	7
12.1 Responsibilities of the Trade Union Delegate	7
12.2 Responsibilities of the Trade Union	8
12.3 Responsibilities of Workplace Management	8
13. ENQUIRIES	9

1. INTRODUCTION

Except as specified in this policy directive 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.

Individual Awards should be examined to determine whether provisions additional to those set out in this policy directive are applicable. The current Awards can be accessed on the Department of Health intranet site at:

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

Existing practice regarding payroll deductions for trade union membership is to continue.

The Determination of Conditions of Subsidy requires (to the extent permitted by law) non-declared affiliated health organisations to comply with policy directives issued by the Department dealing with the terms and conditions of employment of staff employed in the NSW Health Service.

2. SCOPE

This policy directive applies to trade union activities undertaken by staff employed in the NSW Health Service. The provisions contained in the policy directive do not apply if more generous provisions regarding trade union activities are provided for in an Award.

3. PURPOSE

The purpose of this policy directive is to set out the provisions regarding trade union activities and the responsibilities of the parties involved when such activities are undertaken.

4. DEFINITIONS

Chief Executive means a chief executive or other head of a an entity within the public health system exercising the Director-General's employer functions under delegation.

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

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

Title: Trade Union Activities

Administration Corporation in which staff of the NSW Health Service are employed.

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.

Trade union or **Union** means a registered trade union, as defined in the *Industrial Relations Act 1996* as amended from time to time.

Reasonable travelling time means the period of time necessary to travel by the most practical and economic means.

Trade union delegate means an accredited trade union delegate responsible for his/her 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.

Workplace management means the Director-General of the NSW Department of Health or any other person authorised by the Director-General to assume responsibility for the conduct and effective, efficient and economical management of the functions and activities of the organisation or part of the organisation.

5. 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 at (i) to (viii) below.

- (i) Attendance at meetings of the workplace's Occupational Health and Safety Committee and participation in all official activities relating to the functions and responsibilities of elected Occupational Health and Safety Committee members at a place of work as provided for in the *Occupational Health and Safety Act, 2000* and the *Occupational Health and Safety Regulation 2001*;
- (ii) Attendance at meetings with workplace management or workplace management representatives.
- (iii) A reasonable period of preparation time, before:
 - (a) meetings with management; and
 - (b) disciplinary or grievance meetings when a union member requires the presence of a delegate,by agreement with management, where operational requirements allow the taking of such time.
- (iv) Giving evidence in court on behalf of the employer.

Title: Trade Union Activities

- (v) Appearing as a witness before the Government and Related Employees Appeal Tribunal.
- (vi) Representing the trade union at the Government and Related Employees Appeal Tribunal as an advocate or as a Tribunal Member.
- (vii) Presenting information on the union and union activities at induction sessions for new staff.
- (viii) 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 the employer to undertake these activities, such time will not be counted as time worked.

6. TRADE UNION LEAVE ACTIVITIES

The granting of trade union leave with pay will apply to the following activities undertaken by a trade union delegate.

- (i) Attendance at the annual or biennial conferences of the trade union.
- (ii) Attendance at meetings of the trade union's Executive or Councils.
- (iii) Attendance at annual conference of Unions NSW and the Congress of the Australian Council of Trade Unions.
- (iv) Attendance at meetings called by the Unions NSW involving the union which requires attendance of a delegate.
- (v) Giving evidence before an Industrial Tribunal as a witness for the union.
- (vi) Reasonable travelling time to and from conferences or meetings to which the provisions of Sections 3, 4 and 5 of this policy directive apply.

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

7. TRADE UNION TRAINING COURSES

The following training courses will attract the grant of paid trade union leave as specified below.

- (i) Accredited Occupational Health and Safety (OH&S) courses and any other accredited OH&S training for OH&S Committee members. The provider(s) of accredited OH&S training courses and the conditions on which paid trade union leave for such courses will be granted shall be negotiated between the Chief Executive and the trade union.
- (ii) Courses organised and conducted by the Trade Union Education Foundation or 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:
 - (a) the operating requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff;
 - (b) payment being at the base rate, ie. excluding extraneous payments such as shift allowances/penalty rates, overtime, etc;
 - (c) the employer not being responsible for any travelling and associated expenses incurred in attending such courses;
 - (d) attendance being confirmed in writing to the employer by the trade union or a nominated training provider.

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

8. ON LOAN ARRANGEMENTS

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

- (i) Meetings interstate or in NSW of a Federal nature to which a union member has been nominated or elected by the trade union:
 - (a) as an Executive Member; or
 - (b) a member of a Federal Council; or
 - (c) as a member of a vocational or industry committee.
- (ii) Briefing counsel on behalf of the trade union.

Title: Trade Union Activities

- (iii) 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.
- (iv) Country tours undertaken by a member of the Executive or Council of the union.
- (v) Taking up of full time duties with the union (excluding Elected Office).
- (vi) The following financial arrangements apply to the occasions when a staff member is placed on loan to the union:
 - (a) the employer will continue to pay the trade union delegate or an authorised union representative whose services are “on loan” to the union;
 - (b) the employer will seek reimbursement from the union at regular intervals of all salary and associated on costs, including superannuation;
 - (c) 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.
- (vii) 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.
- (viii) On loan arrangements may apply to full time or part time staff and are to be kept to the minimum time required. Where the trade union needs to extend an on loan arrangement, the union 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.
- (ix) Where the Chief Executive and the union cannot agree on the on loan arrangement, the matter is to be referred to the Director-General for determination after consultation with the Chief Executive and the trade union.

9. 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.

10. ACCESS TO FACILITIES BY TRADE UNION DELEGATES

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

- (i) telephone, facsimile and, where available, email facilities;
- (ii) a notice board for material authorised by the union or access to staff notice boards for material authorised by the union;
- (iii) workplace conference or meeting facilities, where available, for meetings with member(s), as negotiated between local management and the union.

11. TRAVELLING AND OTHER COSTS OF TRADE UNION DELEGATES

- (i) Except as specified in paragraph (iii) of Section 12.3, Responsibilities of Workplace Management of this policy directive, travel and other costs incurred by trade union delegates in the course of union activities will be paid by the union.
- (ii) In respect of meetings called by the workplace management in terms of paragraph (iii) of Section 12.3, Responsibilities of Workplace Management of this policy directive, 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.
- (iii) No overtime, leave in lieu, shift penalties or any other additional costs will be claimable by a staff member from the employer, in respect of union activities covered by paid trade union leave or trade union on duty activities provided for in this policy directive.
- (iv) The on loan arrangements shall apply strictly as negotiated and no extra claims in respect of the period of on loan shall be made on the employer by the trade union or the staff member.

12. ACCOUNTABILITIES

12.1 Responsibilities of the Trade Union Delegate

Responsibilities of the trade union delegate are to:

- (i) establish accreditation as a delegate with the trade union and provide proof of accreditation to the workplace;
- (ii) participate in the workplace consultative processes, as appropriate;
- (iii) follow the dispute settling procedure applicable in the workplace;

Title: Trade Union Activities

- (iv) provide sufficient notice to the immediate supervisor of any proposed absence on authorised trade union business;
- (v) account for all time spent on authorised trade union business;
- (vi) when trade union leave is required, to apply for that leave in advance;
- (vii) distribute trade union literature/membership forms under local arrangements negotiated between the Chief Executive and the union; and
- (viii) use any facilities provided by the workplace properly and reasonably as negotiated at organisational level.

12.2 Responsibilities of the Trade Union

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

- (i) 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;
- (ii) meet travelling, accommodation and any other costs incurred by the trade union delegate, except as provided in paragraph (iii) of Section 12.3, Responsibilities of Workplace Management;
- (iii) pay promptly any monies owing to the workplace under a negotiated on loan arrangement;
- (iv) provide proof of identity when visiting a workplace in an official capacity, if requested to do so by management;
- (v) apply to the Chief Executive well in advance of any proposed extension to an on loan arrangement;
- (vi) assist the workplace management in ensuring that time taken by the trade union delegate is accounted for and any facilities provided by the employer are used reasonably and properly; and
- (vii) advise the employer of any leave taken by the trade union delegate during the on loan arrangement.

12.3. 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:

Title: Trade Union Activities

- (i) 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;
- (ii) advise the trade union delegate of the date of the next induction session for new staff members in sufficient time to enable the trade union to arrange representation at the session;
- (iii) meet the travel and/or accommodation costs properly and reasonably incurred in respect of meetings called by the workplace management;
- (iv) where possible, to 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;
- (v) recredit 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 she/he is required to perform trade union activities or is on an allocated/additional day off duty;
- (vi) to 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;
- (vii) to verify with the union the time spent by a trade union delegate on union business, if required; and
- (viii) 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.

13. 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.