

## Leave Without Pay *A guide for employers*

### What is leave without pay?

Leave without pay (LWOP) is an authorised absence during which an employee does not receive wages. It may be requested when paid leave has been exhausted or for personal circumstances that do not fall within another leave entitlement.

There is no general National Employment Standards (NES) entitlement to discretionary LWOP. Employers can usually decide whether to approve it, subject to applicable legislation, an award, enterprise agreement, employment contract or workplace policy. Specific unpaid leave entitlements under the NES must be treated separately.

### Unpaid leave entitlements under the NES

- Unpaid parental leave and related entitlements, where eligibility requirements are met.
- Unpaid carer's leave: up to 2 days for each qualifying occasion when an immediate family or household member needs care or support due to illness, injury or an unexpected emergency. Casual employees are eligible; full-time and part-time employees may use it when paid personal/carer's leave is unavailable for that occasion. It may be taken continuously or in agreed separate periods.
- Community service leave, including eligible voluntary emergency management activities and jury service. Eligible non-casual employees may receive jury service make-up pay for the first 10 days.
- Unpaid compassionate leave for casual employees: 2 days per qualifying occasion. Eligible non-casual employees generally receive paid compassionate leave.

*Employees may also have other statutory entitlements, including paid family and domestic violence leave. Before considering discretionary LWOP, check whether a different leave entitlement or workplace right applies.*

### When may discretionary LWOP be appropriate?

- Additional time away after annual leave has been used, or for study, travel and other personal commitments.
- An extended personal or family absence that is not otherwise covered by a statutory entitlement.
- Illness or injury after paid personal leave is exhausted, provided any other relevant rights and obligations have been considered.
- An agreed unpaid period during a shutdown where the applicable award, agreement and legal requirements permit it.

### Can an employer decline the request?

Generally, an employer may approve or decline discretionary LWOP after considering the circumstances and operational needs. The decision must not breach an applicable instrument or involve discrimination, adverse action or another unlawful response to an employee exercising a workplace right. Take particular care with requests involving pregnancy, disability, illness or injury, caring responsibilities, family and domestic violence or workers compensation.

## ● How to assess and document a request

1. Confirm the proposed dates, duration and broad reason for the absence. Seek only information or evidence reasonably needed to assess the request.
2. Check relevant NES entitlements, award or enterprise agreement provisions, the contract and workplace policy. Consider whether paid leave or another arrangement is suitable.
3. Assess staffing coverage, operational impacts, comparable decisions and any specific risks or legal obligations. Discuss practical alternatives where appropriate.
4. Provide a written decision. If approved, record the unpaid dates, any paid leave to be used first, expected return date, how extensions will be handled and any appropriate contact arrangements.
5. Notify payroll, retain the request and approval securely, and follow up before the agreed return date. Any extension should be requested and decided before the approved period ends.

## ● Effect on pay, leave and service

**Wages:** no wages are generally payable for hours covered by properly authorised discretionary LWOP.

**Annual leave and paid personal/carer's leave:** generally do not accrue during unpaid leave, subject to statutory exceptions and more beneficial provisions in an award or enterprise agreement. Community service leave is a notable exception.

**Continuity of employment:** approved unpaid leave generally does not break continuous employment, even where the period does not count as service for a particular entitlement.

**Unfair dismissal minimum employment period:** some unpaid leave or authorised unpaid absence is excluded from the period counted towards eligibility, potentially delaying the qualifying date.

**NES notice of termination:** authorised unpaid leave generally counts as continuous service when determining the notice period.

**Redundancy pay:** most unpaid leave generally does not count as service when calculating statutory redundancy pay, even though continuity may be preserved.

**Public holidays:** generally unpaid if they fall during unpaid leave. Special rules or differing outcomes may apply, including to agreed unpaid leave during a shutdown. Check the applicable provisions.

**Long service leave:** the treatment of unpaid leave differs across states and territories and, in some cases, by the reason for leave.

**Superannuation:** a fully unpaid period usually produces no ordinary time earnings on which super guarantee contributions are calculated. Super may still be payable on any amounts paid that attract super.

*The impact of LWOP depends on the type of absence, the relevant legislation and applicable industrial instrument. Confirm entitlements before approving lengthy periods.*

## Employee and employer responsibilities

Employees should request discretionary LWOP as early as practicable, supply appropriate details or supporting information, obtain approval before being absent (unless an existing entitlement applies), follow any reasonable agreed arrangements and return on the confirmed date.

Employers should consider requests fairly and consistently, check legal entitlements first, confirm any approval in writing, maintain accurate payroll and leave records, protect sensitive information and manage the agreed return date.

## Important distinction: LWOP, unauthorised absence and stand down

An **absence without approval** is not automatically LWOP. Before treating it as unauthorised or considering disciplinary action, establish the facts, allow the employee to respond and check whether a leave entitlement or protection applies.

A **stand down** is a separate legal mechanism and can occur without pay only where the relevant legal or industrial instrument requirements are met. An employer should not label a directed absence as LWOP without genuine agreement or another lawful basis.

## When to seek HR advice

**Seek advice for extended or disputed absences, medical incapacity or workers compensation, pregnancy or caring responsibilities, visa conditions, potential discrimination or adverse action risks, and any matter affecting service or dismissal entitlements.**

Need help from experienced HR Partners? The team at Now Actually can help. Contact us today!



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*This fact sheet provides general information only. The Fair Work Act 2009, applicable industrial instruments, employment contracts and state or territory legislation may affect individual circumstances.*