

The Australian Fair Pay and Conditions Standard



Australian Government

Office of the Employment Advocate



INDEX

Five standard entitlements.....	1
When does the Standard apply?.....	1
Is it possible to agree with my employer/employee that the Standard will not apply?.....	2
Standard entitlements by type of employee.....	2
Basic pay and casual loadings.....	3
Australian pay and classification scales.....	3
Federal minimum wage.....	6
Casual employees.....	6
Hours of work.....	9
Annual leave.....	10
Personal leave.....	15
Sick and carer’s leave.....	15
Compassionate leave.....	17
Unpaid parental leave.....	18
Maternity leave.....	18
Paternity leave.....	20
Adoption leave.....	22

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 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 except for the following:

- Employees whose employers are not constitutional corporations (unless they are employed either in Victoria or the territories or their employers fall within other specified categories).
- Employees who are bound by an Australian workplace agreement approved by the OEA, before WorkChoices commenced on 27 March 2006.
- Employees who are party to an Australian workplace agreement filed with the OEA before WorkChoices commenced. However, the date from which the Standard does not apply differs depending on whether:
 - the employee signed the agreement before they commenced their employment in the work covered by the agreement. In this case, the Standard does not apply from the date the agreement was filed with the OEA;
 - the employee was already employed in the work covered by the agreement. The Standard does not apply from the date the agreement is approved by the OEA. Prior to this date, the employer would need to comply with the Standard.
- Employees whose employment is to be covered by a Certified agreement certified by the Australian Industrial Relations Commission before WorkChoices commenced.
- Employees whose employment is to be covered by a Certified agreement filed with the Australian Industrial Relations Commission before WorkChoices commenced, once that agreement is certified. Prior to this date the employer would need to comply with the Standard.
- Employees whose employment is covered by a state employment agreement (individual or collective) made before WorkChoices commenced.
- Note that the Standard applies in a slightly different way in Victoria (refer to Employers, Additional information on WorkChoices operating in Victoria, at www.oea.gov.au)

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 10 days personal leave, and that entitlement is more favourable than under Mandy's contract of employment, she would be entitled to 10 days personal leave.

STANDARD ENTITLEMENTS BY TYPE OF EMPLOYEE

Does the Standard apply uniformly to all employees?

No. The application of the Standard varies 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	✓	x
	(b) Carer's leave	✓	x (except for unpaid carer's leave)
	(c) Compassionate 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 basic rate of pay, which can be either:

- a basic periodic or piece rate of pay as prescribed in the Australian Pay and Classification Scales; 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 WorkChoices and casual loading percentage is not less than the guaranteed casual loading percentage at the commencement of WorkChoices.

AUSTRALIAN PAY AND CLASSIFICATION SCALES

What will each Australian Pay and Classification Scales contain?

Each Australian Pay and Classification Scales 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 Scales be expressed?

Each Australian Pay and Classification Scales 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 Scales applies to my employment?

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

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 (e.g. a full-time of part-time employee).	Add	<p>Specific no. of hours The number of hours the employee is required to work during each week (the employee’s specified hours).</p> <p>Full-time but no specific no. of hours 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>Specific no. of hours over a period 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> $\text{No. of hrs required to work over the period} \times \frac{7}{\text{no. of days in that period}}$ <p>Trainees 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"> • the employer; • the terms and conditions of the employee’s employment; or • an applicable law. <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 4 hours.</p>
	Deduct	Any other hours (if any) of unauthorised absence from work.
	Result	The employee’s guaranteed hours

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 (e.g. 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	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 4 hours.
	Result	The employee's guaranteed hours

Who will set the rates of pay for each Australian Pay and Classification Scales?

Initially, the preserved Australian Pay and Classification Scales will be derived from relevant clauses from existing state awards and federal awards and certain state laws. This means that under WorkChoices, a Scale (made up of a periodic rate of pay or piece rate of pay, classifications and coverage provisions) will be based upon, for example the NSW shop employees (state) award.

The Australian Fair Pay Commission will set the basic periodic and piece rate of pay in each Australian Pay and Classification Scales from time to time.

The basic rate of pay in a preserved Australian Pay and Classification Scales will be at least equal to the federal minimum wage.

There is also a guarantee that the Australian Fair Pay Commission will not adjust basic pay rates below the rates as at the commencement of WorkChoices on 27 March 2006.

What if I am a casual employee?

There are special rules that apply to set the rate of pay for a casual employee.

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

If there is no appropriate Scale to apply to an employee's employment, the employee will be entitled to the Standard or special federal minimum wage.

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 is currently set at \$12.75 (subject to the power of the Australian Fair Pay Commission to adjust the federal minimum wage).

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 Scales 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 the special federal minimum wage?

The 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 Scales 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.

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:
If the employee: is covered by an Australian Pay and Classification Scales; and is not an Australian Pay and Classification Scales piece rate employee; and is not currently covered by a workplace agreement; and has never been a party to a workplace agreement.	The casual loading percentage in the Australian Pay and Classification Scales.
If the employee: is covered by an Australian Pay and Classification Scales; and is not an Australian Pay and Classification Scales piece rate employee; and has been a party to a workplace agreement that was terminated; and is not currently covered by a workplace agreement.	The higher of: the casual loading percentage in the Australian Pay and Classification Scales; and the default casual loading percentage (currently 20%).
If the employee: is covered by an Australian Pay and Classification Scales; and is not an Australian Pay and Classification Scales piece rate employee; and is currently a party to a workplace agreement.	The default casual loading percentage (currently 20%).
If: there is no applicable Australian Pay and Classification Scales to cover the employee; and the employee is entitled to receive either the standard or special federal minimum wage.	The default casual loading percentage (currently 20%).

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 Scales and is entitled to receive a basic piece rate of pay; or
- the employee is covered by an Australian Pay and Classification Scales and is entitled to receive a basic periodic rate of pay but the Australian Pay and Classification Scales 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 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.

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.

If an Australian Pay and Classification Scales applies to the employee's employment, the employer must comply with the frequency of payment provisions (if any) contained in the Australian Pay and Classification Scales.

If the applicable Australian Pay and Classification Scales 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 unless the following provides otherwise:

- the employee's workplace agreement, or
- the employee's written contract of employment.

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.

Agreement 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.

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 or a Notional agreement preserving state award, the hours of work guarantee will not apply for a period of 3 years from 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 guideline 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:		
<p>The employee is required to work a specific number of hours per week / period or full-time (e.g. a full-time or part-time employee).</p>	Add	<p>Specific no. of hours The number of hours the employee is required to work during each week (the employee’s specified hours).</p> <p>Full-time but no specific no. of hours 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>Specific no. of hours over a period If the employee is required to work a specific number of hours during a period other than a week (e.g. a fortnight) apply the following formula to determine the specified hours:</p> $\text{No. of hrs required to work over the period} \quad \times \quad \frac{7}{\text{no. of days in that period}}$	
	Deduct	<p>The number of hours (if any) the employee was absent from work on leave which does not count as service (e.g. maternity leave).</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 4 hours.</p>	
	Result	<p>The employee’s nominal hours per week</p>	
	<p>The employee is not employed to work a specific number of hours per week.</p>	<p>The lesser of 1 or 2 below:</p>	
<p>1. The number of hours worked out below:</p>			
Add		<p>The number of hours the employee was required or requested by the employer to work and did work in the week.</p>	
Add		<p>The number of hours (if any) in the week the employee is absent on leave that counts as service (eg. personal leave).</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 4 hours.</p>	
Result		<p>The employee’s nominal hours per week</p>	
<p>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.</p>			

For an employee who works 38 hours per week for 12 months, the entitlement to annual leave is 4 weeks.

Shift workers are entitled to 5 weeks of leave per year if they worked 38 hours per week.

Definition: shiftworker

Shift worker means an employee who:

- a. is employed in a business in which shifts are continuously rostered 24 hours a day for 7 days a week; and
- b. is regularly rostered to work on those shifts; and
- c. regularly works on Sundays and public holidays.

How is annual leave calculated?

Annual leave accrues 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:

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

At what rate is annual leave paid?

The Standard requires annual leave to be paid at the employee's rate of pay at the beginning of the period in which they take annual leave.

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 for an employee to take paid annual leave in advance of accruing that entitlement.

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 8 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 2 weeks per year for 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 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 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 the 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 4 weeks annual leave and also states that she can elect to take annual leave at half pay, that is, Amy may take 8 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 following two tables set out an employee's entitlements and obligations in relation to sick and carer's leave and compassionate leave.

SICK AND CARER'S LEAVE

	Paid sick leave	Paid carer's leave	Unpaid carer's leave
Who is eligible?	All employees (other than casual employees).	All employees (other than casual employees).	All employees (including casuals).
When can it be taken?	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/carer's leave entitlements if applicable.
What is the entitlement?	An employee is entitled to a personal/carer's leave entitlement which includes both sick and carer's leave of 1/26 of the nominal hours worked by the employee for each completed 4 week period. This equates to 10 days for an employee who works 38 hours per week.		2 days per occasion – this may be a single unbroken period of up to 2 days, or any separate period as agreed by the employer and employee.
When does it accrue?	After each completed four week period.	After each completed four week period.	Not applicable.
What should the employee be paid?	The amount that they would reasonably have expected to be paid had they worked during the period	The amount that they would reasonably have expected to be paid had they worked during the period	Not applicable
What limitations are there?	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 10 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/carer's leave entitlements.
Does this leave count as service?	Yes. A period of paid personal leave does not break an employee's continuity of service and counts as service	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,

	for all purposes.		except where expressly provided for by: a term or condition of the employee's employment; a law or instrument under a Commonwealth, state or territory law.
What notice must be provided?	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 because of a personal illness or injury of 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.
Is a medical certificate required?	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.		
Who is a registered health practitioner?	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.		
What must the medical certificate state?	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.
What must the statutory declaration state?	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.
Are there any exceptions?	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.

COMPASSIONATE LEAVE

	Paid compassionate leave
Who is eligible?	All employees (other than casual employees)
When can it be taken?	An employee may take compassionate leave when a member of the employee's immediate family or household member: contracts or develops a personal injury or illness that poses a serious threat to their life; or dies.
How much is the entitlement?	2 days per occasion. May be taken in a single unbroken period of 2 days or 2 separate periods of 1 day or as agreed by the employer and employee.
How much should the employee be paid?	The amount that they would reasonably have expected to be paid had they worked during the period.
What limitations are there?	The employee must give the employer any evidence that the employer reasonably requires of the illness, injury or death.

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; or
- provides that personal leave is credited and/or accrued more frequently than the Standard.

UNPAID PARENTAL LEAVE

What types of parental leave are covered under the Standard?

The Standard guarantees all eligible employees an entitlement to the following 3 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:
 - have completed at least 12 months continuous service with her employer; or
 - 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 6 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; and
- an application for maternity leave.

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 10 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 must be provided to the employer at least 4 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.

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 6 weeks before the expected date of birth of the child.

If the employee continues to work during the 6 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?

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.

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 care-giver. 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 10 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 10 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:
 - has or will have completed at least 12 months continuous service with his or her employer; or
 - 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 2 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 5 on the day of placement; and
- has not previously lived with the employee for a period of 6 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 3 weeks taken by an employee within the 3 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 care-giver.

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?
1. NOTICE	
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.
2. APPLICATION FOR LEAVE	
<ul style="list-style-type: none"> written application; first and last days of intended leave. 	<p>If short adoption leave - 14 days before the placement of the child.</p> <p>If long adoption leave – 10 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>
3. STATEMENT FROM ADOPTION AGENCY	
The day when the placement is expected to start.	Before the period of adoption leave commences.
4. STATUTORY DECLARATION	
<p>The employee must provide a statutory declaration stating:</p> <ul style="list-style-type: none"> the type of adoption leave taken (short/long/both); the first and last days of any other authorised leave taken because of the adoption of the child; the first and last days of adoption leave taken by the employee's spouse; 	Before the period of adoption leave commences.

<ul style="list-style-type: none"> • that the child is an eligible child; • that, if long adoption leave is taken, the employee will be the primary care-giver; • that the employee will not engage in any conduct inconsistent with the contract of employment while on adoption leave. 	
---	--

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.