

## Family and Community Services Leave and Personal/Carer's Leave

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Personnel/Workforce - Leave

**Summary** Sets out the Award provisions for family and community services leave and personal/carer's leave. This policy directive will be included as a chapter of the Leave Matters Manual. The difference between this policy directive and PD2006\_090 is that it replaces clause 6.2(b) re HSU classifications.

**Replaces Doc. No.** Family and Community Services Leave and Personal/Carer's Leave [PD2006\_090]

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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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### Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

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**FAMILY AND COMMUNITY SERVICES LEAVE AND  
PERSONAL/CARER'S LEAVE  
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## 1. INTRODUCTION

This policy directive sets out family and community service leave and personal/carer's leave provisions.

Each Award covering staff employed in the NSW Health Service includes provisions for family and community service leave and personal/carer's leave. The relevant Award should always be read in conjunction with this policy directive. 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 sets out the family and community service leave and personal/carer's leave provisions applicable to staff employed in the NSW Health Service. It includes the provisions introduced by the Family Provisions Case 2005.

## 3. PURPOSE

The purpose of this policy directive is to advise staff employed in the NSW Health Service of their entitlements to family and community service leave and personal/carer's leave.

## 4. DEFINITIONS

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

**Employer** means any person authorised to exercise the functions of the employer of staff to which this policy 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 Administration Corporation in which staff of the NSW Health Service are employed.

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

**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

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in the service of the Crown. For the purposes of this policy directive, members of the Health Executive Service are excluded.

**Person concerned** refers to a person who needs the employee's care and support and is:

- a spouse of the employee; or
- a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- 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 employee or spouse or de facto spouse of the employee; or
- a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- a relative of the employee who is a member of the same household.

**Relative** means a person related by blood, marriage or affinity.

## 5. ACCOUNTABILITIES

**Employees** have a responsibility to utilise FACS and personal/carer's leave for appropriate reasons. Employees must notify absences in accordance with the established procedures and provide such documentation as is required.

**Entities within the public health system:**

- have a responsibility to ensure employees are aware of their entitlements to FACS and personal/carer's leave and to allow employees to access such leave where appropriate
- are to ensure that the FACS and personal/carer's leave provisions are applied appropriately and that employee absence records are accurate and complete
- are to facilitate appropriate flexible work practice alternatives to using FACS or personal/carer's leave.

## 6. FAMILY AND COMMUNITY SERVICE (FACS) LEAVE

### 6.1 General

FACS leave is available for:

- a range of personal reasons encompassing family responsibilities; or
- the performance of community service; or

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- cases of pressing necessity.

FACS leave replaces compassionate leave.

FACS leave is available to full time and part time staff but is not available to casual staff. Casual staff entitlements are set out in [Section 9](#).

An employee is not to be granted FACS leave for attendance at court to answer a criminal charge, unless the employer approves the grant of leave in the particular case.

Applications for FACS leave to attend court, for reasons other than criminal charges (eg Family Court), are to be assessed on an individual basis.

## 6.2 Granting of FACS Leave

An employee may be granted FACS leave:

- (a) to provide care and/or support to sick relatives or members of the employee's household; or
- (b) for reasons related to the family responsibilities of the employee (eg to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency (and in the case of HSU classifications, where there is no element of emergency); parent/teacher meetings; education week activities; to meet elder-care requirements of a relative); or
- (c) for reasons related to the performance of community service by the employee (eg 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 the State in major amateur sport other than in Olympic/Commonwealth Games); or
- (d) in a case of pressing necessity (eg where an employee is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).

## 6.3 Entitlement

The maximum amount of FACS leave on full pay that may be granted to an employee is:

- (a) three working days during the first year of service, commencing on and from 1 January 1995, and thereafter six working days in any period of two years; **OR**
- (b) one working day, on a cumulative basis effective from 1 January 1995, for each year of service after two years' continuous service, minus any period of FACS leave already taken by the employee since 1 January 1995,

whichever method provides the employee with the greater entitlement.

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For the purposes of calculating entitlements under (a) and (b) above, a working day for **full time** employees working 38 hours per week shall be deemed to consist of 8 hours, and working day for employees working 35 hours per week shall be deemed to consist of 7 hours. The rate at which FACS leave is paid out and utilised shall be on actual hours absent from the rostered shift.

**Example A:** An employee working 38 hours per week will have an entitlement, in their first year of employment, to 24 hours of FACS leave. If the employee takes FACS leave for a full 10 hour shift, the employee would be debited 10 hours of FACS leave.

**Example B:** An employee working 35 hours per week will have an entitlement, in their first year of employment, to 21 hours of FACS leave. If the employee takes FACS leave for a full 7 hour shift, the employee would be debited 7 hours of FACS leave.

**Example C:** An employee who commenced employment on 1 January 2004, applies for FACS leave on 20 May 2006. The employee is entitled to six days in any period of two years. Therefore, to calculate the employee's available FACS leave as at 20 May 2006, add all FACS leave taken from 21 May 2004 to 20 May 2006 and deduct that amount from the six days entitlement.

**Example D:** An employee, employed prior to 1 January 1995, applies for FACS leave on 20 May 2006. The employee's maximum entitlement to FACS leave under (b) above would be 11 days ie one day for each year of continuous service. Any FACS leave taken since 1 January 1995 should be deducted from the 11 days to determine the current FACS leave available. A second calculation should be performed as per Example C to determine whether a greater entitlement exists under the provisions set out in (a) above.

FACS Leave is available to **part time** employees on a pro rata basis, based on the average number of hours worked per week, ie a working day shall 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.

**Example:** An employee working an average of 30 hours per week will have an entitlement, in his/her first year of employment, of 18 hours of FACS leave. If the employee takes FACS leave for a full rostered shift eg of four hours, the employee would be debited four hours of FACS leave. Likewise if the employee was rostered for eight hours and was absent for the full eight hours on FACS leave, he/she would receive, and be debited, eight hours paid FACS leave.

## 6.4 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 as defined in [Section 4](#) above.

## 6.5 Use of other leave entitlements

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.

## **7. PERSONAL/CARER'S LEAVE**

### **7.1 General**

Personal/carer's leave is available to:

- provide care and/or support for sick members of the employee's family or household;
- provide for the flexible use of other entitlements.

The personal/carer's leave described in the section is available to full time and part time staff but is not available to casual staff. Casual staff entitlements are detailed in [Section 9](#).

### **7.2 Entitlement**

- (a) The entitlement to use sick leave in accordance with this clause is subject to:
  - (i) the employee being responsible for the care and support of the person concerned, and
  - (ii) the person concerned being as defined in [Section 4](#).
- (b) An employee, other than a casual or other employee that receives a loading in lieu of sick leave, with responsibilities in relation to a person who needs their care and support shall be 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.
- (c) Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (b) 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.
- (d) The employer may, in special circumstances, make a grant of additional sick leave. This grant can only be taken from sick leave untaken prior to the period referred in paragraph (c) above.
- (e) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, that the illness of the person concerned is such as to require care by another person.
- (f) The employee has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.
- (g) The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.

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- (h) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, 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 shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (i) In normal circumstances, the employee must not take leave under this subclause where another person has taken leave to care for the same person.

### **7.3 Use of other leave entitlements**

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

- (a) annual leave, including annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (b) an employee may elect with the employer's agreement to take annual leave at any time within a period of 24 months from the date at which it falls due;
- (c) long service leave; or
- (d) leave without pay for the purpose of providing care and support to the person concerned as defined in [Section 4](#).

## **8. FLEXIBLE WORK PRACTICE ALTERNATIVES TO USING FACS OR PERSONAL/CARER'S LEAVE**

### **8.1 General**

As an alternative to, or to be used in conjunction with FACS or personal/carer's leave, are work practices that permit employees to vary their work arrangements to attend to short term family responsibilities or community services.

Access to time off in lieu of overtime is for the purpose of caring for a prescribed person. The provisions at [Section 8.2](#) regarding time in lieu of overtime are applicable only in relation to those employees that have an entitlement to overtime.

Employers are to implement, where practicable, policy and procedures as described in [Section 8.3](#) Use of Make-up Time whereby employees have available to them the opportunity to:

- be absent from the workplace for short periods of time (eg 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.

## **8.2 Time Off in Lieu of Payment of Overtime**

- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment of overtime at a time or times agreed with the employer within 12 months of the said election.
- (b) Overtime taken as time off during ordinary time shall be taken at the ordinary time rate, that is, one hour off for each hour of overtime worked.
- (c) If, having elected to take time as leave in accordance with 8.2(a) above, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12 month period from the date the overtime was worked, or earlier by agreement, or on termination.
- (d) Where no election is made in accordance with paragraph 8.2(a), the employee shall be paid overtime rates in accordance with the relevant industrial instrument.

## **8.3. Use of make-up time**

- (a) An employee may elect, with the consent of the employer, to work “make up time”. “Make-up time” is worked when 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 industrial instrument, at the ordinary rate of pay.
- (b) An employee on shift work may elect, with the consent of the employer, 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.

## **9. CASUAL EMPLOYEE ENTITLEMENTS**

### **9.1 Bereavement Entitlement**

- (a) Casual employees are entitled to not be available to attend work or to leave work upon the death in Australia of a relative or member of a household as prescribed in [Section 4](#).
- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (ie two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

## 9.2 Personal/Carers Entitlement

- (a) Subject to the evidentiary and notice requirements in paragraphs (e) – (h) of [Section 7.2](#), casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person concerned (as defined in [Section 4](#)) who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child.
- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (ie two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this part. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## 10. 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.

Robert D McGregor AM  
**A/Director-General**