



TO ALL PSA MEMBERS

KNOW YOUR RIGHTS TIME OFF IN LIEU (TOIL) AND FLEXTIME

The new 2010 Enterprise Agreement has improved conditions for Flexi Time, includes the 2006 Enterprise Agreement improvements for TOIL, increased the classification levels at which overtime must be paid, increased night shift penalty, and a penalty for working through a lunch break.

PRINCIPLES

No employee can be required to work additional hours as flexitime.

The industrial principles determining hours of work, flexitime, TOIL and paid overtime are contained in Awards and Enterprise Agreements applicable to PSA members, e.g. the S.A. Public Sector Salaried Employees Interim Award (SAPSSEI Award), and the South Australian Government Wages Parity (Salaried) Enterprise Agreement 20010 ('the EA').

1. An employee cannot be required to work more than 7.5 hours in any one day without being offered overtime.
2. The Award provision for overtime is that it is triggered by working hours in excess of 8 hours in any one day or 38 hours in any one week (Clause 6.1.1 SAPSSEI Award "Overtime"). The overtime payment or the TOIL is still calculated from an employee's normal hours, i.e. In excess of 7.5 hours in any one day or 37.5 hours in any one week.
 - (a) If an employee is working extra hours in a day under a Purchased Leave Scheme (Voluntary Flexible Working Arrangement (Clause 10.1.3 EA) overtime will not be paid until hours worked are in excess of the agreed hours.
3. If the employee requests, and their Manager agrees, then the employee can later take the overtime off in hours equal to the hours worked, in lieu of payment of the penalty rate prescribed, i.e. Time Off in Lieu of Overtime (TOIL) as per Clause 6.1.7 (SAPSSEI Award). (For Public Holidays, will be paid time & a half plus the time off – Clause 6.2)
4. Therefore, if an employee is required by their Manager to work more than 7.5 hour in a day, they receive paid overtime unless both manager and employee agree to TOIL.
5. Flexitime is separate from overtime and TOIL. Overtime can be worked and TOIL therefore can be accrued within the flexitime band width (8am – 6 pm) as per Clause 6.6 (SAPSSEI Award) for time worked in excess of 7.5 hours.
6. Approved flexitime schemes normally operate such that on days when the employee is due at work he/she can accrue flexitime within the hours of 8am and 6pm (band width). The employee is required to attend between 10am and 12 midday and 2pm and 4 pm (core hours).
7. Flexitime arrangements are subject to operational needs and agreements.
8. The PSA considers that all members should be given the opportunity to work and accrue flexitime.

9. An employee cannot be required to work outside their normal hours, e.g. 8.45am to 5pm, (Clause 20, Public Sector Regulations 2010) unless it is authorised overtime.
10. Flexitime is designed for the mutual advantage of the employee and the agency or worksite.
11. It is a mutual obligation of both employee and Manager to ensure that a minimum of 30 minutes unpaid meal break is taken after 5 hours work. Clause 22 of the EA (Meal Breaks) allows for alternative arrangements if the parties agree. Where an employee is required to work more than 6 hours without a meal break, they will be paid a 50% penalty until they have the prescribed break or finish work for the day. (This does not affect Correctional Service Officers, Clause 9.5 Award.)
12. It is essential that time sheets are filled out correctly. If a Manager knowingly authorises an incorrect time sheet, then this may incur disciplinary action.
13. EA Clause 19 (“TOIL Entitlements”) ensures that TOIL cannot be lost. It is important to ensure that TOIL is recorded as such. This was also included in the 2006 EA.
14. EA Clause 19 now ensures approved flexitime cannot be lost. If there is in excess of 10 days accrued Flexi or TOIL, the employee can apply to be paid out.
15. If an employee determines that the work situation requires that they work hours in excess of 7.5 hours, then if approved prior or subsequently, the excess hours should be recorded as overtime or accrued TOIL.
16. A Workplace Flexibility Agreement will override other provisions. This would have been agreed to by a majority of employees and is a written document. Such an Agreement needs to be approved by the Industrial Relations Commission and will apply as an appendix to the 2010 EA (Clause 17, EA).
17. Employees at and above ASO7, AHP4, PO4, MeS4, LSC4, LE4 levels (EA Clause 11), are not automatically eligible for overtime, unless they are on call and return to duty (EA Clause 12) or are regularly required to work excess hours (SAPSSEI Award, Clause 6.1.3.4).
18. If employees are required to work two or more hours after their normal finishing time they are eligible for tea money or a meal (SAPSSEI Award, Clauses 5.3.1.2 and 5.3.1.4).
19. Shift Workers, as well as being paid a shift allowance, are also eligible for TOIL and overtime, but if they are paid overtime cannot also receive the shift allowance. They receive the higher rate applicable.
20. Excessive workload – The PSA ensured a “no unreasonable workload” clause (14.4) is in the EA. It is important that members do not allow workload to increase by working flexitime and then not taking time off.
21. An employee may be required to work reasonable overtime (Clause 6.1.4 SAPPSEI Award), for which paid overtime rates apply. They cannot be required to work extra hours within a flexitime arrangement (Clause 6.6 SAPPSEI Award).

For any enquiries or concerns please contact Acting Assistant Chief Industrial Officer Ian D Peak on 8205 3294 or email: ian@cpsu.asn.au

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