

Community Service Leave under the National Employment Standards

Under the National Employment Standards (NES), employees are entitled to be absent from employment while engaging in community service activities such as jury duty and voluntary emergency management activities. Below, the Employment Relations Team outlines some of the key features of community service leave under the NES.

Jury Duty

All employees, including casuals, are entitled to take leave to attend jury selection and jury duty. When this happens, an employee is required to inform their employer of the period of leave as soon as possible. Where a request is made under the NES, the business can ask the employee provide evidence they are attending jury selection or jury duty.

Full-time and part-time employees who are on jury duty are required to be paid 10 days of make-up pay by their employer. Make-up pay is the difference between the payment the employee receives from the Court and the employee's base rate of pay for the ordinary hours they would have worked.

After the 10 days have lapsed, the employer is under no obligation to continue to pay make-up pay however the employee may continue to receive payment from the relevant state or territory. It is therefore important that an employer also considers the relevant state or territory legislation.

Under the NES, casual employees don't get paid for jury duty. They may receive payment, however, under the relevant State or Territory legislation. For example, in Victoria, make-up pay for jury service will apply to casual employees.

Voluntary Emergency Management Activities

Aside from jury duty, an employee is entitled to community service leave where they engage in a voluntary emergency management activity.

An activity is considered a voluntary emergency management activity if:

- the activity involves dealing with an emergency or natural disaster;
- the employee engages in the activity on a voluntary basis;
- the employee had either requested to engage in an activity, or it would have been reasonably expected that a request would have been made if circumstances permitted; and
- the employee is a member of, or has a member-like association with, a recognised emergency management body

There is no limit on the amount of leave an employee can take for voluntary emergency management activities, and the period in which an employee is absent from work could consist of:

- the time when the employee engages in the activity;
- reasonable travelling time associated with the activity; and
- reasonable rest time immediately following the activity.

As with jury duty, where an employee proposes to take community service leave for a volunteer emergency management activity, the employer may request an employee to provide evidence that

they are entitled to take community service leave, and an employee must give notice of their absence as soon as possible and tell their employer when they expect to return to work.

If you have any questions or would like to discuss community service leave for your business, please don't hesitate to call the VANA Employment Relations Advice Line on 02 9083 0091.

Understanding the risks and considerations associated with summary dismissal

Summary dismissal refers to the termination of an employee without notice where the employee has engaged in serious misconduct. Terminating an employee on this basis is the most severe type of termination and can leave an employer at a greater risk of an unfair dismissal claim. Before considering summary dismissal, employers must undertake a thorough investigation to determine whether the employee has engaged in serious misconduct.

What is serious misconduct?

Serious misconduct is defined in the *Fair Work Regulations 2009*. Regulation 1.07 sets out that serious misconduct includes:

- wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment; or
- conduct that causes a serious and imminent risk to the health or safety of a person, or the reputation, viability or profitability of the employer's business;

Examples of serious misconduct include theft, fraud, assault, intoxication at work, and a failure to carry out a lawful and reasonable direction inconsistent with the employment contract.

Risks of summary dismissal?

While summary dismissal may seem appropriate in certain circumstances, a decision to summarily terminate an employee should be handled carefully. This is because Employers who summarily dismiss an employee face a higher threshold in proving that the termination was not harsh, unjust or unreasonable in the event of an unfair dismissal claim. In other words, the employer has to provide a lot of evidence to support the decision.

Summarily dismissing an employee also raises concerns around breach of contract. If an employee can establish their conduct did not amount to serious misconduct, an employer might then be liable for breach of contract for the termination. This may also mean other contractual terms such as restraint of trade obligations are no longer enforceable.

It's therefore vital that an employer understands the meaning of serious misconduct, and undertakes a thorough investigation into the employee's behaviour before making a decision about whether the employee should be summarily dismissed.

What are the key considerations?

To satisfy the higher standard in cases of summary dismissal, an employer must diligently investigate any allegations and consider all the circumstances, including: the seriousness of the allegations, any mitigating circumstances, whether there is enough evidence to make the decision, and whether any other form of disciplinary action is appropriate.

When allegations of serious misconduct arise, an employer must act promptly as delay will suggest that the conduct was not sufficiently serious to justify termination without notice. While there is a

need to act swiftly, the investigation process should not be rushed given the risks of getting it wrong!

Summary dismissal is a complex area of termination. While there'll be circumstances that justify termination without notice, an employer should seek advice from the VANA Employment Relations Advice Line as making the wrong decision could be costly. For advice and assistance, phone our workplace relations team today on 02 9083 0091.