

ANNUAL LEAVE

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Authority and Application

Clause 45 of the *Victorian Public Service Enterprise Agreement 2020* (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 45 sets out an Employee's (other than a casual employee's) entitlement to paid annual leave.

Relevant provisions of the VPS Agreement

Clause 45 – Annual Leave

Specific arrangements for Senior Medical Advisors (Appendix 4 - DHHS)

Appendix 4 – Clause 33 – On-Call Duty Requirement

Supplementary Guidance Information

1. Accrual of annual leave

- 1.1. Annual leave entitlements accrue on a daily basis progressively throughout the year, starting from the commencement of the Employee's employment.
- 1.2. Unpaid absences do not count as service for annual leave accrual unless otherwise provided for in the Agreement.
- 1.3. Consistent with decisions made by the Full Bench of the Fair Work Commission and the Full Court of the Federal Court, an Employee who is absent from work and in receipt of workers compensation payments is entitled to take and accrue Annual Leave.

2. Applying for annual leave

- 2.1. Annual leave must be approved prior to being taken, other than in exceptional circumstances.
- 2.2. Requests for annual leave must be submitted by Employees using their Employer's leave request system and be made as soon as reasonably practicable prior to taking annual leave.
- 2.3. Requests for annual leave at half pay should be made by the Employee at the time of applying for annual leave. Requests for leave at half pay will be considered in the context of operational requirements and the needs of the Employee. The amount of accrued annual leave the Employee has at the time of their application may be considered in determining whether or not to grant an Employee's request for leave at half pay. Approval will not be unreasonably withheld.
- 2.4. Note that if the leave request is related to family violence, please refer to the Family Violence Leave Policy for further guidance, including other leave options which may be available.

3. Payment whilst on annual leave

- 3.1. Payment whilst on annual leave will be made to the Employee in the usual pay cycle. However, Employees may apply to be paid in advance of the taking of their annual leave (inclusive of the annual leave allowance) where special circumstances exist (e.g. where access to their normal bank account is not available or is greatly restricted). The request must be made when applying for annual leave. To be eligible to receive payment in advance, the application for annual leave taken in conjunction with the request for payment in advance must be made in writing and must be for a period of one week or more. The Employee must be absent on the pay day(s) that fall within the period of the request for payment of annual leave in advance.

4. Managing annual leave requests

- 4.1. Employers should consider leave requests promptly and take a balanced approach to their approval considering both the needs of the individual (including their personal and family responsibilities) and the operational requirements of the Employer. Leave requests, whether at full or half pay, will not be unreasonably refused.
- 4.2. Unless an Employee has an excessive annual leave, accrual which is being managed under clause 45.6 of the Agreement, the taking of annual leave must occur in accordance with clause 45.3 of the Agreement and by mutual agreement between the Employer and Employee.

5. Leave balances

- 5.1. Employers must review and monitor leave balances to ensure appropriate health and safety standards are met and that Employees do not accumulate excessive leave balances. Where Employees have excessive annual leave balances (as defined by clause 45.6(b)) they should be managed in accordance with the process set out at clause 45.6 of the Agreement.
- 5.2. All Employees should schedule to take 4 weeks of annual leave (pro-rata for part-time employees) by the end of the calendar year following the calendar year in which they are accrued and at a time convenient to the needs of the Employer and Employee. Unless otherwise agreed, fixed term employees should schedule any accrued annual leave before the end date of their fixed term contract.
- 5.3. An Employee may only take the leave they have accrued, unless otherwise provided for in clause 45 or agreed.

6. Managing excessive annual leave accruals

- 6.1. Where an Employee's accrued annual leave entitlement has not been taken by the end of the calendar year following the calendar year in which it accrued, the Employee and their Employer must genuinely try to agree upon the steps that will be taken to reduce or eliminate that leave accrual.
- 6.2. An Employee to whom a direction has been given under clause 45.6(b) of the Agreement is required to submit the directed leave using the leave request system applying at their Employer within 10 working days from the date the written direction was given.
- 6.3. In instances where an Employee does not make an alternative agreement with their Employer to take leave after a direction has been given in accordance with clause 45.6(b) of the Agreement, the Employee will be placed on paid annual leave for the period indicated in the original direction. The Employer should ensure it notifies payroll that the Employee has been placed on annual leave.

7. Occasions where annual leave may be re-credited

- 7.1. An Employee on paid annual leave may access an entitlement to Personal/Carers Leave (clause 51) or Compassionate Leave (clause 54) or Cultural and Ceremonial Leave (clause 60) if the need arises. The Employee may request that they be granted the other form of leave and re-credit their annual leave.
- 7.2. An application to substitute leave must include documentary evidence as required by the Agreement.
- 7.3. If the application is granted, the annual leave will be re-credited, and the Employee will access their Personal/Carer's Leave or Compassionate Leave or Cultural and Ceremonial Leave.

- 7.4. Where the Employee has been paid the annual leave allowance payable under clause 45.4 of the Agreement for the period of leave to be re-credited, the recovery of the overpayment will be managed in accordance with clause 33.5 of the Agreement.

8. Cessation of employment with the Victorian Public Service

- 8.1. An Employee who ceases employment with the Victorian Public Service (VPS) with a positive annual leave balance will have their final pay adjusted to include payment for the unused annual leave and annual leave allowance.
- 8.2. An Employee will have their accrued annual leave balance paid to them on the expiry of their fixed term contract, where that contract reaches its natural agreed end date, and the Employee has not found a new fixed term role or ongoing position in the VPS which commences prior to the completion of the existing fixed term contract.

9. Movement between departments or agencies covered by the Agreement

- 9.1. Annual leave entitlements will be transferred and not paid out where an Employee moves to another department or agency covered by the Agreement and the service is continuous.
- 9.2. Employees who are moving to a role with another Employer covered by the Agreement where service will be continuous should advise their Employer of this fact as soon as possible to ensure annual leave balances and other applicable entitlements can be transferred to their new Employer.

10. Taking annual leave in conjunction with an official interstate or overseas business trip

- 10.1. An Employee may request to take annual leave during or as an extension to official interstate and overseas visits. The length of leave taken should be in reasonable proportion to the duration of the official travel and must not give the impression that official travel is being used to subsidise private travel arrangements.
- 10.2. Leave, or an extension of private travel, taken while undertaking work related travel must not incur or result in any additional costs to the State.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An employee who is directly affected by a decision made or action taken pursuant to clause 45 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Related policies or documents

VPS Enterprise Agreement Common Policies

- Cashing Out of Annual Leave
- Personal/Carer's Leave
- Compassionate Leave
- Parental Leave
- Purchased Leave
- Christmas Closedown
- Other Leave
- Study Leave
- Family Violence Leave
- Review of Actions/Grievance

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Authorised by Industrial Relations Victoria:

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