

NATIONAL EMPLOYMENT STANDARDS – COMMUNITY SERVICE LEAVE

Community Service Leave forms part of the 'safety net' entitlements provided by the National Employment Standards (NES), which came into effect on 1 January 2010. The NES applies to all employees covered by the national workplace relations system, regardless of the applicable industrial instrument or contract of employment. However, terms in awards, agreements, employment contracts and State and Territory legislation can provide more favourable terms and conditions in addition to the minimum entitlements set out under the NES.

Community Service Leave provides employees with a right to be absent from work in order to engage in prescribed community service activities, such as emergency service duties and jury service.

Community Service Leave See *Fair Work Act* s. 108

Employees, including casual employees, are entitled to take leave and carry out certain community service activities such as:

- > Jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory;
- > 'Voluntary emergency management activity' if and only if:
 - > the activity deals with an emergency or natural disaster;
 - > the employee engages in the activity on a voluntary basis;
 - > the employee is a member of, or has a member-like association with, a 'recognised emergency management body'; and
 - > the body requests the employee to engage in the activity, or it would be reasonable to expect that such a request would have been made.

Definition of 'recognised emergency management body' See *Fair Work Act* s.109 (3)

A body or part of a body, that has a role or function under a plan that:

- > is for coping with emergencies and/or disasters;
- > is prepared by the Commonwealth, a state or a territory;
- > a fire-fighting, civil defence or rescue body, or part of such a body;
- > any other body, or part of a body, which substantially involves:
 - securing the safety of persons or animals in an emergency or natural disaster;
 - protecting property in an emergency or natural disaster; or
 - otherwise responding to an emergency or natural disaster.

The following are examples of bodies that would be recognised for the purposes of community service leave:

- > The State Emergency Service (SES)
- > The Country Fire Authority (CFA)
- > The RSPCA (in respect to animal rescue during emergencies or natural disasters).

Entitlement to Community Service Leave

There is no set limit on the amount of community service leave an employee is entitled to. An employee is entitled to be absent from his or her employment:

- > for the time that the employee is engaged in the eligible community service activity, including reasonable travelling time associated with the activity, and reasonable rest time immediately following the activity;
- > if the absence is reasonable in all the circumstances.

Please note that the requirement that the amount of community service leave taken is 'reasonable' does not apply to jury service.

Notification Requirements See *Fair Work Act* s. 110

An employee's absence from his or her employment is not covered by community service leave unless the employee complies with the notice and evidence requirements under the *FW Act*.

To be eligible for community service leave, employees must give their employer:

- > notice of the leave;
- > the period or expected period of leave; and
- > reasonable evidence that the employee is entitled to the leave (if requested by the employer).

Payment for Community Service Leave See *Fair Work Act* s. 111

The NES does not stipulate payment for Community Service Leave. However, s.112 states that the *FW Act* is not intended to overrule any State or Territory laws that provide entitlements to community service leave that are more beneficial to an employee. The applicable community service legislation in each State and Territory is listed below.

Victoria (Vic)

The [*Emergency Management Act 1986 \(Vic\)*](#) regulates emergency management in Victoria. Employees who are required to provide emergency services are not compensated for the time that they are absent from the workplace, however they are entitled to be absent from the workplace without discrimination for a reasonable period of time.

 See *Emergency Management Act 1986 (Vic)* ss 27

Compensation is payable by the WorkCover Authority if a volunteer emergency worker suffers personal injury (including death) or loss of or damage to property belonging to the worker or in the worker's possession or control while engaged in emergency activity.

South Australia (SA)

The [*Emergency Management Act 2004 \(SA\)*](#) regulates emergency management in South Australia.

 See *Emergency Management Act 2004 (SA)* ss 33

A person who is absent from employment on official duties in connection with response or recovery operations undertaken in accordance with this Act is not liable to be dismissed or prejudiced in employment by reason of that absence.

New South Wales (NSW)

The [*State Emergency & Rescue Management Act 1989 \(NSW\)*](#) regulates emergency management in New South Wales.

 See *State Emergency & Rescue Management Act 1989 [NSW]* ss 60B

An employer must not victimise an employee of the employer for being absent if the absence was due to the employee taking part in emergency operations as a member of an emergency services organisation and the absence occurred while this Part applied to the operations (pursuant to an order of the Premier under this Part).

Australian Capital Territory (ACT)

The [Emergencies Act 2004 \(ACT\)](#) regulates emergency management in the Australian Capital Territory.

 See *Emergencies Act 2004 (ACT)* ss 183

If an employee is absent from their employment to take part in an emergency operation during a state of alert or emergency, it is an offence to victimise an employee for being absent in order to take part. This can result in either a fine or imprisonment. Victimisation includes if an employee is dismissed, their engagement is terminated, changes are made to their position or circumstances of engagement or any other injuries to their employment. A volunteer is defined as a volunteer member, a casual volunteer or an emergency services support volunteer.

Tasmania (Tas)

The [Emergency Management Act 2006 \(Tas\)](#) regulates emergency management in Tasmania.

 See *Emergency Management Act 2006 (Tas)* ss 57

An employee who is absent from their usual employment for the purposes of participating in emergency management, or participating in a rescue and retrieval operation during or after the incident or other event that is the reason for the operation, is not liable for dismissal or loss of long service leave, sick leave, recreation leave or other benefits to which they may be entitled whether or not his or her usual employer has consented to that absence if –

- (a) the person is a member of, or has a member-like association with, the State Emergency Service, another statutory service, a municipal volunteer SES unit or an affiliated organisation and either –
 - (i) was requested by or on behalf of the State Emergency Service, statutory service, municipal volunteer SES unit or affiliated organisation to participate in the emergency management or rescue and retrieval operation; or
 - (ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made; or
- (b) the person has been directed or required under the exercise of emergency powers or special emergency powers to so participate in the emergency management or rescue and retrieval operation.

Western Australia (WA)

The [Emergency Management Act 2005 \(WA\)](#) regulates emergency management in Western Australia.

 See *Emergency Management Act 2005 [WA]* ss 92

An employee who is absent from their place of work in order to carry out an emergency management response is entitled to be paid by their employer for the period of absence on the time that they would ordinarily have worked for the employer. For the purpose of calculating the entitlement of an employee to long service leave, sick leave, recreational leave or other benefits to which the employee is entitled, the continuity of service of the employee is to be taken not to have been broken by this absence.

Northern Territory (NT)

The [Fire and Emergency Act 1996 \(NT\)](#) and [Emergency Management Act 2013 \(NT\)](#) regulate emergency management in the Northern Territory.

 See *Fire and Emergency Act 1996* (NT) ss 15

An employee who, during or immediately after a fire or other emergency, is absent from his or her usual employment or duties in connection with the fire or emergency, is not liable for dismissal, loss of long service leave, sick leave, recreation leave or other benefits to which he or she may be entitled under the industrial award or agreement applicable to his or her usual employment, by reason only of their absence on those duties, whether or not his or her usual employer has consented to the absence.

 See *Emergency Management Act 2013* (NT) ss 114

If a person is required to conduct or assist during an emergency situation, a state of emergency or a state of disaster; and as a result, the person is absent from his or her usual employment they are not liable for dismissal or loss of any their usual employment rights or benefits (including long service leave, sick leave and recreation leave) only because the person is absent, whether or not the person's employer has consented to the absence.

Queensland (Qld)

The *Public Safety Preservation Act 1986* (Qld) regulates emergency management in Queensland.

 See *Public Safety Preservation Act 1986* ss 44

An employee must not be dismissed from their employment if they were absent from their place of work because of a relevant direction related to this Act. The maximum penalty for this would be 40 penalty units or 1 year's imprisonment. An employee cannot be dismissed from their employment nor is their continuous service seen to be broken for the purposes of calculating the entitlement of any employee to long service leave, sick leave, recreation leave or other benefits to which the employee is entitled. If an employee is absent from their employment because of a relevant direction is entitled to be paid by the person's employer wages payable for the period of the employee's absence during normal working hours. These conditions will apply whether or not the employer in question has consented to the absence of the employee.

Employers should ensure that the applicable State or Territory legislation does not provide payment for an eligible community service activity. A modern award or enterprise agreement may also contain an ancillary term which entitles an employee to payment for community service leave.

With respect to jury service, under the NES an employee is entitled to 'make-up pay' for the first 10 days that the employee is absent for a period of jury service.

Make-up pay is the difference between:

- > any jury service pay the employee receives from the court (excluding any expense-related allowances); and
- > the employee's base rate of pay for each hour (or part hour) they would have worked, excluding separate entitlements, such as incentive-based payments and bonuses, loadings, monetary allowances, overtime or penalty rates.

Additionally, the *FW Act* allows State and Territory laws to continue to apply to employees where they provide more beneficial entitlements than the NES in relation to eligible community service activities. For example, the *FW Act* would not apply to the exclusion of a State or Territory law where it provided for a casual employee to be paid jury service pay.

In Victoria, payment to employees for Jury Service is currently \$40 per day for the first six days and \$80 per day thereafter. The obligation under the *Juries Act 2000* (Vic) is for employers to continue making up the difference in ordinary pay until the jury service is completed, which may extend past the 10-day limit under the *FW Act*. For more information please refer to the relevant fact sheet on the [NES - Juries Act 2000 \(Vic\)](#).

Evidence Requirements See Fair Work Act s. 110

An employer may require the employee to provide evidence that would satisfy a reasonable person:

- > that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and/or
- > the total amount of jury service pay that has been paid, or is payable, to the employee for the period (even if there was no jury service payment).

If the employer requires evidence, then the employer is only required to pay the employee upon receipt of the evidence.

Contacting the Victorian Chamber of Commerce and Industry

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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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