

STAFF LEAVE ENTITLEMENT POLICY

Our Out of School Hours Care (OSHC) Service is committed to providing a safe and healthy workplace that supports employees to take breaks away from the workplace to balance work with rest, recreation and family responsibilities.

The *Staff Leave Entitlement Policy* aims to comply with Government legislation and workplace laws to provide clear guidelines in relation to employment conditions and entitlements set by Fair Work Australia through the National Employment Standards and relevant Awards, including but not limited to Children's Services 2010 Modern Award and Education Services (Teachers) 2020 Modern Award.

NATIONAL QUALITY STANDARD (NQS)

QUALITY AREA 4: STAFFING ARRANGEMENTS		
4.1	Staffing arrangements	Staffing arrangements enhance children's learning and development.
4.1.1	Organisation of Educators	The organisation of Educators across the Service supports children's learning and development.
4.1.2	Continuity of staff	Every effort is made for children to experience continuity of Educators at the Service.

EDUCATION AND CARE SERVICES NATIONAL REGULATIONS	
126	Centre-based services – general educator qualifications
135	Early childhood teacher illness or absence
151	Record of Educators working directly with children
152	Record of access to early childhood teachers
Division 5	Requirements for educators who are early childhood teachers.

RELATED LEGISLATION

NSW Anti-Discrimination Act 1977	Fair Work Act 2009
Federal and State Occupational Safety and Health Legislation	Federal and State Equal Opportunity Legislation and any other relevant industrial awards
Education and Care Services National Law Act 2010	Children and Young Persons Act 1998

PURPOSE

This policy has been developed to communicate expectations and obligations regarding applying for leave from the Out of School Hours Care Service including- Annual leave, Personal/Carer's Leave, Parental Leave Pay, Dad and Partner Pay, Long Service Leave, Community Service Leave, Family and Domestic Violence Leave, Compassionate Leave, Rostered Days Off, Superannuation, Termination/Resignation of employment and Overtime/ Time in Lieu.

SCOPE

This policy applies to staff, educators, Approved Provider, Nominated Supervisor and management the OSHC Service.

IMPLEMENTATION

Our OSHC Service will commit to providing leave arrangements for all employees as legislated by the Australian Government through relevant industrial Awards and the National Employment Standards as set by Fair Work Australia. We will offer an opportunity for staff to access paid and unpaid leave for a range of purposes to support a healthy and productive workplace. This policy provides guidelines for staff to request and apply for leave.

All documentation relating to Leave Entitlements is to be stored confidentiality in individual staff files.

EVIDENCE REQUIREMENTS

An employer can ask their employee for evidence that shows the employee took the leave to deal with family and domestic violence. If the employee doesn't provide the requested evidence, they may not get paid the leave.

The evidence has to convince a reasonable person that the employee took the leave to deal with the impact of family and domestic violence.

An employer can only use this information to satisfy themselves that the employee is entitled to family and domestic violence leave, unless:

- the employee consents
- the employer is required to deal with the information by law, or
- it's necessary to protect the life, health or safety of the employee or another person.

The employer can't use the information for other purposes, including to take adverse action against the employee.

- **Types of evidence**

Types of evidence can include:

- a statutory declaration
- documents issued by the police service
- documents issued by a court, or
- family violence support service documents.

Employers can ask employees to provide evidence for as little as one day or less off work.

- **Example: Employee providing evidence**

Michael is the manager of a medium-sized food manufacturing business with 40 employees.

A full-time employee lets Michael know about an upcoming court date to deal with an issue relating to family and domestic violence. The employee needs to attend court on 2 workdays and will need to take 2 days of paid family and domestic violence leave.

Michael asks the employee to provide evidence for the leave. The employee gives Michael documents from the court. The documents show the dates they're required to attend court.

The employee is entitled to be paid for all the hours they would have worked on those days if they weren't on leave. Michael must keep the information provided by the employee confidential.

- **Confidentiality**

Employers have to take reasonable steps to keep any information about an employee's situation confidential when they receive it as part of an application for leave. This includes:

- information about the employee giving notice that they're taking the leave
- any evidence they provide.

Employers can disclose information if:

- it's required by law, or
- is necessary to protect the life, health or safety of the employee or another person.

Any information about an employee's experience of family and domestic violence is sensitive. If information is mishandled, it could have adverse consequences. Employers should work with their employee to discuss and agree on how this information will be handled.

DEFINITIONS

Family Member

Fair Work Australia defines an immediate family member as a:

- spouse or former spouse
- de facto partner or former de facto partner

- child
- parent
- grandparent
- grandchild
- sibling, or
- child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse or de facto partner).

This definition includes step-relations (e.g., step-parents and step-children) as well as adoptive relations.

A household member is any person who lives with the employee.

Types of Employment: Full Time/ Part Time/ Casual

A full-time employee is engaged to work an average of 38 ordinary hours per week.

A part-time employee is an employee who is engaged to work on a regular basis for less than 38 hours per week.

Casual employment means employment on a day-to-day basis. Casuals will be paid a minimum of two hours pay for each engagement.

NATIONAL EMPLOYMENT STANDARDS (NES)

The NES sets minimum employment standards and conditions for employees within Australia including maximum weekly hours, requests for flexible working arrangements, offers and requests to convert from casual to permanent employment, parental leave and related entitlements, annual leave, personal/carer's leave, compassionate leave and unpaid family and domestic violence leave, community service leave, long service leave, public holidays and notice of termination and redundancy pay.

ANNUAL LEAVE

Annual Leave will be accrued at the rate as stated in the relevant Award and NES.

The NES, Children's Services Award and Educational Services (Teachers) 2020 state full time employees will be entitled to 4 weeks Annual Leave every 12 months. Part time employees are entitled to Annual Leave on a pro rata basis. For example, if an employee works 19 hours per week, they will be entitled to 2 weeks Annual Leave every 12 months. Casuals are not entitled to Annual Leave.

Annual Leave begins to accumulate from the first day of employment. Annual Leave accumulates when employees are on leave including paid leave, such as paid annual leave and paid sick and carer's leave, community service leave including jury duty and long service leave.

Annual leave does not accumulate when the employee is on unpaid annual leave, unpaid sick/carer's leave, unpaid parental leave and unpaid family and domestic violence leave.

Annual Leave does not accumulate when an employee is on leave on the Paid Paternity Leave Scheme. The balance of Annual Leave at the end of each year carries over to the next year.

REQUESTING ANNUAL LEAVE

Annual leave must be accumulated before it can be taken as paid leave.

To request Annual Leave, employees must lodge a *Leave Request Form* and hand it to the Nominated Supervisor. Employees will be notified in writing if the request has been successful and approved. Leave will not be granted to any **two (2) employees** for the same period. Leave request forms must be submitted at least **2 weeks** before the leave is requested.

All leave will be subject to approval. The operational and key staff requirements of the business will be taken into consideration prior to leave being approved. This includes ensuring the Education and Care Services National Regulations (2011) requirements for staffing are met at all times.

DIRECTION TO TAKE ANNUAL LEAVE

Employees may be directed to take Annual Leave if the employee has an excessive accumulation of Annual Leave, usually if the balance of Annual Leave is over 6 weeks.

CHRISTMAS SHUT DOWN

Our Service closes over the Christmas holiday period. During this time employees are directed to take Annual Leave. If the employee does not have sufficient Annual Leave accumulated, they will be directed to take Leave Without Pay during the shutdown period.

PERSONAL/ CARER'S LEAVE

Personal Leave will be accrued at the rate as stated in the relevant Award and NES.

The NES, Children's Services Award and Educational Services (Teachers) 2020 state Personal Leave will be accrued at the rate as stated in the relevant award or agreement. All permanent full-time staff are

entitled to 10 days Personal Leave each year, and pro-rata for part-time staff. Casual staff are not entitled to Personal Leave.

Personal Leave provides provisions for an employee take time off to help them deal with personal illness, caring responsibilities and family emergencies. Personal Leave can be used when an employee is ill or injured. An employee may have to take time off to care for an immediate family or household member who is sick or injured or help during a family emergency. This is known as Carer's Leave, but it comes out of the employee's Personal Leave balance.

Personal Leave begins to accumulate from the first day of employment. Personal leave must be accumulated before it can be taken as paid leave. Personal Leave accumulates when employees are on leave including paid leave such as paid annual leave and paid sick and carer's leave, community service leave including jury duty and long service leave and Paid Parental leave.

Personal leave does not accumulate when the employee is on- unpaid annual leave, unpaid sick/carer's leave, unpaid parental leave and unpaid family and domestic violence leave.

NOTIFICATION OF ABSENCE

If you are unwell and cannot attend your rostered shift you must contact the Nominated Supervisor or assigned nominee at least **four (2) hours** before the commencement of your shift. Under no circumstances are messages to be left with a colleague. Text messages/ emails/ Private Messages are not an acceptable form of communication.

If you do not notify the Nominated Supervisor/Responsible Person and do not attend for your shift, it will be considered that you have abandoned your responsibilities and your employment may be terminated.

REQUESTING PERSONAL LEAVE

Personal leave should not be requested in advance. We encourage all medical appointments to be arranged outside of work hours. If a medical appointment or elective surgery is pre-arranged and it is advised the employee is unfit to work, then this will be discussed with the Nominated Supervisor prior to leave being approved.

MEDICAL CERTIFICATE REQUEST

For those in permanent positions, personal leave will only be paid when a doctor's certificate or statutory declaration is provided. If you are unable to gain a doctor's certificate for the personal leave day you must sign a statutory declaration and attach it to your timesheet.

UNPAID PERSONAL LEAVE

All employees, including casual workers, are entitled to 2 days unpaid Personal/Carer's Leave each year. Employees get 2 days unpaid carer's leave each time an immediate family member or household member of the employee needs care and support because of:

- illness
- injury or
- an unexpected emergency.

Full time and Part time employees are unable to use unpaid Personal leave if they have any accumulation of Personal Leave.

HEALTH OF EMPLOYEE

Employees may be requested to provide a medical clearance if management is concerned that the employee may have an injury or illness that provides a risk to their own health or wellbeing or the health or wellbeing to children or colleagues. The employee may be requested to take Personal Leave or Leave without Pay until a medical clearance is arranged.

PARENTAL LEAVE

Parental leave lets employees take time away from work for the birth or adoption of a child. The term 'parental leave' can include:

- unpaid parental leave
- government-funded payments-
 - Paid Parental Leave
 - Dad and Partner Leave
- employer-funded paid parental leave.

UNPAID PARENTAL LEAVE

Under the National Employment Standards in the Fair Work Act 2009, an employee employed with the same employer for 12 months or more before they or their partner gives birth or adopts a child, may be entitled to up to 12 months of unpaid parental leave. An employee can also request an additional 12 months' unpaid leave. (Including long-term casuals)

PAID PARENTAL LEAVE

The Paid Parental Leave scheme is an entitlement for working parents of children born or adopted on or after 1 January 2011. Eligible working parents can get up to 18 weeks of government funded Parental Leave Pay at the National Minimum Wage.

If the child's birth or adoption is on or after July 1, 2020, 30 of these days will be flexible- 12 weeks (60 days of payable days) and 30 *Flexible Paid Parental Leave* days. Flexible Days may be taken within 2 years of the child's birth or adoption Flexible Paid Parental Leave may be given to another person caring for the child if the parent chooses to return to work or are no longer the primary carer for the child.

Full-time, part-time, casual, seasonal, contract, and self-employed workers may be eligible for help under the scheme.

Parental Leave Pay doesn't change an employee's existing leave entitlements or provide a new entitlement to leave.

EMPLOYEE FUNDED PARENTAL LEAVE/ENTITLEMENT

The Paid Parental Leave scheme cannot be absorbed into a paid maternity or leave scheme provided by our Service. However, our OSHC Service will: insert information about your Service's employer-provided leave if applicable.

SAFE JOBS

An employee who's been on unpaid parental leave is entitled to come back to the job they had before going on leave.

An employee on unpaid parental leave can shorten their leave, if the employer agrees. If the employer doesn't agree, then the employee has to return to work on the planned date.

Our Service requests **4 weeks' notice** for any changes to the planned return to work date.

see: [Employee Checklist for Parental Leave](#)

REQUEST FOR FLEXIBLE WORKING CONDITIONS

Employers and employees can agree to change standard working arrangements to help employees balance work with other aspects of their lives. The employee must have worked with the employer for at least 12 months and the request fit into one of the following categories:

- a parent of, or have responsibility for the care of, a child who is school age or younger
- a carer (within the meaning of the Carer Recognition Act 2010)

- a person with disability
- aged 55 or older
- experiencing family violence, or
- providing care or support to a family member, or someone they live with, who is experiencing family violence.

The employee must make the request in writing and the employer must consider their request, discuss the request with the employee to try to reach an agreement about changes to their working conditions and respond in writing within 21 days.

The employer must state whether the request is granted or refused and provide reasons if the request is refused and only refuse a request on reasonable business grounds.

LONG SERVICE LEAVE

Long service leave applies to employees who are full-time, part-time or casual. If an employee has been working for the same employer for 10 years, they are entitled to 2 months (8.67 weeks) paid leave, to be paid at the employees ordinary gross weekly wage under the [Long Service Leave Act 1955](#) (the Act).

Employees are entitled to Long Service Leave as per state/territory laws or provisions. Contact the [long service leave agency](#) in your state or territory for further information.

To request Long Service Leave, employees must lodge a *Leave Request Form* and hand it to the Nominated Supervisor. Employees will be notified in writing if the request has been successful and approved. Leave will not be granted to any **two (2) employees** for the same period. Leave request forms must be submitted at least **2 weeks** before the leave is requested.

LEAVE WITHOUT PAY

Leave Without Pay will not be approved unless all existing Annual and Personal Leave has been granted. To request Leave Without Pay, employees must lodge a *Leave Request Form* and hand it to the Nominated Supervisor. Employees will be notified in writing if the request has been successful and approved. Leave will not be granted to any **two (2) employees** for the same period. Leave request forms must be submitted at least **2 weeks** before the leave is requested.

COMMUNITY SERVICE LEAVE

Community Service Leave covers voluntary emergency management activities, such as RFS/SES. Community service leave is unpaid, except for Jury Duty.

An employee engages in a voluntary emergency management activity if:

- the activity involves dealing with an emergency or natural disaster
- the employee engages in the activity on a voluntary basis
- the employee was either requested to engage in an activity, or it would be reasonable to expect that such a request would have been made if circumstances had permitted, and
- the employee is a member of or has a member-like association with a recognised emergency management body.

An employee is entitled to take community service leave while they are engaged in the activity and for reasonable travel and rest time. There is no limit on the amount of community service leave an employee can take.

JURY DUTY

Employees must advise their employers of the period or expected period of leave as soon as possible. If an employee requests leave, they need to provide evidence showing they attended jury selection or jury duty.

Employees are paid by the court a portion of their base pay rate per day. Employers may be required to provide make-up payment for the ordinary hours worked, for up to 10 days.

FAMILY AND DOMESTIC VIOLENCE LEAVE

From 1 February 2023, all employees of non-small business employers can take 10 days of paid family and domestic violence leave each year. This includes part-time and casual employees.

The entitlement to paid family and domestic violence leave comes from the NES. It's a minimum leave entitlement, like paid annual leave or paid sick and carer's leave.

Family and Domestic Violence Leave does not accumulate from year to year if it isn't used. The 10 days of leave renew every 12 months.

COMPASSIONATE LEAVE

All employees (including casual employees) are entitled to compassionate leave.

Compassionate leave can be taken when a member of an employee's immediate family or household:

- dies
- contracts or develops a life-threatening illness or injury
- a baby in their immediate family or household is stillborn
- they have a miscarriage
- their current spouse or de factor partner has a miscarriage

Full-time and part-time employees receive paid compassionate leave and casual employees receive unpaid compassionate leave.

Full-time and part-time employees are paid at their base pay rate for the ordinary hours they would have worked during the leave. Compassionate leave cannot be cashed out.

SUPERANNUATION

All employees who earn above the threshold limit will be entitled to superannuation paid at the statutory rate. Our Superannuation provider is [Bateau Bay Public School Before & After School Care P&C Association](#). If you wish to have your Superannuation paid to your fund of choice you will need to complete the "Superannuation Standard Choice Form".

TERMINATION/RESIGNATION CONDITIONS

Notice of termination of employment will be as per relevant Award. In the event of instant dismissal, the notice period may be paid, and the employee asked to leave immediately.

Employees who fail to give the required notice must forfeit the relevant termination pay. Notice to terminate employment must be given in writing to the Nominated Supervisor.

[Children's Service Award 2010](#)

Employee's period of continuous service with the employer at the end of the day the notice is given	Period of notice
Not more than one year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 year's	4 weeks

An employee/employer has to provide an extra week of notice if they are over 45 years old and have worked for the employer for at least 2 years.

Educational Services (Teachers) Award 2020

Period of notice - 4 weeks' notice

An employee/employer has to provide an extra week of notice if they are over 45 years old and have worked for the employer for at least 2 years.

ABSENCE FROM EMPLOYMENT WITHOUT NOTIFICATION

An employee may be taken to have abandoned their employment if they do not provide notification of absence. The Nominated Supervisor will make reasonable attempts to contact the employee, if the employee does not respond to these attempts the termination of employment procedure will be instructed.

TIME IN LIEU

Time in Lieu (TIL) may be accepted by an employee in agreement for additional hours worked instead of overtime.

To request Time In Lieu Leave, employees must lodge a Leave Request form and hand it to the Nominated Supervisor. Employees will be notified in writing if the request has been successful and approved. Leave will not be granted to any **two (2) employees** for the same period. Leave request forms must be submitted at least **2 weeks** before the leave is requested.

REVIEW

POLICY REVIEWED BY	Travis Broadhurst	P&C President	17/02/2023
POLICY REVIEWED	FEBRUARY 2023	NEXT REVIEW DATE	FEBRUARY 2024
MODIFICATIONS	<ul style="list-style-type: none"> policy maintenance - no major changes to policy hyperlinks checked and repaired as required new section- Continuous Improvement/Review added minor formatting edits within text 		
POLICY REVIEWED	PREVIOUS MODIFICATIONS	NEXT REVIEW DATE	
JUNE 2022	<ul style="list-style-type: none"> New Policy developed for OSHC Services 	OCTOBER 2022	