

Military Leave - *Defence Reserve Service (Protection) Act 2001* and Extension of Military Leave through 'Top Up' Pay

This circular provides information on the *Defence Reserve Service (Protection) Act 2001* which requires an employer to release employees to undertake duties as members of the Defence Forces. This circular also provides information on Extension of Military Leave Through 'Top Up' Pay under the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*.

Release of Defence Force Reservist

Section 17 of the *Defence Reserve Service (Protection) Act 2001* makes it unlawful for an employer to hinder or prevent an employee from rendering, or volunteering to render, defence service. Accordingly, agencies are legally obliged to release employees to undertake duties as members of the Defence Forces.

Clause 73, Military Leave, of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* (the Conditions Award), reflects the need for agencies to release employees for Defence Reserve Service in accordance with the *Defence Reserve Service (Protection) Act 2001*.

The entitlement to paid military leave is subject to clause 73.1 of the Award. In accordance with that clause, employees may be granted military leave on full pay to undertake compulsory annual training and to attend schools, classes or courses of instruction or compulsory parades conducted by the employee's unit.

Top Up Pay provisions under the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*

Clause 73.5 of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* (Conditions Award) makes available a Military Leave Top up Pay provision.

For leave in excess of the current military leave entitlement of up to 24 days for army and naval reservists and 28 days for air force reservists, public service employees will receive Top up Pay. The amount is the difference between their Reservist pay paid by the Commonwealth Department of Defence, and what they would ordinarily have received if they were at work. During periods of Top up Pay the Government will maintain Reservist's superannuation, and Reservists will continue to accrue sick leave and extended leave entitlements.

Agencies should note employees are to be offered the choice of taking annual leave or extended leave rather than Top up Pay.

Employees will need to provide a certificate of attendance or other authentication signed by the Commanding Officer (or other responsible officer) to receive Top up Pay.

It is expected that the potential cost of the Top up Pay scheme will be offset, in part, by the operation of the Commonwealth's Employer Support Payment (ESP) Scheme, which is designed to compensate employers for releasing their employees for Defence Force service. For specifics on the scheme including the requirements for it to apply, Agencies should contact Defence Reserves Support on 1800 803 485 or email: nsw.drsc@defence.gov.au

Other public sector employers are strongly encouraged to adopt Top up Pay provisions for Reservists who are requested to provide additional military services in excess of existing entitlements.

The cost of Top up Pay can be partly offset by the Commonwealth Defence Employer Support Payment Scheme which compensates employers for the absence of employees on military leave. For specifics on the scheme including requirements for it to apply, Agencies should contact Defence Reserves Support on 1800 803 485 or email: nsw.drsc@defence.gov.au

Philip Gaetjens
Secretary

Further Information:

Which agencies does this Circular apply to?

Section 17 of the *Defence Reserve Service (Protection) Act 2001* makes it unlawful for an employer to hinder or prevent an employee from rendering, or volunteering to render, defence service. Employers are legally obliged to release employees to undertake duties as members of the Defence Forces.

Top up pay applies to employees covered by the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*. Top up pay provisions are also contained in other industrial instruments and agencies should refer to these in regards to Top up pay entitlements. Other NSW Government sector employers are strongly encouraged to adopt Top up pay provisions for Reservists who make themselves available for peacekeeping operations overseas, or who undertake defence forces training in excess of existing entitlements.

Who needs to know about this Circular?

Secretaries, Senior Executives, Managers, Employees, Payroll, Industrial Relations, Human Resources.

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This Circular consolidates C2006-25 Military Leave - Defence Reserve Service (Protection) Act 2001 and C2004-38 Extension of Military Leave Through 'Top Up' Pay
