

DEFENCE FORCE RESERVE LEAVE

The majority of Australian Defence Force reserves balance their military service with full or part-time work. Whilst much of a reservist's training commitments can take place outside their ordinary hours of employment, there will be occasions where he or she may be required to take leave.

Federal Legislation (the *Defence Reserve Service (Protection) Act 2001 (Cth)*) protects the rights of reservists. As there are criminal penalties associated with a breach of the Act, it's important that employers are aware of their obligations.

Taking Leave

The entitlement to take leave for military service  See *Defence Reserve Service (Protection) Act 2001 (Cth)* s. 17

The National Employment Standards in the *Fair Work Act 2009 (Cth)* do not contain a specific entitlement to leave for reservists. However, the *Defence Reserve Service (Protection) Act 2001 (Cth)* prohibits employers from "hindering" an employee from rendering defence service.

An employee must therefore be released for defence service, including attendance on training exercises. Employers should require their employees to provide notice well in advance of the leave, to enable alternative arrangements to be made. One way of achieving this is by implementing a reserve leave policy, outlining both employer and employee obligations.

Payment whilst on leave

An employer is not obliged to pay reservists whilst they are absent from work an employee will be on unpaid leave during such absence. An employee may choose to use a paid entitlement such as long service leave or annual leave whilst rendering defence service, but this is at their discretion - an employer cannot make this a condition of approving reserve leave.


Employer Support Payment Scheme (ESPS)

All employers who employ reservists are eligible to apply for payments to assist in offsetting the cost of releasing reservists. Payment can be claimed for both permanent employees and regular and systematic casuals.

ESPS payments are paid at a set rate regardless of the employee's salary. For part time and casual employees, employers receive payments on a pro rata basis.

For further information regarding ESPS payments, contact [Defence Reserves Support](#) on 1800 803 485.

Employment Protection for Reservists

Protection from Discrimination  See *Defence Reserve Service (Protection) Act 2001 (Cth)* Part 4, ss. 15-23

Part 4 of the *Defence Reserve Service (Protection) Act 2001* prohibits discrimination for the reason that a person has rendered defence service in the past, is presently serving, or may serve in the future – "a prohibited reason".

In relation to an employee, employers may not:

- > Change the terms and conditions of employment to his or her prejudice;
- > Discriminate against an employee in his or her terms and conditions of employment; or
- > Dismiss an employee, if it is for a prohibited reason, or for reasons including a prohibited reason outlined above.

A breach of the provisions in Part 4 is a criminal offence and carries a maximum penalty of 30 penalty units, amounting to \$6,660 for the 2020 Financial Year.

The Effect of Defence Service on the Contract of Employment

Suspension of contract of employment See *Defence Reserve Service (Protection) Act 2001* (Cth), ss. 26-28

If the defence force requires an employee to render defence service, whilst on leave the contract of employment is suspended rather than terminated. An employee may apply to the employer to resume work under the contract after the conclusion of military service, but must make this request within 30 days. In many cases, for example where the absence is for a fixed period with clear start and end dates, this may not be necessary.

Termination after resuming employment See *Defence Reserve Service (Protection) Act 2001* (Cth), s 32

If an employee is required to render defence service, the reservist's employer may not terminate the employee's employment or unfavourably alter his or her terms and conditions for a period equal to the length of absence on that period of defence service, except where:

- > It was not within the employer's power to retain the member in employment (such as a redundancy); or
- > The employee committed misconduct sufficient to justify a termination or variation

Leave Accruals and Entitlements See *Defence Reserve Service (Protection) Act 2001* (Cth), ss 29 - 31

If an employee takes reserve leave, the continuity of their employment is not broken by this leave, however, the *Defence Reserve Service (Protection) Act 2001* deals with the following entitlements:

- > Annual leave and leave loadings
- > Personal/carer's leave
- > Parental leave
- > Long service leave
- > Any other prescribed matter

Continuous Full-Time Defence Service (CFTS)	Other types of service
Entitlements are treated as if the employee had been on a period of leave without pay	Entitlements are treated as if the employee had been on a period of paid leave

For example, if an employee is on a period of leave which is CFTS, such as on an extended overseas deployment, annual leave and personal leave **will not accrue**.

Any other form of reserve leave has to be treated as paid leave, meaning that annual leave and personal leave **will continue to accrue**. The employer can offset this cost by applying for Employer Support Payments, outlined above.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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