



# MEMBER UPDATE

## AFPA Industrial Dispatch #31 5 July 2018

Welcome to edition 31 of the AFPA Industrial Dispatch, a regular bulletin from the Legal and Industrial Team to keep our members up to date with significant industrial issues.

### CURRENT SIGNIFICANT ISSUES

#### Attendance of Employer and/or Rehab Provider at Medical Appointments

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Comcare have advised that Rehabilitation Providers should meet with your GP or your treating medical professional to discuss your progress with regards to your rehabilitation.

In the interests of best practice, Comcare says, it is generally considered an advantage for all stakeholders in the rehabilitation process to have the Rehabilitation Providers attend regular GP or treating practitioner appointments with the employee, although the provider should not be present during any physical examination or treatment. An appointment can be split into two parts, the provision of treatment and/or examination followed by discussion with stakeholders around progress with rehabilitation.

This is also an acceptable practice in our view, when members attend other workplace medical examinations/appointments, such as a fitness for duty medical. It is important to remember if an employer representative wishes to attend these appointments with you they first must seek your permission to attend.

Recent advice from the ACTU states that “there is no legal or operational basis for employers or their representatives to be present during a medical consultation between an injured worker and a treating doctor. This applies even where treatment is recommended or facilitated by the employer.”

#### Leave approvals

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It is a timely reminder to all members to continue to check your payslips every fortnight. Whilst this may seem tedious, this is the best way to ensure you are not over or under-paid.

When applying for Recreation and Long Service leave, ensure your leave has been approved prior to taking that period of leave. If your leave balance is not updated after taking recreation leave or you may have taken LSL at half pay, either scenario may result in an overpayment.

Also ensure your personal leave has been submitted and approved as soon as practicable to avoid similar issues.

You are responsible to ensure your leave is approved and the balances are accurate; the AFP records will only be as reliable as the information that is entered.

If you have any concerns about your leave balances or under or over-payments that may have occurred, please contact our team.

### **Performance Development Agreements (PDAs)**

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It is essential that all employees have a current PDA in place to receive their pay increase under the 2017–2020 Enterprise Agreement (2017 EA). The AFP have advised that each employee without a current PDA has been notified by email. Remember it is your responsibility to open and draft your PDA. If you require assistance, please contact our team.

### **Excessive Annual Leave and MRDs**

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AFFPA members are encouraged to familiarise themselves with clause 36(4) the 2017 EA, this clause provides that members may be directed to take 76 hours (2 weeks) of annual leave where their annual leave balance exceeds 228 hours (6 weeks). A similar clause in the 2012–2016 EA provided that members could be directed to take annual leave where their balance exceeded 304 hours (8 weeks). Importantly, for those members who accrue MRDs they must reduce their annual leave balance to 228 hours by 1 March and 1 September of each year otherwise they will not be eligible for MRDs (clause 40 of the 2017 EA).

Some members have been told by the AFP that their annual leave balance will not include any pre-booked leave. Naturally this caused quite a bit of frustration as annual leave balances as they appear in Insight include any pre-booked leave.

Sometimes, due to staffing issues or operational demands, it is not possible to take a large period of leave within a six month period. A change to the definition of *annual leave balance* would negatively impact members' ability to receive MRDs and also impact on operational requirements. We have confirmed with AFP Industrial Relations that annual leave balances **will include any pre-booked leave**, which allows members to pre-book leave if required to ensure leave balances do not exceed 228 hours and still receive MRDs.

If you are being told otherwise or have any questions, please contact Anish ([anish.prasad@afpa.org.au](mailto:anish.prasad@afpa.org.au)) to discuss further.

### **Members previously in receipt of High Volume Operations composite and the new EA**

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The AFFPA have received a number of queries from members previously in receipt of the High Volume composite allowance under the 2012 EA, regarding the transition from this allowance to a post-paid model for excess hours. We have received the following advice from AFP Industrial Relations.

#### Payment of Overtime for Excess Hours – Operations Working Pattern

As you are aware, the new EA commenced part way through the current six month averaging period (on 24 May 2018). Whilst no teams/roles are assigned to the High Volume composite allowance on commencement of the new EA as communicated throughout negotiations, approved excess hours (above the required hours of the Operations working pattern) will be remunerated through overtime; subject to section 26 of the new EA.

#### Reconciling Hours – Operations Working Pattern

The current six month averaging period will continue until end of August 2018. Whilst members previously receiving the High Volume composite were required to work 'up to' 50 hours per week, there was no requirement for hours in debit under the High Volume model or the Operations working pattern to be reconciled (deeming provisions previously existed for the Operations working pattern). Under the new EA, there is now a requirement for employees under the Operations working pattern to reconcile hours in debit by the end of the averaging period. As there is no transitional provision for this requirement, this means that employees under the Operations working pattern with hours in debit (i.e. less than 40 hours on average per week, not less than the 'up to' 50 hours per week previously required under the High Volume model), will need to reconcile these hours before the end of the averaging period.

If the average of 40 hours per week are not reconciled by 31 August 2018, they will automatically carry over to the next three month averaging period commencing 1 September as a debit balance. There are some exemptions to this requirement detailed in the *Better Practice Guide (BPG) on AFP Working Patterns (under Part 1.1 of Attachment A to this guide)* which you are encouraged to familiarise yourself with.

#### Leave Deductions

Under the previous 2012 EA, reasonable additional hours required to be worked across the averaging period by an employee receiving the High Volume composite were reduced by 2 hours per day for every working day of leave or training. Under the Operations working pattern, given that expected hours are 40 hours per week (averaged across the averaging period), leave is deducted at the rate of 7.6 hours per working day of leave, with 8 hours attributing toward the averaging period. The 7.6 deduction factors in a paid meal break if the shift would have been worked at 8 hours.

If you have any further queries, please contact the Legal and Industrial Team.

#### **Maternity Leave – Federal Court proceedings**

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We have received a number of enquiries regarding the impact of the proceedings before the Federal Court in relation to having all periods of paid maternity recognised as service, including maternity leave taken at half pay.

The proceedings were to be before the Federal Court for first mention on 25 June 2018, however the AFP requested that the proceedings be adjourned for 4 weeks. The matter will now be first mentioned on 20 July 2018.

We will continue to keep all members up-to-date, including those who have sent enquiries regarding the proceedings.

If you have any questions regarding this, please contact Matthew Peterson ([matthew.peterson@afpa.org.au](mailto:matthew.peterson@afpa.org.au)) to discuss further.

#### **INDUSTRIAL QUERIES**

If you have any industrial queries or queries about issues raised in this Dispatch, please contact Sharon, Anish, Matt or Sam at [afpa@afpa.org.au](mailto:afpa@afpa.org.au) or call us on (02) 6285 1677.



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