
VPS Enterprise Agreement Common Policies

ANNUAL LEAVE

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Authority and Application

Clause 41 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 41 sets out an Employee's (other than a casual employee's) entitlement to paid annual leave.

Relevant provisions of the VPS Enterprise Agreement

Clause 41. Annual Leave

41.1 Entitlement to Annual Leave

An Employee, other than a casual Employee, is entitled to four weeks' paid annual leave for each year of employment. The entitlement accrues on a daily basis.

41.2 Entitlement to an additional week of annual leave for Shift Workers

- (a) A Shift Worker whose rostered Shift Work time of ordinary duty includes at least ten Sundays during the annual leave accrual year will be entitled to an additional one week's annual leave.
- (b) A Shift Worker whose rostered Shift Work time of ordinary duty includes less than ten Sundays during the annual leave accrual year will be entitled to additional leave at the rate of one-tenth of a working week in respect of each Sunday so worked.
- (c) A Shift Worker entitled to an additional week of annual leave may elect to take that fifth week's leave as an additional week's pay in lieu of the additional leave. Where the Shift worker elects to receive the additional week's salary in lieu of the leave, and the Employer approves that election, the Shift Worker shall be paid one week's salary at his or her ordinary rate of pay. Pro-rata payment would apply if the Shift Worker would not have been entitled to a full week's leave. There is no entitlement to any additional payment in respect of an annual leave allowance where a Shift Worker elects to receive the additional week's salary in lieu of the leave.

41.3 Taking of accrued annual leave

- (a) An Employee may only take the leave they have accrued, unless otherwise provided in this clause or agreed.
- (b) Annual leave entitlements must be taken 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. By agreement between the Employer and the Employee, leave may be deferred beyond that date. Unless otherwise agreed, the Employee may be directed to take leave, in accordance with **clause 41.6**.
- (c) An Employee may request that the whole or any the part of their annual leave be taken at half pay for a period equal to twice the period to which Employee would otherwise be entitled.
- (d) The Employer will consider operational requirements and the needs of the Employee when assessing applications for annual leave at half pay. Approval will not be unreasonably withheld.

41.4 Payment whilst on annual leave

- (a) Subject to **clause 41.4(b)**, each Employee who takes annual leave is entitled to be paid in addition to his or her salary the greater of the following two amounts:
 - (i) an annual leave allowance at the rate of 17.5 per cent of the Employee's salary for the period of annual leave including leave credited under **clause 41.2(a)** or **41.2(b)**; or
 - (ii) an annual leave allowance equal to any additional payments to which the Employee would be entitled for shift, Saturday or Sunday duty which the Employee would be required to perform if he or she was not proceeding on annual leave.
- (b) The maximum allowance payable under **clause 41.4(a)** will not exceed an amount calculated in respect of a salary at the top of Grade 4.

41.5 Payment of accrued annual leave entitlement upon termination

An Employee, who, upon retirement, resignation or termination of employment, has an outstanding annual leave entitlement, will be paid an amount equal to the unused annual leave entitlement and any unpaid annual leave allowance. Any annual leave allowance payable pursuant to this **clause 41.5** shall be calculated in accordance with **clause 41.4**.

41.6 Excessive annual leave accruals

This clause contains provisions additional to the NES about taking paid annual leave, to deal with excessive paid annual leave accruals.

(a) Dealing with annual leave accruals by agreement

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 Employer and Employee must genuinely try to agree upon steps that will be taken to reduce or eliminate that leave accrual. This agreement must be attempted before an Employer can direct that leave be taken under **clause 41.6(b)(ii)** or an Employee can give notice of leave to be granted under **clause 41.6(c)(ii)**.

(b) Employer may direct that excessive annual leave be taken

(i) An Employee has an excessive annual leave accrual if:

- the Employee has accrued more than eight weeks' paid annual leave; or
- the Employee is a Shift Worker who is entitled to an additional week of annual leave in accordance with **clause 41.2(a)** and has accrued more than 10 weeks' paid annual leave.

(ii) Where the Employer has an excessive annual leave accrual (and agreement has not been reached under **clause 41.6(a)**), the Employer may give a written direction to the Employee to take a period or periods of paid annual leave. Such a direction must not:

- result in the Employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks (taking into account all other paid annual leave that has been agreed, that the Employee has been directed to take or that the Employee has given notice of under **clause 41.6(c)(ii)**);
- require the Employee to take any period of leave of less than one week;
- require the Employee to take any period of leave commencing less than eight weeks after the day the direction is given to the employee;
- require the Employee to take any period of leave commencing more than 12 months after the day the direction is given to the Employee; or
- be inconsistent with any leave arrangement agreed between the Employer and Employee.

(iii) An Employee to whom a direction has been given under this clause may make a request to take paid annual leave as if the direction had not been given.

(iv) The Employer must not unreasonably refuse to agree to a request by the Employee to take paid annual leave.

(v) If leave is agreed after a direction is issued and the direction would then result in the Employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks, the direction will be deemed to have been withdrawn.

(vi) The Employee must take paid annual leave in accordance with a direction complying with this clause.

(c) Employee may require that leave be granted

(i) This **clause 41.6(c)** applies if an Employee has had an excessive annual leave accrual for more than six months and the Employer has not given a direction under **clause 41.6(b)(ii)** that will eliminate the Employee's excessive leave accrual.

(ii) If agreement is not reached under **clause 41.6(a)**, the Employee may give a written notice to the Employer that the Employee wishes to take a period or periods of paid annual leave. Such a notice must not:

- result in the Employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks (taking into account all other paid annual leave that has been agreed, that the Employee has been directed to take or that the Employee has given notice of under this clause);
- provide for the Employee to take any period of leave of less than one week;
- provide for the Employee to take any period of leave commencing less than eight weeks after the day the notice is given to the Employer;
- provide for the Employee to take any period of leave commencing more than 12 months after the day the notice is given to the Employer; or
- be inconsistent with any leave arrangement agreed between the Employer and Employee.

(iii) The maximum amount of leave that an Employee can give notice of under this clause is:

- four weeks' leave in any 12 month period; or
- five weeks' leave in any 12 month period if the Employee is a Shift Worker who is entitled to an additional week of annual leave in accordance with **clause 41.2(a)**.

(iv) The Employer must grant the Employee paid annual leave in accordance with a notice complying with this clause.

(d) Disputes in relation to the operation of clause 41.6

A dispute in relation to the operation of this clause may be dealt with in accordance with **clause 12** (Resolution of Disputes).

41.7 Agency specific annual leave arrangements

Accrual of leave by Senior Medical Advisors in the Department of Health and Human Services is specified in **clause 33.2** of **Appendix 4**.

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

Clause 33. On-Call Duty Requirement

33.1 Senior Medical Advisors must be contactable and available outside the normal hours of duty to respond to urgent program issues.

33.2 A Senior Medical Advisor whose role is listed in this clause and who is available outside the ordinary hours of duty to respond to program service delivery needs will be entitled to one week of annual leave for any period of 12 months service, in addition to any other annual leave entitlements under **clause 41, Section I** of this Agreement (Annual Leave).

- (a)** A practitioner in Mental Health Services, other than a Medical Officer, Senior Medical Officer and Registrar who is available outside the ordinary hours of duty to respond to clinical service delivery needs or to satisfy the statutory requirements of the *Mental Health Act 1986*;
- (b)** A Statewide Principal Child Protection Practitioner within the Office of Professional Practice who is available outside the ordinary hours of duty to respond to urgent program service delivery needs;
- (c)** A Director, Client Outcomes and Service Improvement in a division who is available outside the ordinary hours of duty to respond to urgent program service delivery needs.

33.3 Senior Medical Advisors may be required to remain on duty where the program, patient or client needs require, notwithstanding conferences or the expiration of normal hours.

Supplementary Guidance Information

1. Accrual of annual leave

- 1.1. Annual leave entitlements under this clause accrue on a daily basis progressively throughout the year, starting from the commencement of the Employee's employment.

- 1.2. The following absences will not count as service for the annual leave accrual purposes:
 - 1.2.1. Leave Without Pay (clause 63.2); and
 - 1.2.2. Unpaid Parental Leave (clause 51.18(c)).
- 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. Other than in exceptional circumstances, annual leave must be approved prior to being taken.
- 2.2. Requests for annual leave must be submitted by Employees using the leave request system applying at their Employer and be made as soon as reasonably practicable prior to taking annual leave.
- 2.3. Where an Employee wishes to apply for annual leave at half pay, they should do so 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 may be considered in determining whether or not to grant an Employee's request for leave at half pay.
- 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 annual leave taken in conjunction with the request for payment in advance must be for a period of one week or more.

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 41.6 of the Agreement, the taking of annual leave must occur in accordance with clause 41.3 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 41.6(b)) they should be managed in accordance with the process set out at clause 41.6 of the Agreement.
- 5.2. All Employees should schedule to take 152 hours 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.

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 41.6(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 41.6(b) of the Agreement, the employee's manager will notify payroll of the requirement for the Employee to be placed on paid annual leave for the period indicated in the original direction.

7. Occasions where annual leave may be re-credited

- 7.1. Where an Employee is on a period of paid annual leave and an entitlement to Personal/Carers Leave (clause 47) or Compassionate Leave (clause 50) or Cultural and Ceremonial Leave (clause 53) arises, the Employee may request that they be granted that other form of leave and re-credited 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 applicable annual leave amount will be re-credited, and the Employee will access their accrual of Personal/Carer's Leave or Compassionate Leave or Cultural and Ceremonial Leave.
- 7.4. Where the Employee has already received the annual leave allowance payable under clause 41.4 of the Agreement for the period of leave to be re-credited, the recovery of the overpayment will be managed in accordance with clause 29.5 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 who ceases employment with the VPS with a negative annual leave balance, will have their final pay adjusted to take into account the annual leave and annual leave allowance which was paid to the Employee prior to being accrued.

9. Movement between departments or agencies covered by the Agreement

- 9.1. Annual leave entitlements will be transferred where an Employee moves to another department or agency covered by the Agreement and there is no break in service.
- 9.2. Annual leave entitlements will not be paid out when an Employee moves to another department or agency covered by the Agreement, and there is no break in service.

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 41 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 12 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
- Christmas Closedown
- Compassionate Leave
- Leave Without Pay
- Parental Leave
- Personal / Carer's Leave
- Purchased Leave
- Study Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpsc.vic.gov.au/vps-enterprise-agreement-common-policies/>