

# The Australian Fair Pay and Conditions Standard fact sheet

The Australian Fair Pay and Conditions Standard (the Standard) is a legislative safety net of minimum wages and conditions of employment. The Standard is enforceable under the *Workplace Relations Act 1996*.

Employers making new workplace agreements must provide entitlements which are equal to or more favourable than the Standard.

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## Five standard entitlements

### What entitlements are covered by the Australian Fair Pay and Conditions Standard?

There are five basic entitlements, known collectively as the Australian Fair Pay and Conditions Standard (**the Standard**). They relate to:

1. Basic rates of pay and casual loading
2. Hours of work
3. Annual leave
4. Personal/carer's and compassionate leave
5. Unpaid parental leave.

Details about these entitlements are provided below.

### When does the Standard apply?

The Standard applies to all employers and employees who are subject to the *Workplace Relations Act 1996*. This would include employees whose employer is:

- a constitutional corporation
- the Commonwealth or a Commonwealth authority
- a body corporate incorporated in a Territory
- a person or entity that carries on an activity in a Territory.

In general, the Standard also applies to employees in Victoria. However, the Standard applies in a slightly different way in Victoria (refer to Employers – Additional Information to assist with agreement making – Workplace relations in Victoria at [www.workplaceauthority.gov.au](http://www.workplaceauthority.gov.au)).

In addition, the Standard only has limited application where an employee was subject to a State or Federal workplace agreement that commenced operation prior to 27 March 2006 or had lodged a Federal agreement for certification/approval prior to 27 March 2006. For these employees, the Standard only applies to the employee where the terms and conditions an employee derives from their agreement do not deal with one of the five matters contained in the Standard. In turn, the Standard only applies to the extent that the agreement does not deal with the matter contained in the Standard. That is, the Standard fills the gaps in the agreement where the agreement does not deal with one of the five matters contained in the Standard.

For those employees who had lodged a Federal agreement for certification or approval, but where such certification or approval had not been given prior to 27 March 2006, the Standard applied to these employees up until the date at which their agreement commenced to operate.

### Is it possible to agree with my employer/employee that the Standard will not apply?

No. A term of a workplace agreement or a common law contract of employment has no effect to the extent to which it tries to exclude the Standard or part of it.

The Standard will underpin workplace agreements and common law contracts of employment. That is, the Standard will apply, unless the workplace agreement or common law contract of employment provides the employee with a more favourable outcome in which case that more favourable outcome will apply. The explanation of each of the entitlements guaranteed by the Standard includes a discussion of when the Standard is deemed to provide a 'more favourable outcome'.

**Example**

Mandy is a shop assistant. Her contract of employment states that she is entitled to five days of personal leave and that the Standard does not apply to her employment. To the extent that a term of Mandy's contract tries to exclude the Standard, it has no effect. As the Standard provides for ten days personal leave, and that entitlement is more favourable than under Mandy's contract of employment, she would be entitled to ten days personal leave.

## Standard entitlements by type of employee

### Does the Standard apply to casual employees?

Yes. However, entitlements under the Standard vary depending on whether the employee is employed on a casual basis or not. See the following table for a summary.

#### Summary of Standard entitlements by type of employee

Standard	Non-casual employees	Casual employees
1 (a) Pay (b) Casual loading	√ x	√ √
2 Hours	√	√
3 Annual leave	√	x
4 (a) Personal leave (b) Carer's leave (c) Compassionate leave	√ √ √	x x (except for unpaid carer's leave) x
5 Unpaid parental leave	√	√ *

\* Available to 'eligible casual employees' only (refer to section on parental leave).

## Basic pay and casual loadings

The first minimum condition is a guaranteed basic rate of pay for each of an employee's guaranteed hours. The guaranteed basic rate of pay will either be determined by:

- a basic periodic or piece rate of pay as prescribed in an Australian Pay and Classification Scale, or
- the Federal Minimum Wage.

The Standard guarantees that the employee's guaranteed basic rate of pay will not be less than the guaranteed basic rate of pay at the commencement of the workplace relations reforms commencing 27 March 2006. In addition, an employee's casual loading percentage cannot be less than the guaranteed casual loading percentage at the commencement of the 27 March 2006 workplace relations reforms.

# Australian Pay and Classification Scales

## What will each Australian Pay and Classification Scale contain?

Each Australian Pay and Classification Scale will contain:

- a guaranteed basic periodic rate of pay for each 'guaranteed hour' that an employee works or a piece rate of pay
- classifications, and
- coverage provisions.

It may also contain casual loading provisions and frequency of payment provisions.

### Definition - periodic or piece rate?

A basic **periodic rate** of pay means a rate of pay for a period worked – for example, a weekly or fortnightly rate of pay. A periodic rate of pay does not include incentive based payments and bonuses, loadings, allowances, penalty rates or other separate entitlements.

A basic **piece rate** of pay means a rate of pay per output or task – for example, fruit picker paid per bucket of fruit picked.

## How will the basic periodic rate of pay in an Australian Pay and Classification Scale be expressed?

Each Australian Pay and Classification Scale guaranteed basic periodic rate of pay will be expressed as a set monetary amount per hour.

## How will I know if an Australian Pay and Classification Scale applies to my employment?

Each Australian Pay and Classification Scale will contain coverage provisions which will set out who is covered by the Australian Pay and Classification Scale.

## Who sets the Australian Pay Classification Scales?

On 27 March 2006, a set of preserved Australian Pay and Classification Scales were derived from relevant clauses in existing State and Federal Awards and certain State laws. As an example, a preserved Australian Pay and Classification Scale was created on 27 March 2006, which contained the periodic rate of pay, classifications and coverage provisions drawn from the NSW Shop Employees (State) Award.

The Australian Fair Pay Commission has ongoing responsibility for setting Australian Pay and Classification Scales. On 26 October 2006 the Australian Fair Pay Commission issued its first decision increasing wage rates in existing Australian Pay and Classification Scales. The Commission's first wage-setting decision had three elements:

- an increase of \$27.36 per week in the standard Federal Minimum Wage
- an increase of \$27.36 per week in all Pay Scales up to and including \$700 per week, and
- an increase of \$22.04 per week in all Pay Scales above \$700 per week.

These increases flow on to junior employees, employees to whom training arrangements apply and employees with disabilities. They all take effect from 1 December 2006.

## What if there is no Australian Pay and Classification Scale that applies?

If there is no applicable Australian Pay and Classification Scale, an employee will be entitled to the relevant Federal Minimum Wage.

## How are guaranteed hours calculated?

If an employee is entitled to receive a periodic rate of pay, the law requires that this rate of pay is paid for each of what is referred to as the employee's 'guaranteed hours'. Essentially these will be the hours that the employee actually works. The table below sets out in detail how 'guaranteed hours' are calculated in various different factual situations.

In this situation	The guaranteed hours are worked out as follows by performing the following calculations:	
The employee is required to work a specific number of hours per week / period or full-time (eg a full-time or part-time employee).	Add	<p><b>Specific number of hours</b> The number of hours the employee is required to work during each week (the employee's specified hours).</p> <p><b>Full-time but no specific number of hours</b> If the employee is a full-time employee, but the number of hours he/she is required to work is not specified in their terms and conditions of employment, the employee's specified hours are taken to be 38 hours per week.</p> <p><b>Specific number of hours over a period</b> If the employee is required to work a specific number of hours during a period other than a week ( eg a fortnight), apply the following formula to determine the specified hours: No. of hrs required to work over the period    ×    <math>\frac{\text{7}}{\text{No. of days in that period}}</math></p> <p><b>Trainees</b> Special rules apply to employees who are trainees.</p>
	Add	Any additional hours that the employee was required or requested to work over and above the employee's specified hours.
	Deduct	<p>The number of hours (if any) the employee was on authorised paid or unpaid leave during that week.</p> <p>An employee's leave may be 'authorised' by:</p> <ul style="list-style-type: none"> <li>• the employer</li> <li>• the terms and conditions of the employee's employment, or</li> <li>• an applicable law.</li> </ul> <p>Do not deduct absence due to public holidays, or for authorised off the job training.</p>
	Deduct	<p>The number of hours (if any) that the employee engaged in industrial action.</p> <p>If any industrial action is taken by the employee, the minimum number of hours that may be deducted is four hours.</p>
	Deduct	Any other hours (if any) of unauthorised absence from work.
	Deduct	Any other hours (if any) that the employee was subject to an authorised stand down.
	Result	<b>The employee's guaranteed hours</b>

In this situation	The guaranteed hours are worked out by performing the following calculation:	
The employee is not employed to work a specific number of hours per week (eg a casual employee).	Add	The number of hours the employee is required or requested by the employer to work and that the employee does work.
	Deduct	<p>The number of hours (if any) that the employee engaged in industrial action.</p> <p>If any industrial action is taken by the employee, the minimum number of hours that may be deducted is four hours.</p>
	Result	<b>The employee's guaranteed hours</b>

## Federal Minimum Wage

### What is the Federal Minimum Wage?

There are two types of Federal Minimum Wage:

- the standard Federal Minimum Wage, and
- the special Federal Minimum Wage.

### What is the standard Federal Minimum Wage?

The standard Federal Minimum Wage was originally set at \$12.75 per hour. The Australian Fair Pay Commission recently issued its first increase to this wage rate. The new standard Federal Minimum Wage of \$13.47 per hour took effect on 1 December 2006.

### When should an employee be paid the standard Federal Minimum Wage?

An employee will be entitled to be paid at least the standard Federal Minimum Wage if:

- there is no appropriate Australian Pay and Classification Scale that applies to their employment, and
- the employee is not a junior employee, an employee with a disability or an employee to whom a training arrangement applies.

### What is a special Federal Minimum Wage?

A special Federal Minimum Wage is a rate of pay that is paid to:

- junior employees
- employees with disabilities, or
- employees to whom a training arrangement applies;

if there is no appropriate Australian Pay and Classification Scale that otherwise applies to their employment.

### How will the special Federal Minimum Wage be set?

The Australian Fair Pay Commission will determine the special Federal Minimum Wage. As of 1 December 2006 there are two special Federal Minimum Wages in operation, specifically:

- a special Federal Minimum Wage of \$13.47 per hour for employees with a disability who are able to earn full adult, junior or trainee wages as the effects of their disability do not impact on their productive capacity, and
- a special Federal Minimum Wage for employees with a disability who are unable to perform the range of duties to the competence level required because of the effects of a disability on their productive capacity – and are not currently covered by a Pay Scale. The minimum hourly rate payable to an employee in respect of whom an assessment has been made is the percentage of the standard Federal Minimum Wage (\$13.47 per hour) that applies to the employee in accordance with the following table:

Assessed productive capacity	% of standard FMW
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

## Casual employees

### What if I am a casual employee?

If you are a casual employee and you are entitled to be paid a basic periodic rate of pay, the Standard guarantees that you receive a casual loading percentage as outlined in the table below.

In this situation	The guaranteed casual loading percentage is:
<p><b>If the employee:</b></p> <ul style="list-style-type: none"> <li>• is covered by an Australian Pay and Classification Scale, and</li> <li>• is not an Australian Pay and Classification Scale piece rate employee, and</li> <li>• is not currently covered by a workplace agreement, and</li> <li>• has never been a party to a workplace agreement.</li> </ul>	<p><b>The casual loading percentage in the Australian Pay and Classification Scales.</b></p>
<p><b>If the employee:</b></p> <ul style="list-style-type: none"> <li>• is covered by an Australian Pay and Classification Scale, and</li> <li>• is not an Australian Pay and Classification Scale piece rate employee, and</li> <li>• has been a party to a workplace agreement that was terminated, and</li> <li>• is not currently covered by a workplace agreement.</li> </ul>	<p><b>The higher of:</b></p> <ul style="list-style-type: none"> <li>• the casual loading percentage in the Australian Pay and Classification Scales, and</li> <li>• the default casual loading percentage (currently 20%).</li> </ul>
<p><b>If the employee:</b></p> <ul style="list-style-type: none"> <li>• is covered by an Australian Pay and Classification Scale, and</li> <li>• is not an Australian Pay and Classification Scale piece rate employee, and</li> <li>• is currently a party to a workplace agreement.</li> </ul>	<p><b>The default casual loading percentage (currently 20%).</b></p>
<p><b>If:</b></p> <ul style="list-style-type: none"> <li>• there is no applicable Australian Pay and Classification Scale to cover the employee, and</li> <li>• the employee is entitled to receive either the standard or special Federal Minimum Wage.</li> </ul>	<p><b>The default casual loading percentage (currently 20%).</b></p>

### Are there any circumstances in which the guaranteed casual loading percentage will not apply?

Yes. An employee is not entitled to the guaranteed casual loading percentage if:

- they are not a casual employee, or
- the employee is covered by an Australian Pay and Classification Scale and is entitled to receive a basic piece rate of pay, or
- the employee is covered by an Australian Pay and Classification Scale and is entitled to receive a basic periodic rate of pay but the Australian Pay and Classification Scale does not contain a casual loading percentage and the employee's employment is not covered by a workplace agreement.

**In relation to the basic rate of pay guarantee, below are some circumstances demonstrating whether the Standard provides a more favourable outcome compared to a workplace agreement or contract of employment.**

### **Averaging of guaranteed basic rate of pay over a period of up to 12 months**

The Standard will not provide a more favourable outcome when compared to a workplace agreement or contract of employment when:

- the workplace agreement or contract of employment provides that the employee is paid, on average at least the guaranteed basic rate of pay (either under the Australian Pay and Classification Scale or the Federal Minimum Wage), and
- the employer and the employee have agreed that the wages guarantee will be complied with over a period of up to 12 months.

#### **Example**

Fred is a fruit picker in North Queensland. Fred works constantly for Fantastic Fruit Pty Limited throughout the year, but generally, he works longer hours during the spring and summer months when the fruit is ripe, and fewer hours during winter and autumn. Because Fred wants to have the stability of receiving a constant wage, he and his employer have agreed in his workplace agreement that Fred will be paid the same amount each week (over a 12 month period) despite the fact that the hours that Fred works differ from week to week.

The Standard guarantee in relation to basic rates of pay does not provide Fred with a more favourable outcome compared to his workplace agreement.

### **Salary sacrifice arrangements**

The Standard will not provide a more favourable outcome when compared to a workplace agreement or contract of employment when:

- an employer and employee agree (via a workplace agreement or contract of employment) to pay an amount in respect of the employee under a salary sacrifice arrangement, and
- the employee makes a written election separate to the workplace agreement or contract for a salary sacrifice arrangement, and
- the employee would have received the guaranteed basic rate of pay had they instead received the amount that was salary sacrificed.

### **Recovery of overpayments**

The Standard will not provide a more favourable outcome when compared to a workplace agreement or contract of employment when:

- the workplace agreement or contract of employment allows the employer to deduct an amount from the employee's pay for the purposes of recovering a previous overpayment, and
- the employee would have received the guaranteed basic rate of pay had they instead received the amount that was deducted.

### **Imposition of penalties**

In contrast to the above examples, the Standard will provide a more favourable outcome when compared to a workplace agreement or contract of employment when:

- the workplace agreement or contract of employment (whether the contract is in writing or not) allows a penalty to be imposed on the employee, and
- a consequence of the imposition of the penalty is that the employee's guaranteed basic rates of pay would not be satisfied.

In this context, a penalty is defined to include a deduction from an employee's remuneration, a reduction in their entitlements or a requirement that the employee make a payment to their employer. However, it will not be a penalty where a deduction, reduction or requirement is for the benefit of the employee, authorised under a law or made or imposed because the employee was provided with an entitlement to which the employee was not entitled.

## How often should an employee be paid?

The Standard also provides a guarantee which, depending on an employee's circumstances, sets out how often they should be paid.

This guarantee operates on the basis that if a contract of employment or workplace agreement guarantees an employee frequency of payment for periods of one month or less the employer must comply with such provisions.

If the written contract of employment or workplace agreement provides for a frequency of payment of more than one month, or is silent as to the frequency of payment, then the frequency of payment provisions in the relevant Australian Pay and Classification Scale would apply.

In turn, if the applicable Australian Pay and Classification Scale is silent on the required frequency of payment or the employee is not covered by an Australian Pay and Classification Scales, the employee is guaranteed to be paid fortnightly in arrears.

## Hours of work

### What does the Standard guarantee in relation to hours of work?

The Standard guarantees that an employee cannot be required or requested to work:

- more than 38 hours per week plus reasonable additional hours, or
- an average of 38 hours per week over a period of up to 12 months (if the employee and the employer agree in writing) and reasonable additional hours.

**Note:** 'Agree in writing' can be in a workplace agreement, an award, or otherwise.

In calculating the number of hours that the employee has worked per week, any authorised leave, such as personal leave, should be included.

Where an employer requests or requires an employee to work more hours than the guarantee and the employee works these hours, the employer may be subject to civil penalties.

There are some circumstances in which the guarantee of maximum hours of work does not apply. Specifically, where the employee/employer is bound by a Federal Award, a notional agreement preserving State Award (NAPSA) or a Victorian transitional award or a Victorian common rule award. This exclusion from the hours of work guarantee will only apply for a period of three years commencing 27 March 2006.

### What are reasonable additional hours?

Whether additional hours are 'reasonable' for the purposes of the Standard will depend on the circumstances of each case. However, in determining whether additional hours are reasonable all relevant factors must be taken into account. These factors include:

- any risk to the employee's health and safety
- the employee's personal circumstances, including family responsibilities
- operational requirements of the workplace
- the amount of notice provided to the employee that the additional hours are required or requested,
- whether the additional hours are on a public holiday, and
- the employee's hours of work over the preceding four week period.

Employees are entitled to a day off on a public holiday. An employer may request that an employee work on a public holiday however an employee may refuse that request where the employee has reasonable grounds for doing so. In determining whether an employee has reasonable grounds for refusing to work on a public holiday, the following factors will be taken into account:

- the nature of the work performed by the employee
- the type of employment (for example, whether full-time, part-time, casual or shift work)
- the nature of the employer's workplace or enterprise (including its operational requirements)
- the employee's reasons for refusing the request

- the employee’s personal circumstances (including family responsibilities)
- whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday
- whether a workplace agreement, award other industrial instrument, contract of employment or written guidelines or policy that regulates the employee’s employment contemplates that the employer might require work on public holidays, or particular public holidays
- whether the employee has acknowledged or could reasonably expect that the employer might require work on public holidays or particular public holidays
- the amount of notice in advance of the public holiday given by the employer when making the request
- the amount of notice in advance of the public holiday given by the employee in refusing the request,
- whether an emergency or other unforeseen circumstances are involved, and
- any other relevant factors.

## Annual leave

### What is the Standard entitlement for annual leave?

The Standard provides that all employees, other than casual employees, have a minimum paid entitlement to annual leave based on their ‘nominal hours’ (see below) worked.

### How are ‘nominal hours’ calculated?

In this situation	Nominal hours are calculated as follows:	
The employee is required to work a specific number of hours per week/period or full-time (eg a full-time or part-time employee).	Add	<p><b>Specific number of hours</b></p> <p>The number of hours the employee is required to work during each week (the employee’s specified hours). If the specified number of hours exceed 38 hours per week, the employee’s specified hours are taken to be 38 hours.</p> <p><b>Full-time but no specific number of hours</b></p> <p>If the employee is a full-time employee, but the number of hours he/she is required to work is not specified in their terms and conditions of employment, the employee’s specified hours are taken to be 38 hours per week.</p> <p><b>Specific number of hours over a period</b></p> <p>If the employee is required to work a specific number of hours during a period other than a week ( eg a fortnight) apply the following formula to determine the specified hours:</p> $\text{No. of hrs required to work over the period} \times \frac{7}{\text{No. of days in that period}}$
	Deduct	The number of hours (if any) the employee was absent from work on leave which does not count as service (eg maternity leave).
	Deduct	The number of hours (if any) that the employee engaged in industrial action. If any industrial action is taken by the employee, the minimum number of hours that may be deducted is four hours.
	Result	<b>The employee’s nominal hours per week</b>
The employee is not employed to work a specific number of hours per week.	<b>The lesser of 1 or 2 below:</b>	
	<b>1. The number of hours worked out below:</b>	
	Add	The number of hours the employee was required or requested by the employer to work and did work in the week.

	Add	The number of hours (if any) in the week the employee is absent on leave that counts as service ( eg personal leave).
	Deduct	The number of hours (if any) that the employee engaged in industrial action. If any industrial action is taken by the employee, the minimum number of hours that may be deducted is four hours.
	Result	<b>The employee's nominal hours per week</b>
<b>2. The number of hours the employee would have been taken to have worked for the employer if the employee was required to work a 38 hour week.</b>		

For an employee who works 38 hours or more per week for 12 months, the entitlement to annual leave is four weeks.

Shift workers are entitled to five weeks of leave per year if they worked 38 hours per week.

#### Definition - shift worker

A shift worker means an employee who:

- is employed in a business in which shifts and continuously rostered 24 hours a day for seven days a week, and
- is regularly rostered to work on those shifts, and
- regularly works on Sundays and public holidays.

#### How is annual leave calculated?

Annual leave accrues, in arrears, on a pro-rata basis for each completed four week period of employment. Pro-rata is a proportion of a whole entitlement. This means that the leave is credited to the employee 13 times a year (once every four weeks).

The formula for calculating an employee's annual leave entitlement for a four week period is:

$$\frac{1}{13} \times \text{Nominal hours worked in the four week period}$$

A shift worker receives an additional amount of leave. The formula for calculating a shift worker's additional annual leave entitlement for each week is:

$$\frac{1}{52} \times \text{Nominal hours worked for the completed 12 month period}$$

#### At what rate is annual leave paid?

The Standard requires an employer to pay an employee for each hour (or part hour) of annual leave taken at the employee's basic periodic rate of pay (expressed as an hourly rate) immediately before the period begins.

The Standard only requires that the employee receive payment at the basic periodic rate of pay for leave that has accrued under the Standard. That is, leave that corresponds to the employee's nominal hours worked. As a result, an employee who regularly works more than 38 hours per week does not have an entitlement under the Standard to be paid in relation to the hours they would have normally worked, which normally would have exceeded 38 hours per week.

#### I normally work more than 38 hours per week, do I still get four weeks leave?

To ensure that an employee who would normally work in excess of 38 hours per week remains entitled to four full weeks of annual leave, such an employee is entitled to be absent not only for the hours (or part hours) that count towards determining their nominal hours worked, but also for any other hours (or part hours) that the employee would otherwise have worked on that day. This additional time is not paid leave and is not deducted from the employee's leave balance.

## Are there any rules about taking annual leave?

Yes. The Standard provides that an employee may take paid annual leave provided that:

- the employer has authorised the leave, and
- the employee has an accrued leave balance of at least the amount of leave they propose to take.

The Standard does not provide an employee with an entitlement to take paid annual leave in advance of accruing that entitlement. However, where an employer and employee agree to allow the employee to take annual leave in advance of the entitlement accruing, this will generally be more favourable to the employee and accordingly not contrary to the Standard.

The Standard does not provide any other limits on the amount of annual leave that an employee may take. There is no minimum amount of annual leave that must be taken at one time.

## Can an employer refuse to authorise the taking of annual leave?

In deciding whether to authorise annual leave, an employer is entitled to take into account the operational requirements of the workplace.

An employer must not unreasonably:

- refuse to authorise the taking of annual leave, or
- revoke an authorisation.

## Can an employer tell an employee when to take leave?

The Standard provides two circumstances in which an employer can direct an employee to take leave. These are:

- during a period of 'shut down', or
- if the employee has a large accumulated annual leave balance.

### Shut down

An employer may direct an employee to take paid annual leave for a particular period when the employer shuts down the business, or any part of the business, in which the employee works. This may occur, for example, during the period between Christmas and New Year.

This direction can only occur where the employee has sufficient accumulated annual leave to cover the proposed shut down period.

### Large accumulated annual leave balance

An employer may also direct an employee to take annual leave where the employee has a large accumulated annual leave balance (in excess of 1/13 of the number of nominal hours that the employee has worked over a two year period).

This amount is equivalent to eight weeks for an employee working 38 hours per week over a two year period.

## Can an employee cash out some of their annual leave?

Yes. An employee is entitled to cash out up to 1/26 of the nominal hours (see above) worked by the employee during the previous 12 months. This is equivalent to up to two weeks per year for full-time employees whose hours do not change over the course of a 12 month period.

**Are there any restrictions on cashing out annual leave?**

Yes. In order to cash out an amount of annual leave the following conditions must be satisfied:

- the employee and the employer must have entered a workplace agreement
- the workplace agreement must contain a term that allows the employee to cash out the annual leave
- the employee must provide the employer with a written election to cash out the annual leave
- the employee must have an accumulated annual leave balance of at least the amount that they wish to cash out – that is, it is not possible to cash out annual leave in advance of it being credited
- the rate of pay at which the annual leave is paid out must be at least the employee's basic periodic rate of pay (expressed as an hourly rate) at the time the employee makes the election, and
- the employer authorises the employee to forgo the amount of annual leave.

**Can an employee be forced to cash out an amount of annual leave?**

No. The Standard provides that an employer must not:

- require an employee to forgo an entitlement to take an amount of annual leave, or
- exert undue influence or undue pressure on an employee's decision whether or not to cash out an amount of annual leave.

**When must be the 'cashed out' annual leave payment be made?**

The employee must be paid within a reasonable time of making the election to cash out annual leave.

**Is annual leave cumulative?**

Yes.

**In relation to annual leave, below are some circumstances demonstrating whether the Standard provides a more favourable outcome compared to a workplace agreement or contract of employment.**

The Standard will provide a more favourable outcome than a workplace agreement or contract of employment when the Standard:

- guarantees a greater amount of annual leave (for example, a greater number of days or hours) than the workplace agreement or contract of employment, or
- provides that annual leave is credited and/or accrued more frequently than the workplace agreement or contract of employment.

The Standard will not provide a more favourable outcome than a workplace agreement or contract of employment when the workplace agreement or contract of employment:

- provides an annual leave entitlement that is expressed in a way that is different from, but equivalent to, the Standard
- permits the employee to take an additional period of annual leave by forgoing an equivalent amount of pay, or
- provides that annual leave is credited and/or accrued more frequently than the Standard.

**Example**

Amy wants to take a European holiday. Her workplace agreement provides her with an entitlement to four weeks annual leave and also states that she can elect to take annual leave at half pay, that is, Amy may take eight weeks leave at half pay. Amy's workplace agreement is not less favourable than the Standard.

## Personal leave

Personal leave includes sick leave, carer's leave and compassionate leave.

The table sets out an employee's entitlements and obligations in relation to sick and carer's leave and compassionate leave.

## Sick and carer's leave

	<b>Paid sick leave</b>	<b>Paid carer's leave</b>	<b>Unpaid carer's leave</b>
<b>Who is eligible?</b>	All employees (other than casual employees).	All employees (other than casual employees).	All employees (including casuals).
<b>When can it be taken?</b>	When an employee suffers a personal illness or injury.	When an employee is required to provide care or support to a member of the employee's immediate family or household member who requires care or support as they are sick or injured or has an unexpected emergency.	When an employee is required to provide care or support to a member of the employee's immediate family or household member who requires care or support as they are sick or injured or has an unexpected emergency and has exhausted their other paid personal/carers leave entitlements if applicable.
<b>What is the entitlement?</b>	An employee is entitled to a personal/carers leave entitlement which includes both sick and carer's leave of 1/26 of the nominal hours worked by the employee for each completed four week period. This equates to ten days for an employee who works 38 hours per week.		Two days per occasion – this may be a single unbroken period of up to two days, or any separate period as agreed by the employer and employee.
<b>When does it accrue?</b>	After each completed four week period.	After each completed four week period.	Not applicable.
<b>What should the employee be paid?</b>	The employee should be paid for each hour (or part hour) of leave taken at the employee's basic periodic rate of pay (expressed as an hourly rate) immediately before the period begins.	The employee should be paid for each hour (or part hour) of leave taken at the employee's basic periodic rate of pay (expressed as an hourly rate). immediately before the period begins.	Not applicable.
<b>What limitations are there?</b>	If the employee is receiving workers' compensation payments (under a Commonwealth, State or Territory law) the employee will not be entitled to also receive paid sick leave.	A maximum of ten days of paid carer's leave may be taken each year (regardless of an employee's cumulative personal leave balance).	Unpaid carer's leave may only be taken after the employee has exhausted their other paid personal/carers leave entitlements.
<b>Does this leave count as service?</b>	Yes. A period of paid personal leave does not break an employee's continuity of service and counts as service for all purposes.	Yes. A period of paid personal leave does not break an employee's continuity of service and counts as service for all purposes.	A period of unpaid carer's leave does not break an employee's continuity of service. However it does not count as service, except where expressly provided for by: <ul style="list-style-type: none"> <li>• a term or condition of the employee's employment</li> <li>• a law or instrument under a Commonwealth, State or Territory law.</li> </ul>

<b>What notice must be provided?</b>	The employee must notify their employer of their absence as soon as reasonably practicable. Accordingly, it may be before or after the leave starts. The notice must indicate that the employee requires leave because of a personal illness or injury to the employee.	The employee must notify their employer of their absence as soon as reasonably practicable. Accordingly, it may be before or after the leave starts. The notice must be to the effect that the employee requires leave to provide care or support to a member of the employee's immediate family or household as they are suffering either a personal illness, injury or an unexpected emergency.	The employee must notify their employer of their absence as soon as reasonably practicable. Accordingly, it may be before or after the leave starts. The notice must be to the effect that the employee requires leave to provide care or support to a member of the employee's immediate family or household as they are suffering either a personal illness, injury or an unexpected emergency.
<b>Is a medical certificate required?</b>	An employer may require the employee to provide evidence in relation to a period of personal leave. The employee must then provide their employer with a medical certificate from a registered health practitioner. If it is not reasonably practicable to provide a medical certificate, the employee may provide a statutory declaration.		
<b>Who is a registered health practitioner?</b>	A health practitioner who is registered or licensed as a health practitioner under a State or Territory law. A registered health practitioner can only issue a medical certificate in relation to the area of practice in which the practitioner is registered or licensed by that State or Territory law.		
<b>What must the medical certificate state?</b>	The medical certificate must state that in the practitioner's opinion the employee was, is or will be unfit for work during the period because of personal illness or injury.	The medical certificate must state that in the practitioner's opinion, the member of the immediate family or household has had or will have a personal illness or injury in the period.	The medical certificate must state that in the practitioner's opinion, the member of the immediate family has had or will have a personal illness or injury in the period.
<b>What must the statutory declaration state?</b>	If a statutory declaration is provided, it must state that the employee is, was or will be unfit to work due to personal illness or injury.	If a statutory declaration is provided, it must state that the employee requires or required leave to provide care or support to a member of the employee's immediate family or household member because of illness, injury or an unexpected emergency.	If a statutory declaration is provided, it must state that the employee requires or required leave to provide care or support to a member of the employee's immediate family or household member because of illness, injury or an unexpected emergency.
<b>Are there any exceptions?</b>	Yes. If an employee cannot comply with the documentation requirements due to circumstances beyond their control, the employee will not have breached the Standard.		

### Definition - immediate family

The following are members of an employee's immediate family:

- a. a spouse, child, parent, grandparent, grandchild or sibling of the employee, or
- b. a child, parent, grandparent, grandchild or sibling of a spouse of the employee.

### **Can an employee cash out some of their paid personal/carer's leave?**

Yes. An employee can request to cash out an amount of paid personal/carer's leave each year. An employee cashing out their paid personal/carer's leave must retain a minimum balance after cashing out of no less than 3/52 of the nominal hours worked by the employee during the previous 12 months of service (or sequence of periods totalling 12 months of service) prior to the election to cash out being made. For an employee who has worked 38 hours per week over a continuous 12 month period, this is equivalent to 15 days of personal/carer's leave.

### **Are there any restrictions on cashing out paid personal/carer's leave?**

Yes. In order to cash out an amount of paid personal/carer's leave the following conditions must be satisfied:

- the employee and the employer must have entered a workplace agreement
- the workplace agreement must contain a term that allows the employee to cash out the paid personal/carer's leave
- the employee must provide the employer with a written election to cash out the paid personal/carer's leave
- the employee must have an accumulated paid personal/carer's leave balance of at least the amount that they wish to cash out – that is, it is not possible to cash out paid personal/carer's leave in advance of it being credited
- the workplace agreement must contain a term providing that the rate of pay at which the paid personal/carer's leave is paid out must be at least the rate of pay that the employee is entitled to receive at the time of making the election, and
- the employer authorises the employee to forgo the amount of paid personal/carer's leave.

### **Can an employee be forced to cash out an amount of paid personal/carer's leave?**

No. The Standard provides that an employer must not:

- require an employee to forgo an entitlement to take an amount of paid personal/carer's leave, or
- exert undue influence or undue pressure on an employee's decision whether or not to cash out an amount of paid personal/carer's leave.

### **When must be the 'cashed out' paid personal/carer's leave payment be made?**

The employee must be paid within a reasonable time of making the election to cash out paid personal/carer's leave.

### **In relation to the personal leave, below are some circumstances demonstrating whether the Standard provides a more favourable outcome compared to a workplace agreement or contract of employment.**

The Standard will provide a more favourable outcome than a workplace agreement or contract of employment when the Standard:

- guarantees a greater amount of personal leave (for example, a greater number of days or hours) than the workplace agreement or contract of employment, or
- provides that personal leave is credited and/or accrued more frequently than the workplace agreement or contract of employment.

The Standard will not provide a more favourable outcome than a workplace agreement or contract of employment when the workplace agreement or contract of employment:

- provides an amount of personal leave entitlement that is expressed in a way that is different from, but equivalent to, the Standard
- provides a greater amount of paid carer's leave than the annual cap provided by the Standard
- permits the employee to take an additional period of paid personal/carer's leave by forgoing an equivalent amount of pay, or
- provides that personal leave is credited and/or accrued more frequently than the Standard.

## Compassionate leave

	<b>Paid compassionate leave</b>
<b>Who is eligible?</b>	All employees (other than casual employees)
<b>When can it be taken?</b>	An employee may take compassionate leave when a member of the employee's immediate family or household member: <ul style="list-style-type: none"> <li>contracts or develops a personal injury or illness that poses a serious threat to their life, or</li> <li>dies</li> </ul>
<b>How much is the entitlement?</b>	Two days per occasion. May be taken in a single unbroken period of two days or two separate periods of one day or as agreed by the employer and employee.
<b>How much should the employee be paid?</b>	The employee should be paid for each hour (or part hour) of leave taken at the employee's basic periodic rate of pay (expressed as an hourly rate) immediately before the period begins.
<b>What limitations are there?</b>	The employee must give the employer any evidence that the employer reasonably requires of the illness, injury or death.

## Unpaid parental leave

### What types of parental leave are covered under the Standard?

The Standard guarantees all eligible employees an entitlement to the following three types of unpaid parental leave:

- maternity leave (which may be ordinary or special maternity leave)
- paternity leave, and
- adoption leave.

### Does parental leave count as service?

A period of parental leave does not break an employee's continuity of service but it does not count as service except as expressly provided by or under:

- a term of condition of the employee's employment, or
- a law or an instrument of force under a Commonwealth, State or Territory law.

## Maternity leave

### Are there any special eligibility requirements in relation to maternity leave?

To be eligible for maternity leave an employee must:

- comply with the documentation and notice requirements outlined below, and
- immediately before the expected date of birth of the child
  - o have completed at least 12 months continuous service with her employer, or
  - o she is, or will be, an eligible casual employee.

#### Definition - an eligible casual employee means a casual employee:

- who has been engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months, and
- who, but for an expected birth or an expected placement of a child, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

## **What is the difference between ordinary maternity leave and special maternity leave?**

Special maternity leave is leave granted to an employee if she has a pregnancy related illness or her pregnancy ends within 28 weeks of the expected birth, otherwise than by the birth of a living child.

## **What is the entitlement to ordinary maternity leave?**

All eligible employees, including eligible casual employees, are eligible for unpaid maternity leave up to a maximum of 52 weeks which must include a period of leave of six weeks starting from the date of birth of the child, in respect of the birth of a child. The period of maternity leave will be less than 52 weeks if the employee, or the employee's spouse, takes any other related authorised leave such as authorised paternity leave.

## **What is the entitlement to special maternity leave?**

If an employee takes special maternity leave she will be required to provide her employer with:

- an application for special maternity leave stating the first and last days of the maternity leave, and
- if the employee has a pregnancy related illness – a medical certificate confirming the illness and that the employee is unfit to work, or
- if the employee's pregnancy has ended – a medical certificate and a statutory declaration.

This is required to be provided to the employer before, or as soon as reasonably practicable after, starting a continuous period of leave including the special maternity leave.

The employee will be entitled to a period of special maternity leave as set out in the medical certificate.

## **What are the notice and documentation requirements for ordinary maternity leave?**

The employee is required to give her employer:

- a medical certificate
- an application for maternity leave, and
- a statutory declaration.

## **What details are required to be included in the medical certificate?**

The medical certificate must state:

- that the employee is pregnant, and
- the expected date of birth of the child.

This medical certificate must be provided to the employer at least ten weeks before the expected date of birth stated in the certificate.

If an employee's child is born prematurely or if there are other compelling reasons which mean that the employee was not able to provide this notice as required, it will generally be sufficient for the employee to provide the notice as soon as reasonably practicable after the birth of the child.

## **What details are required to be included in the application?**

The written application provided to the employer must state the first and last days of the intended maternity leave.

This application, together with a statutory declaration, must be provided to the employer at least four weeks prior to the first day of maternity leave.

If an employee's child is born prematurely or if there are other compelling reasons which mean that the employee was not able to provide this application as required, it will generally be sufficient for the employee to provide the notice as soon as reasonably practicable after the birth of the child.

### What details are required to be included in the statutory declaration?

The statutory declaration must be provided together with the application for maternity leave, at least four weeks prior to the first day of maternity leave.

The statutory declaration must state:

- the first and last days of any other authorised leave intended to be taken (or already taken) by the employee because of her pregnancy or the expected birth (note that this does not include leave taken by the employee because it was not safe for the employee to carry out her job while she is pregnant), and
- the first and last days of any paternity leave, or any other similar leave intended to be taken by the employee's spouse because of the pregnancy, and
- that the employee intends to be the primary carer of the child at all times while on maternity leave, and
- that the employee will not engage in any conduct inconsistent with his contract of employment while on maternity leave.

### When does maternity leave commence?

Provided the employee has complied with the notice requirements above, an employee may start a continuous period of leave at any time within six weeks before the expected date of birth of the child.

If the employee continues to work during the six weeks prior to the birth of the child, the employer may require the employee to provide a medical certificate to determine whether the employee is fit to work in her present position or whether it is inadvisable for the employee to continue to work in that position because of illness or risks, arising out of the pregnancy or hazards connected with the position. If the medical certificate is not provided, the employer can direct the employee to commence maternity leave.

### What if it is not safe for the employee to carry out her job while she is pregnant?

In some circumstances it will not be appropriate for an employee to continue to work in her job while she is pregnant either because the work is hazardous or because, as a result of her pregnancy, the employee is ill or there are particular risks with her pregnancy. In these circumstances an employee who is otherwise entitled to ordinary maternity leave and has complied with the documentation requirements set out above, may be transferred to another, more appropriate job.

Specifically, an employee is entitled to be transferred to a safe job, if the employee provides a medical certificate that states that although she is fit to work, the work assigned is hazardous or it is inadvisable for her to continue in her current position because of illness or risks arising out of the pregnancy. The employee is entitled to be transferred to a safe job without any other changes to the employee's terms and conditions of employment.

If the employer does not think it is reasonably practicable to provide the employee with a safe job, the employee is entitled to, or may be directed to, commence paid leave. This leave is in addition to any other paid leave to which the employee is entitled, such as annual leave or personal leave, and must be paid at the employee's basic periodic rate of pay, immediately before the period begins. The paid leave ends at the earlier of the following dates:

- the date on the medical certificate
- the day before the child is born, or
- where the pregnancy does not result in the birth of a living child, the day before the pregnancy ends.

Leave of this type does not reduce an employee's entitlement to 52 weeks of unpaid maternity leave.

### What about returning to work?

Generally, an employee is entitled to return to the position she held immediately before a period of maternity leave.

## Paternity leave

Who is eligible for paternity leave?

To be eligible for paternity leave a male employee must:

- comply with the documentation and notice requirements outlined below, and
- immediately before the first day on which the paternity leave commences
  - have completed at least 12 months continuous service with his employer, or
  - he is, or will be, an eligible casual employee.

### What is the maximum entitlement to paternity leave?

All eligible employees, including eligible casual employees, have an entitlement to paternity leave up to a maximum of 52 weeks, in respect of the birth of their child if the employee is the child's primary care giver.

The period of paternity leave will be less than 52 weeks if the employee, or the employee's spouse, takes any other related authorised leave such as maternity leave.

### How can paternity leave be taken?

There are two types of paternity leave:

- short paternity leave, and
- long paternity leave.

#### Short paternity leave

Is a single, unbroken period of unpaid leave of up to one week taken by a male employee starting on the day his spouse begins to give birth.

#### Long paternity leave

Is a single, unbroken period of unpaid leave other than short paternity leave, taken by a male employee after his spouse gives birth so that the employee can be the child's primary caregiver. Long paternity leave cannot be taken concurrently with ordinary maternity leave taken by the employee's spouse.

Long paternity leave may be taken at any time within the 12 months after the birth of the child.

### What are the documentation requirements in relation to paternity leave?

The employee is required to give his employer:

- a medical certificate, and
- an application for paternity leave (short or long).

### What details are required to be included in the medical certificate?

The medical certificate must be provided by a medical practitioner. The certificate must state:

- if the child is yet to be born:
  - the name of the employee's spouse, and
  - the employee's spouse is pregnant, and
  - the date on which the birth is expected.
- if the child has been born:
  - the name of the employee's spouse, and
  - the actual date of birth of the child.

**When should the medical certificate be provided to the employer?**

This medical certificate must be provided to the employer at least ten weeks before the expected date of birth stated in the certificate.

If an employee's child is born prematurely or if there are other compelling reasons which mean that the employee was not able to provide this notice as required, it will generally be sufficient for the employee to provide the notice as soon as reasonably practicable either before or after the birth of the child.

**What details are required to be included in a short paternity leave application?**

The written application provided to the employer must state the first and last days of the intended paternity leave. This application must be provided as soon as reasonably practicable on or after the first day of the period of leave.

**What details are required to be included in a long paternity leave application?**

An employee is required to provide his employer with the following documentation in relation to a long paternity leave application:

- a written application, and
- a statutory declaration.

The written application must:

- state the first and last days of the intended paternity leave, and
- be provided to the employer at least ten weeks prior to the first day of paternity leave.

If an employee's child is born prematurely or if there are other compelling reasons which mean that the employee was not able to provide this application as required, it will generally be sufficient for the employee to provide the notice as soon as reasonably practicable after the birth of the child.

The statutory declaration must state:

- the first and last days of the intended paternity leave, and
- the first and last days of any maternity leave, or any other authorised leave intended to be taken by the employee's spouse because of the pregnancy, and
- that the employee intends to be the primary carer of the child at all times while on paternity leave, and
- that the employee will not engage in any conduct inconsistent with his contract of employment while on long paternity leave.

**What about returning to work?**

Generally, an employee is entitled to return to the position he held immediately before a period of paternity leave.

**Adoption leave****Who is eligible for adoption leave?**

To be eligible for adoption leave an employee must:

- comply with the documentation and notice requirements outlined below, and
- immediately before the first day on which the adoption leave is, or is to be, taken
  - o has or will have completed at least 12 months continuous service with his or her employer, or
  - o is, or will be, an eligible casual employee.

## What is the maximum entitlement to adoption leave?

The Standard guarantees employees (other than non-eligible casual employees) two types of adoption leave:

- pre-adoption leave, and
- adoption leave.

## What is pre-adoption leave?

An employee is entitled to pre-adoption leave of up to two days unpaid leave to attend interviews or examinations required to obtain approval to adopt an eligible child.

### Definition - an eligible child means a child who:

- is or will be under the age of five on the day of placement, and
- has not previously lived with the employee for a period of six months or more as at the day of placement, and
- is not a child or a step-child of the employee or the employee's spouse.

## Are there any restrictions on taking pre-adoption leave?

Yes. An employee cannot take pre-adoption leave if:

- the employee could take other authorised leave instead (for example, annual leave), and
- the employer directs the employee to take such leave.

## What is adoption leave?

All employees are entitled to unpaid adoption leave up to a maximum of 52 weeks, if the employee intends to adopt a child.

There are two types of adoption leave:

- short adoption leave, or
- long adoption leave.

### Short adoption leave

Is a single, unbroken period of up to three weeks taken by an employee within the three weeks starting on the day of placement of an eligible child with the employee.

### Long adoption leave

Is a single, unbroken period of up to 52 weeks taken by an employee after the day of placement of an eligible child with the employee for adoption so that the employee can be the child's primary caregiver.

Long adoption leave must end within 12 months after the day of placement of the child.

## What are the notice and documentation requirements in relation to adoption leave?

An employee must provide their employer with written notice in accordance with the following table.

What information?	When must it be provided?
<b>1. Notice</b>	
The employee's intention to apply for adoption leave.	As soon as reasonably practicable after receiving confirmation of the approval of the placement.
The date on which the child will be placed in the employee's care.	As soon as reasonably practicable after receiving notice of the date.
The first and last days of the periods of the intended short and long adoption leave.	As soon as reasonably practicable after receiving notice of the date on which the child will be placed in the employee's care.

<b>2. Application for leave</b>	
<ul style="list-style-type: none"> <li>written application</li> <li>first and last days of intended leave.</li> </ul>	<p><b>If short adoption leave</b> – 14 days before the placement of the child.</p> <p><b>If long adoption leave</b> – ten weeks before first day of leave.</p> <p>If compelling reason why notice cannot be complied with – as soon as reasonably practicable before the first day of leave.</p>
<b>3. Statement from adoption agency</b>	
The day when the placement is expected to start.	Before the period of adoption leave commences.
<b>4. Statutory declaration</b>	
<p>The employee must provide a statutory declaration stating:</p> <ul style="list-style-type: none"> <li>the type of adoption leave taken (short/long/both)</li> <li>the first and last days of any other authorised leave taken because of the adoption of the child</li> <li>the first and last days of adoption leave taken by the employee's spouse</li> <li>that the child is an eligible child</li> <li>that, if long adoption leave is taken, the employee will be the primary caregiver</li> <li>that the employee will not engage in any conduct inconsistent with the contract of employment while on adoption leave.</li> </ul>	Before the period of adoption leave commences.

### What about returning to work?

Generally, an employee is entitled to return to the position he or she held immediately before a period of adoption leave.

**In relation to the parental leave, below are some circumstances demonstrating whether the Standard provides a more favourable outcome compared to a workplace agreement or contract of employment.**

The Standard will provide a more favourable outcome than a workplace agreement or contract of employment when the Standard:

- guarantees a greater amount of parental leave (for example, a greater number of days or hours) than the workplace agreement or contract of employment, or
- provides that parental leave is accrued and/or credited more frequently than the workplace agreement or contract of employment.

The Standard will not provide a more favourable outcome than a workplace agreement or contract of employment when the workplace agreement or contract of employment:

- provides a personal leave entitlement that is expressed in a way that is different from, but equivalent to, the Standard, or
- provides that parental leave is accrued and/or credited more frequently than the Standard.

