



# Leave Policy

GOVERNMENT OF THE COOK ISLANDS

Effective: January 19 2022

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## Policy Statement

This Policy upholds good Employer principles, promotes healthy and safe working conditions and work-life balance for Public Sector Employees. It also provides a transparent framework for the approval and administration of leave and work absences.

## Scope

This Policy applies to Employers and Employees of Public Service Departments, Island Governments, Crown Agencies and Ministerial Support Offices.

Exclusions:

- Annual leave for Primary and Secondary School Employees
- Casual Employees who are only entitled to minimum terms and conditions provided in the Employment Relations Act 2012

## Principles

The Public Service Act 2009 identifies the following values for Public Servants to adhere to:

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Honesty	acting honestly, being truthful, and abiding by the laws of the Cook Islands
Impartiality	providing impartial advice, acting without fear or favour, and making decisions on their merits
Service	serving the people well through faithful service to the Government of the Cook Islands
Transparency	taking actions and making decisions in an open way
Accountability	being able to explain the reason for actions taken, and taking responsibility for those actions
Respect	treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect
Efficiency and effectiveness	achieving good results for the Cook Islands in an economical way

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The duty to act as a good Employer requires Employers to develop and implement Personnel Policies which ensure the fair and proper treatment of Employees during employment, including the impartial recruitment of Employees, Employee capability development opportunities and good and safe working conditions.

## Legislation and Regulations

The Public Service Act 2009, Employment Relations Act 2012, Public Holidays Act 1999 and other relevant legislation.

## Definitions

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**Agency** means any public service Department, instrument, or Agent of the Government and includes a body corporate or organisation that is wholly owned or controlled by the Crown

**Casual** Employees have irregular working hours, or work intermittently, or are employed for short term work only

**Civil Duty** for the purposes of this Policy means civic work performed by eligible Employees. For example: Jury Service, summoned to Parliamentary Select Committees, natural disasters, state of emergency

**Disasters** cause serious disruption to a community, business or household's functions through significant human, material, economic, environmental impact and losses

**Employee** means any person who is an Employee of the Public Sector

**Employer** means the Head of a Public Sector Department or Crown Agency, Ministerial Support Office or other Agency or their delegated authority

**Employment Agreement** means a written agreement or contract of employment

**Full time Employee** is an Employee who works a minimum of 35 hours per week and has a reasonable expectation to work these hours each week

**Normal Place of Work** means the place or site where an Employee is usually stationed to work

**Part Time** Employees are employed for less than 35 hours per week, with regular hours of work each week and have a reasonable expectation of working these hours each week

**Per annum** means fiscal year 01 July to 30 June

**Person of close association** can include a: spouse/partner; child; brother/sister including in-law; parent including in-law; grandparent; and grandchild

**Pro Rata** means proportionate allocation to the full time hours

**Public Service Commissioner** means the Public Service Commissioner appointed under Article 73 of the Constitution and Section 5 of the Public Service Act

**Special Leave** is a non-statutory category of leave which Employers may approve within the scope and terms of this Policy. It is not an entitlement

**Statutory Leave** is legislated leave such as: annual leave; sick leave; maternity leave; and paternity leave identified in the Employment Relations Act and Public Holidays Act

**Time-Off-In-Lieu (TOIL)** means approved time off from work equivalent to extra or additional hours worked

## Procedures

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Employers are responsible for administering this Policy. The Employer is responsible for ensuring all policies are easily accessible to Employees however, the onus lies with the Employee to read, understand, familiarize and comply with this and any other relevant Government policies. Any person who breaches this Policy may have committed an act of misconduct and may be subject to disciplinary action and/or dismissal.

### Employers:

- Must approve all leave taken and can approve leave taken retrospectively
- Must ensure leave is taken according to an Employee's entitlement and accrued benefits
- Must decide on leave applications and notify Employees as soon as practicable
- May put an Employee on Leave without Pay, if he/ she is absent without notice or reason
- Must ensure Employee approved leave does not negatively impact on the Agency's work
- Must maintain effective workforce planning and rostering
- Must maintain anticipated leave calendars to improve personnel leave management
- Must provide for Employees to access their leave balances
- Must ensure supporting documentation for approved leave is retained for audit purposes
- Should actively encourage and allow Employees to take accrued Annual Leave periodically
- Must return hours of leave back to Employees who are already on leave but are requested to come back to work before end of their expected leave date
- Must be aware of their obligations under the Employment Relations Act

### Employees:

- Are encouraged to take leave for their own well-being
- Are responsible for monitoring their leave balances
- Must ensure leave taken has been correctly recorded
- Are entitled to payment of accrued Annual Leave upon termination of their employment
- Can apply to take Annual Leave which has accrued after three months of continuous service during the first year of employment

## Applications and Approval

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Leave applications should identify the:

- Type of leave being requested
- Amount of leave (days)
- Dates inclusive of when leave commences and ends

**Annual leave** applications should be submitted for approval as soon as practical or at least two weeks before the planned Annual Leave, particularly for continuous periods of three or more working days. Shorter approval periods are permissible for less than three working days.

**Sick leave** is primarily reserved for the Employee or a person of close association, exceptions to this are at the discretion of the HoM, when unwell.

Employees or a representative must contact their Employer, as failure to do so may result in the Employee being placed on Annual Leave or Leave without Pay.

Applications must be made as soon as practicable.

Employees must provide an appropriate Medical Certificate when applying for Sick Leave exceeding two consecutive days. Sick Leave is only recorded for working days the Employee is absent from work.

Employers may request a medical certificate and medical examination (at their cost) if they require a second opinion, to consider approving an Employee's Sick Leave application.

All Sick Leave benefits must be exhausted before Compassionate Leave can be applied for in circumstances where Sick Leave would otherwise be appropriate.

In instances where a regular pattern on the use of Sick Leave has been established, the Employer may require an Employee to undergo an examination by a Registered Medical Practitioner of the Employer's choice (at the Employer's cost). Where the Employee is found to be unfit to perform the current duties required, then alternate duties should be arranged for the Employee if appropriate. If the Employee is unable to undertake any form of duties, then they may be placed on Sick Leave or Leave without Pay as appropriate, until cleared to return to work.

**Maternity/Paternity leave** applications should be requested as soon as practical or at least one month before the expected date of delivery. Confirmation of the expected date of delivery from the maternity care provider is required.

In the event of a legal adoption, an application should be made as soon as possible with documentation verifying the Employee's intention to adopt.

**All other leave** applications should be made as soon as practical.

## **Annual Leave**

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Annual Leave is paid time off from work primarily for rest and recreation. Full time Employees can accrue 20 days per annum on a pro-rata basis - based on hours worked or during periods of paid leave. Employers and Employees are strongly advised against accruing leave balances beyond 30 days.

Part time Employees are entitled to leave accrued on a pro-rata basis - based on hours worked in comparison to hours of work in proportion to the 20 days per year accrual of full time Employees and in accordance with the provisions of the Employment Relations Act.

Employers and Employees must agree on times for leave to be taken. If a leave application is denied, then both parties must agree on an appropriate time when the leave may be taken.

Employees should not commit to holiday plans until Annual Leave has been approved.

Approving advanced Annual Leave (entitlements not yet accrued) is discouraged to minimise financial risk and liability to the Agency and Government.

An Employee's accrued Annual Leave will not be paid out unless the Employee ceases employment with the Agency.

### **Sick Leave**

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**Sick leave** is primarily reserved for the Employee or a person of close association, exceptions to this are at the discretion of the HoM. This may include:

- Is ill or injured
- Is required to travel overseas for medical examination
- Visits a traditional medical practitioner for healing or must be quarantined or isolated

Full time Employees receive 10 working days paid Sick Leave per annum. Part-time Employees can accrue sick leave on a pro-rata basis in proportion to full time Employees. Annual entitlement can be used in one instance.

Employers and Employees are strongly advised against accruing leave balances beyond 40 days.

Where an Employee is transferred or employed by another Department within the Public Service, accrued Sick Leave is transferred to the new employing Department.

Accrued Sick Leave is not paid out upon termination of employment.

Where an Employee falls sick during a period of Annual Leave, the Employer may approve the period of sickness to be taken as Sick Leave. This does not apply where sickness occurs while taking Annual Leave immediately before ceasing work.

A Medical Certificate is required for absences of more than two consecutive days, for the ill, injured or quarantined person.

### **Maternity Leave**

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Female Employees having a baby or legally adopting a new-born baby are entitled to a maximum of 12 weeks Maternity Leave - taken as six weeks on full pay or 12 weeks on half pay. The option for 12 weeks on half pay must be agreed to by the Employer.

An Employee may apply to take Maternity Leave effective two weeks prior to the expected date of delivery.

An Employee who experiences a miscarriage or still birth during the second trimester may apply for up to four weeks Maternity Leave on full pay.

An Employee who experiences a miscarriage or still birth during the third trimester may apply for up to six weeks Maternity Leave on full pay.

During the period of maternity leave the Employee's position will be covered on a temporary basis.

## **Paternity Leave**

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Paternity leave provides fathers the opportunity to bond with the new born baby and support the mother of the new born or adopted baby.

Male Employees may apply for up to five days Paternity Leave on full pay.

## **Public Holidays**

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The following statutory holidays are provided in the Public Holidays Amendment Act 2013.

Christmas Day	25 December
Boxing Day	26 December
New Year's Day	1 January
The Day Following New Year's Day	2 January
Good Friday (end of March or early April)	As published
Easter Monday (end of March or early April)	As published
ANZAC Day	25 April
The Sovereign's (Queens) Birthday (June)	As published
Ra o Te Ui Ariki (July)	First Friday
Constitution Day	4 August
Cook Islands Gospel Day	26 October

If a public holiday (other than ANZAC day) falls on a weekend, then this holiday will be observed on the following Monday, and if applicable, Tuesday.

Employees are entitled to payment on public holidays where the Employee would otherwise be expected to work.

Employees approved to work on a public holiday should:

- Have an extra day added to their Annual Leave entitlement or
- Receive Time Off in Lieu for the time worked on the public holiday
- Receive the equivalent Time Off in Lieu or Annual Leave for the time worked on the public holiday while on overseas Official travel duty or Professional Development Leave

With the exception of Departments providing essential public services, Employers may close Departments during the festive period between Christmas Day and New Year's Day. Employees are encouraged to take Annual Leave during this period.

## **Special Leave**

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Special leave is not an entitlement as Employers are not required by law to provide this.

An Employer may approve special leave for:

Capped and Uncapped Special Leave or a combination of both.

<b>Capped Special Leave cannot be accrued</b>	<b>A total of 10 days per financial year for the following leave types:</b> <ul style="list-style-type: none"> <li>• Bereavement</li> <li>• Constitution Celebrations</li> <li>• Inter-Island Sports (Manea/Purapura Games)</li> <li>• National Representation</li> <li>• Pandemic leave</li> </ul>
<b>Uncapped Special Leave</b>	<ul style="list-style-type: none"> <li>• Civil Duty</li> <li>• Island Government Employees stranded on Rarotonga</li> </ul>

To approve special leave, the Employer will consider:

- The type of leave applied for;
- The Employees work programme and performance;
- Previous absences from work and length of service;
- Ability to cover the position with existing resources (Employees and budget); and
- The overall impact of the absence on the delivery of the Department's services.

#### **Bereavement**

An Employer may approve Bereavement Leave to enable Employees to fulfill obligations and/or pay respects to a deceased person of close association.

#### **Constitution Celebrations**

An Employer may approve Special Leave to allow Employees to participate in the Constitutional Celebrations and the Constitutional Float Parade. The leave must be applied for as soon as practicable. Employees required to travel to participate in the Celebrations can be given special consideration for travelling times to/from their respective island.

#### **Inter-Island Sports**

An Employer may approve Special Leave to enable an Employee to participate in inter-island sports events such as the Manea and Purapura Games. Spectators do not qualify.

#### **National Representation**

An Employer can approve Special Leave to an Employee selected to represent the Cook Islands in events such as sports, cultural, or religious events.

#### **Pandemic Leave**

An Employer can approve Special Leave to an Employee who has been ordered by a Health Officer under the COVID-19 Act 2020 to quarantine or isolate or to care for a person of close association who themselves have been ordered to quarantine or isolate. Employees will be expected to provide their Employer with a copy of the Quarantine or Isolation Order.

#### **Civil Duty**

Employers may approve leave for Employees to perform civil duties.

For example:

- Juror, witness or Justice of the Peace in court proceedings;
- Member on Court Tribunals;
- Appearances at Parliamentary Committee sittings, Commissions of Inquiry etc.

Employees should advise their Employer as soon as possible, if they are summoned for civil duty. Section 9 of the Juries Act allows an Employer on behalf of the Employee to seek exemption from jury duty, where an Employee is providing an essential service and cannot be absent from work. Employees must return to work when they are not required to perform their civil duty.

### **Island Government Employees stranded on Rarotonga**

Island Government Employees stranded on Rarotonga as a result of transportation (shipping/airline) delays to the Pa Enea - outside their control, must contact their Employer to apply for special leave or arrange to report to work on Rarotonga.

### **Official Duty Travel**

Refer to the Official Duty Travel Policy

### **Professional Development**

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An employer can approve professional development leave for employees to attend job related workshops, conferences, or work attachments designed to develop employee capability. Professional development can take place in-country or overseas and should be identified in the employee's professional development/training plan.

Employers of Pa Enea employees may approve up to six months leave at any one time, on a biannual basis - to enable employees to gain overseas work experience and improve the future livelihood of their families.

Employers will consider:

- The employee's position and performance
- Confirmation from overseas employer(s) or recruiting department of the terms and conditions of employment, including duration and return travel arrangements
- Impact on the services delivered by the Island Administration in the employee's absence
- Alternative arrangements to maintain normal daily operations on the island if work commitments require the employment of additional labour
- Contingency plan in the event that the employee does not return to work on the island

### **In-country Study Leave**

Employers may approve up to one day (per instance) in-country study and examination leave for work related studies undertaken by employees. Half a day for study and half a day to complete the exam. This leave only applies to final examinations.



## **Overseas Study Leave**

Employers can approve overseas study leave for work related studies linked to the employee's professional development plan. The study may be funded privately, or by the Cook Islands Government, a development partner, or any other sponsor. Employees should be bonded to return and work in the Cook Islands for a period equal to the time they were away on study. Employers must provide employees a job for an equivalent or greater position to return to at the completion of their study.

Employers must consider the following before approving overseas study leave:

- The costs and benefits of the training to both the employee and the Agency
- The employee's work performance
- The employer's ability to pay
- Impact of the employee's absence on the Agency's service delivery

## **Time Off In Lieu (TOIL)**

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Employers may pre-approve time off in lieu for employees who work extra hours for additional work outside the normal working hours of the employee. TOIL can also be approved for employees who carry out higher duties (See Remuneration Policy).

TOIL is paid on an hourly basis for each additional hour worked and can be taken when mutually agreed between employee and employer. Employers and employees are strongly advised against accruing leave balances beyond five days.

Where there is proof of no opportunity to use this leave prior to cessation of employment, any approved TOIL not used up must be paid out upon termination of employment from that Agency.

Time off in lieu or annual leave is accrued if an employee is required to work on a Cook Islands Public Holiday which falls within the official duty travel or professional development period.

Time off should be taken soon after returning from travel.

## **Compassionate Leave**

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Compassionate leave applications can be made if Employees require more leave than accrued annual, sick, or TOIL leave benefits provided in this policy. Alternatively, Employees may apply for leave without pay.

An Employer may approve leave on compassionate grounds of up to a maximum of 30 working days leave per year. All leave entitlements such as Annual Leave, Sick Leave and Toil benefits must be exhausted before Compassionate Leave can be applied for in circumstances where Sick Leave would otherwise be appropriate.

Employers may consider compassionate leave for:

- Additional sick leave beyond accrued benefits
- Additional maternity/paternity leave beyond accrued benefits
- Additional bereavement leave
- Disaster response

Disaster response allows Employees to prepare for a disaster before the disaster, or respond after a disaster. Disaster response leave may also be applicable where an Employee resides in an area struck by a disaster and has suffered personal loss.

### **Leave without Pay**

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Employees do not have an automatic right to leave without pay. Employers may approve leave without pay prior to the leave being taken, or place Employees on leave without pay.

Employers may place an Employee on leave without pay after a discussion has taken place with the Employee for:

- failing to turn up to work without notice
- failure to apply for leave as soon as practicable
- departing work earlier than required

In approving leave without pay, the Employer will consider:

- The reason for the leave or absence
- Ability to cover the position and impact on the Department
- Work performance
- Previous time taken off
- Length of service and
- Other Employees on leave at the requested time

Placement back into the Employee's usual position is expected upon return from a period of approved leave without pay, except where an Employer suspends an Employee on leave without pay pending the outcome of an investigation, which leads to disciplinary action or dismissal.

Annual leave or sick leave is not accrued while an Employee is on leave without pay for a continuous period in excess of five days.

### **Other provisions**

All records relating to the administration of this Policy must be kept for at least seven years and are only accessible by the Employer and/or authorised staff. After the required seven year period, the Department may destroy the documentation in adherence with Government official information management policies.

### **Associated Documents**

Online leave application link: <https://payroll.cookislands.gov.ck/ESS>

Official Duty Travel Policy

### **Other information**

For Policy queries contact the Office of the Public Service Commissioner on phone (682) 29 421 or email: [pscinfo@cookislands.gov.ck](mailto:pscinfo@cookislands.gov.ck)