

Leave Policy¹

Context

This policy outlines the leave provisions that employees may be able to utilise during their employment with Group Colleges Australia (GCA).

Scope

This Policy applies to all employees, except casual employees unless otherwise stated. Employees engaged on a part-time fractional basis are entitled to paid leave on a pro-rata basis.

Policy Statement

At GCA we recognise that, on occasion, our employees may need to draw on paid or unpaid leave. All employees have access to a variety of paid and unpaid leave arrangements as specified by law and in accordance with their terms and conditions of employment.

In general, planned leave must be mutually agreed, considering workloads and employee's needs. **Except in cases where the employee could not anticipate the absence, leave must be approved in advance using the Sage ESS (Employee Self Service) System.**

Types of Leave

Annual Leave

GCA is committed to providing opportunities where employees work in a safe and healthy environment and balance their work and life commitment. To this end, we encourage employees to take breaks from their employment and provides them with an opportunity to refresh themselves away from the work environment. It is in the best interests of employees and GCA that annual leave entitlements are taken each year

Note that GCA can direct an employee to take annual leave and the requirement is reasonable. A requirement to take annual leave may be reasonable if:

- the employee has an excessive annual leave balance²;
- and that there is a Christmas shut down period.

In assessing reasonableness the following facts are relevant;

- the needs to the employee and the GCA's operations
- any agreed arrangement with the employee
- custom and practice of GCA
- timing of the direction or requirement to take leave
- the length of the period of notice given.

¹ <https://www.fairwork.gov.au/leave>

² Annual leave may be considered excessive if an employee has more than 8 weeks annual leave see <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/annual-leave>

Entitlement

Each employee is entitled to a minimum of 20 days of paid annual leave for each completed 12-month period of continuous service.

Leave entitlements are calculated from an employee's first day of work and accrue in accordance with the rules defined by Fair Work Australia. Employees are expected to monitor and manage their personal annual leave provision.

Applying for Leave

All applications for annual leave shall be in **full days**.

Any request for annual leave must be made a minimum of four (4) weeks prior to the commencement of leave. Applications for urgent leave due to unforeseen circumstances may be approved at the discretion of the direct line manager and/or CEO.

Annual leave must not be taken if not approved prior to the commencement of the leave.

Excessive Leave

Unless a prior arrangement has been made to build-up annual leave with a view to taking a substantial break, employees with an annual leave balance of 40 days or more may be directed to take annual leave within the next three months.

Annual leave in Advance

Annual leave in advance may be granted upon request and at the discretion of the CEO. In such circumstances, where an employee leaves GCA, any outstanding payment for annual leave granted in advance may be deducted from their termination payment.

Annual Shut Down

GCA reserves the right to close down its offices on an annual basis for the purpose of allowing annual leave to all or the majority of employees concerned. GCA may require employees at its discretion, to take any accrued annual leave or unpaid leave (where an employee does not have sufficient accrued annual leave) during this close down period.

Cashing out of Annual Leave

Employees who are full time at GCA may request GCA cash out some of their accrued annual leave from time to time provided that:

- the employee maintains a minimum of 4 weeks annual leave after the cashing out;
- GCA agrees; and
- the agreement to cash out is made in writing and signed by the employee in question and the CEO.

Payment of annual leave on Termination

Annual leave accrued but not taken will be paid to an employee upon termination.

Personal leave

Personal leave enables employees to take time off when personally ill, injured or otherwise incapacitated, to attend necessary medical appointments or to care for or support a family or household member in similar circumstances.

An employee may use their accrued paid personal/carer's leave for personal illness or personal injury affecting the employee. An employee may also use this leave to provide care and support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of a personal illness, or personal injury affecting the member, or an unexpected emergency affecting the immediate family or household member.

Entitlement

In accordance with the Fair Work Act, an employee (other than a casual employee) is entitled, subject to their hours and terms of employment, to a minimum of **10 days** of paid personal leave per annum. Casual employees are entitled to take up to **2 days' unpaid carer's** leave per annum.

Such leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

Notification

An employee should notify his/her direct line manager as soon as possible if they are unable to attend work due to an illness or injury and should, if possible, provide an estimate of the duration of the leave.

The employee must notify their direct line manager:

- no later than 08.30 on the first day of absence; and
- on every day of absence.

If the employee's direct line manager is unavailable the employee should speak to the CEO.

Any employee absent from duty on the grounds of illness or caring purposes for any period of absence **1 day or more**³ shall be required to furnish a medical certificate/or statutory declaration,⁴ indicating the degree of incapacity, and the date the registered health practitioner⁵ believes the employee is able to return to work. If such evidence cannot be provided, then such leave may be treated as annual leave or as unpaid sick leave.

Breach of the notification and evidence rules

If an employee does not follow the rules on notification and evidence, then GCA may not be able to pay the employee sick pay to which the employee may be entitled; and/or may take disciplinary action against the employee.

GCA can require supporting documentation when an employee is considered to have taken excessive periods of leave or appears to have a pattern of leave taking (for example the employee takes every second Thursday off).

Payment for personal/carer's leave

Paid personal/carer's leave for employees, other than casuals, will be paid at the employee's base rate of pay for all ordinary hours of work in the period. This will not include payment for any allowance, loadings, penalties or the like. The payment will be processed at the usual pay time provided the employee has complied with the notice and documentation requirements.

³<https://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave/notice-and-medical-certificates>

⁴ See the Medical Council of NSW guidelines for medical certificates detailed in **Appendix A** the medical certificate should be from a registered health practitioner.

⁵ Registered medical practitioner is defined as 'a person registered or licensed as a medical practitioner under a law of State or Territory that provides for the registration of licensing of medical practitioners' see Division 2, The Dictionary Fair Work Act 2009

Exhausted Personal Leave

When an employee's provision for personal leave is completely exhausted, GCA may allow the employee to utilise any unused annual leave balance or to utilise leave without pay, noting that an employee cannot take leave without pay whilst any applicable accrued leave balances are available.

Unpaid Personal Leave

Casual employees and those full-time and part-time employees who have used their entitlement to paid carer's leave, are entitled to up to **2 days'** unpaid carer's leave for each occasion when a member of the employee's immediate family or household requires care or support because of:

- a personal illness or injury of the member; or
- an unexpected emergency affecting the member.

Long Service Leave

Entitlement

Under the Long Service Leave Act 1955 (NSW), all GCA employees are entitled to 2 months' paid leave after 10 years continuous service, and 1 month's paid leave for each subsequent 5 years of continuous service.

Pro rata long service leave is payable between 5 & 10 years continuous service on termination:

- (a) by the employee on account of illness or incapacity or domestic or other pressing necessity;
- (b) by the employer for any reason other than serious and wilful misconduct.

For more information on Long Service Leave please see **Appendix B – the NSW Long Service Leave Fact Sheet**.

Applying for Long Service Leave

Employees will be to take their long service leave at a mutually agreeable time, having regard to the operational requirements of GCA.

Employees intending to take their long service leave must submit their request at least 6 months in advance of the leave period. All requests must be reviewed and approved by the CEO.

Public Holiday

All employees, other than casuals, are entitled to NSW *gazetted* public holidays without loss of pay when the public holiday falls on the employee rostered workday.

Parental and Special Maternity Leave.

Parental leave is granted on the basis that an individual's career will not be disadvantaged by having a child. The aim of parental leave is to enable the employee and their family to work together to establish future care of their children. Parental leave also provides them

with the added security of knowing that they can return to the workforce when the parental leave period is over.

Entitlement

Employees (including de-facto partners, same-sex couples and single parents) with at least 12 months of continuous service (or 'regular and systemic service' in the case of casual employees) are entitled to 52 weeks of unpaid and parental leave, which must be associated with:

- the birth of a child to the employee or the employee's spouse or partner, or
- the placement of a child under 16 with the employee for adoption, or
- a situation where a permanent care order is made by the Children's Court, granting custody and guardianship to the employee, their spouse or partner for a child under 16; or
- a stillbirth; or
- the death of a child during the first 24 months of life⁶.

Where a baby has been born prematurely or suffers other birth related complications refer to **Appendix C**.

Special Maternity Leave

A pregnant employee who is eligible for unpaid parental leave if:

- she has a pregnancy related illness or
- if she has been pregnant;
- her pregnancy ends after at least 12 weeks because of miscarriage or termination
- the infant is not stillborn.

If an employee takes special maternity leave because of a pregnancy related illness, the leave will end when the pregnancy or illness ends, whichever is earlier. If she takes leave because of a miscarriage or termination, it can continue until she is fit for work. While the employee will not be entitled to special maternity leave if the infant is still born she may still be eligible for unpaid parental leave. Note that special maternity leave will not reduce the amount of unpaid parental leave an employee can take.

Compassionate Leave

Compassionate leave is paid leave taken by an employee to spend time with an immediate family member (or household member)⁷ who has a personal illness or injury that poses a serious threat to his/her life, and/or after the death of an immediate family or household member. Note that as of 10 September 2021, the Fair Work Act 2009 was updated to include miscarriage as a reason to access compassionate leave⁸.

⁶ Note after stillbirth or death of a child an employee parent may be entitled to take compassionate leave while on unpaid parental leave.

⁷ Immediate family is an employee's spouse, former spouse, de-facto partner, or former de-facto partner, child, parent, grandparent, grandchild, sibling, or a child, parent, grandchild of the employee's spouse or de-facto partner (or former spouse or de-facto partner). It also includes step relations as well as adoptive relations. See <https://www.fairwork.gov.au/leave/compassionate-and-bereavement-leave>

⁸ <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/personal-leave-and-compassionate-leave#compassionate-leave>

Entitlement

All employees are entitled to a period of up to **2 days** paid compassionate leave on each occasion where a family or household member has died, or the employee needs to spend time with a seriously ill family or household member. Additional unpaid leave may be granted at the discretion of the CEO.

Casual employees are entitled to **2 days of unpaid** compassionate leave in each circumstance.

Community Service Leave.

Community service leave entitles employees to be absent from work when engaging in eligible activities. Some elements of community service leave are governed by Fair Work Australia:

Community service leave encompasses the following activities:

- Jury Duty
- Defence Reserve
- Voluntary Service
- Cultural, Ceremonial or Religious Observance

Employees are entitled to be absent from his or her employment for the following periods:

- a reasonable amount of time for the engagement of the service (in the case of Jury Duty, the employee's period of absence is reasonable in all circumstances),
- reasonable travelling time associated with the activity, and
- reasonable rest time immediately following the activity.

Employees must notify their direct line manager and/or the CEO, of the expected period of absence as soon as possible and must provide reasonable evidence that the absence from work is because the employee is engaged in an eligible community service activity.

Family & Domestic Violence Leave

Employees experiencing domestic violence or an employee who is supporting a member of their immediate family experiencing domestic violence may use domestic violence leave to access medical, legal and support services as necessary.

Entitlement

All employees (including part-time and casual employees) are entitled to **5 days** unpaid family and domestic violence leave each year. Employees can day the leave one day at a time, or for the employee to take more than 5 days of leave. See here for more information <https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave>

Leave without Pay

In special circumstances, the CEO has the discretion to approve leave without pay that an employee is not specifically otherwise entitled to.

In general, leave without pay will not be granted in a situation where an employee has an applicable entitlement for paid leave (e.g. annual leave, personal leave, long service leave).

Responsibilities

Employees are also responsible for the following:

- familiarising themselves with their leave entitlements.
- requesting appropriate leave in accordance with accrual entitlement and legislation.
- affording management notice of prospective future leave requests to provide for adequate workforce planning and facilitation of the approval of leave applications.
- complying with leave request and approval process

The Line Manager and/or CEO is responsible for:

- considering and balancing operational and individual needs when approving leave.
- monitoring annual leave and long service leave balances
- planning with employees to utilise these leave balances.
- considering any paid or unpaid leave in excessive of entitlement
- not unreasonably refusing any request for annual leave or long service leave.

Legislative Context

- Fair Work Act 2009 (Cth)
- Long Service Leave Act 1955 (NSW)
- National Employment Standards
<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

Related Documents

- GCA Employment Contract
- Privacy Policy
- GCA Staff Grievance Policy

Version Control and Accountable Officers

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|-----|----|-------------------------------------|---------------|
| 003 | AK | Refresh | EMT Feb 2022 |
| 004 | AK | Addition of domestic violence leave | EMT Sept 2022 |
| 005 | AK | Refresh | EMT Feb 2023 |

APPENDIX A

See <https://www.mcnsw.org.au/medical-certificates-what-you-should-know>

The *Medical Council of NSW* states that the usual requirements for a medical certificate are:

- name and address of the practitioner issuing the certificate
- name of the patient
- date the examination took place
- degree of incapacity of the patient
- date the medical practitioner considers the patient is likely to be able to return to work
- be addressed to the party requiring the certificate as evidence of illness, for example, an employer, insurer or magistrate
- date the certificate was written and signed.

APPENDIX B

NSW LONG SERVICE LEAVE

See <https://www.industrialrelations.nsw.gov.au/employers/nsw-employer-essentials/long-service-leave-entitlement-nsw/> the Long Service Leave Factsheet is reproduced below.

Long Service Leave

A GUIDE TO LONG SERVICE LEAVE ENTITLEMENTS

Long service leave is a period of paid leave a worker can take after ten years of continuous

service with an employer. The Long Service Leave Act 1955 provides full-time, part-time and casual workers in NSW to 2 months (8.6667 weeks) paid long service leave when they have completed a continuous period of ten years service and further paid leave after each additional period of five years of service with that employer.

Continuous Service

There are circumstances where a break will not affect the continuity of a workers service but will not count when calculating the length of service, for example, a period of parental leave.

However, there are other breaks that will not affect the continuity or the calculation of service, for example, an absence due to illness or injury.

For more information please visit our website or refer to the Long Service Leave Act 1955.

Entitlements Between 5 and 10 Years

Under the following circumstances a worker who has completed five years (but less than 10 years) of service may be entitled to a payment for pro-rata long service leave:

- Resigns on account of illness, incapacity, domestic or other pressing necessity; or
- Dismissed for any reason except serious and wilful misconduct; or
- By reason of the death of the worker.

If the Business is Sold

If a business is sold in whole or in part and that business

- continues by the new owner as the same business; and the worker continues to be employed in that business the the continuity of the worker's service is not considered to be broken and the entitlement to long service leave will continue.

Taking Long Service Leave

Long service leave cannot be paid out. The long service entitlement must be taken as

leave or paid on termination. Long service leave can be taken in one

continuous period, or if the employer and the worker agree, as follows:

- Where the leave owing is two months - in two separate periods
- Where the leave owing is between two months and nineteen and one-half weeks in two or three separate periods
- Where the leave exceeds nineteen and one-half weeks - in two, three or four separate periods.

INDUSTRIALRELATIONS.

Paying Long Service Leave

Full-time or Part-time Workers

The payment for long service leave is based on whichever is the greater:

- The workers ordinary pay for the last pay period prior to the leave being taken; or the average weekly pay earned during the previous five years.*

Casual Workers

The payment for long service leave is based on whichever is the greater and at the workers current

- hourly rate of pay (including casual loading):
- The normal weekly number of hours averaged during the previous 12 months; or previous 5 years.*

*Shift allowances, penalty rates, overtime payments, travelling allowances and other expense related allowances are not included.

Piece workers, commission only workers

For workers who are remunerated otherwise than wholly in relation to an ordinary time rate of pay, such as piece workers or commission-only workers, the payment for long service leave is based on whichever is the greater:

The average weekly ordinary rate of pay earned during the previous 12 months; or the average weekly ordinary rate of pay earned during the previous five years.

Bonuses and Incentives

In addition, bonuses and incentives (commissions) received by the worker are averaged over the previous 12 months (or averaged over the previous five years if the five year average pay rate is used) and added to the weekly rate used to calculate the leave payment.

However, bonuses and incentives paid to workers who are otherwise paid above the annual high income threshold annually are not included. This figure is adjusted annually on 1 July.

Public Holidays

If a public holiday occurs during a workers long service leave, an extra day must be added if it is a day the worker would have worked had they not been on long service leave.

Understanding Federal Awards for Long Service Leave

The Long Service Leave Act 1955 may not apply if the employer is respondent to a pre reform federal award or is a member of an employer association (for example - the Motor Traders Association) that made them respondent to a pre reform federal award.

This is because some pre reform federal awards provide for long service leave (for example clause 4 of Part III of the federal Metal, Engineering and Associated Industries Award 1998) or there may be a separate long service leave award (for example – Vehicle Industry - Repair, Services and Retail - (Long Service Leave) Award 1977).

For Victoria

<https://business.vic.gov.au/business-information/staff-and-hr/long-service-leave-victoria/long-service-leave-an-overview>

Entitlement to take leave after 7 years

Employees are entitled to take long service leave after a minimum of 7 years continuous employment.

The amount of leave an employee is entitled to take is calculated on one-sixtieth of the period of employment, i.e. number of weeks employment divided by 60 equals the number of weeks entitlement. For example, if an employee has worked for 7 years, convert this to weeks, divide by 60, and this equals approximately 6.1 weeks. 6.1 weeks is the long service leave entitlement at that time. (The leave amount has not changed under the new LSL Act 2018.)

Taking Leave

At the employee's request

An employee can request to take long service leave at any time after 7 years continuous employment. The employer must grant the leave as soon as practicable following the employee's request unless the employer has 'reasonable business grounds' for refusing the request. The LSL Act 2018 defines what 'reasonable business grounds' may include. Previously an employee had to work a minimum of 10 years to be entitled to take leave.

Disputes over the timing of the taking of leave can be referred to the Industrial Division of the Magistrates' Court, either by the employer or the employee.

At an employer's direction

An employer may direct an employee to take leave by giving at least 12 weeks written notice. If the employee does not want to take their leave at the time nominated by the employer, they can apply to the Industrial Division of the Magistrates' Court.

Period of leave

Long service leave can be taken for any period of one day or more. It could be taken all at once or for any period of not less than one day at a time.

Long service leave at half pay

An employee can request to take a period of long service leave for twice as long as the period to which they are entitled, at half their ordinary pay.

Working elsewhere while on long service leave prohibited

It is an offence to work while on long service leave. It is also an offence to knowingly employ someone who is on long service leave.

However, where an employee has more than one job (for example, two part-time jobs), the employee may continue to work at one job whilst they are on long service leave from their other job, providing they do not work during the part time hours from which they are on long service leave.

APPENDIX C

Premature birth and birth-related complications

- Employees who experience premature births or other birth-related complications that result in their newborn having to stay in hospital or being hospitalised immediately after birth can agree with their employers to put their unpaid parental leave on hold.
- This means that while their newborn is hospitalised, parents can return to work and the period when they are back at work will not be deducted from their unpaid parental leave.

The employee can then resume their unpaid parental leave at the earliest of:

- a time agreed with GCA
- the end of the day when the newborn is discharged from the hospital, or
- if the newborn dies, the end of the day when the newborn dies.

<https://www.fairwork.gov.au/leave/maternity-and-parental-leave/parental-leave-for-stillbirth-premature-birth-or-infant-death>

APPENDIX D

List of documents referred to in the creation of this document.

| Name of Document | Institution Name | Website | Date Accessed |
|-------------------------|-------------------------|---|----------------------|
| Leave Policy | Melbourne University | https://policy.unimelb.edu.au/MPF1343/ | 16/1/2023 |
| Leave Management Rule | UNE | https://policies.une.edu.au/view.current.php?id=00142 | 16/1/2023 |
| Leave Policy | Macquarie University | https://policies.mq.edu.au/document/view.php?id=338 | 16/1/2023 |