



28 July 2017

IRC Decision – Flex time

Your right to flex time upheld by the NSW Industrial Relations Commission

The NSW Coalition Government is continuing its attempts to diminish the public sector, while management tries to undermine long-standing employee entitlements. Therefore, it is not surprising the PSA hears from members all too frequently about difficulties in accessing flex time.

Clause 21 of the *Crown Employees (Conditions of Employment) Award 2009* clearly outlines your right to flex time.

21.1 The parties to this award are committed to fostering flexible work practices with the intention of providing greater flexibility in dealing with workloads, work deadlines and the balance between work and family life. All parties are committed to managing time worked to prevent any forfeiture of credit hours accumulated under a Flexible Working Hours arrangement.

Other key clauses to note are as follows:

21.3 Where the operational requirements allow, the working of flexible hours under a flexible working hours scheme operating in a Department, shall be extended to a staff member working under a part-time work arrangement.

21.12 Weekly hours worked during the settlement period are to be monitored by the staff member and their supervisor. If it appears that the staff member may exceed an accumulated work time of 150 hours

in a settlement period; or if the total hours of work in a settlement period with the credit hour carry over from the previous settlement period may exceed 150 hours, the supervisor and staff member shall develop a strategy to ensure that the staff member does not forfeit any of the credit hours accumulated, or likely to be accumulated.

21.16 Flex leave - Subject to operational requirements:

21.16.1 A staff member may take off one full day or two half days in a settlement period of 4 weeks.

21.16.3 Flex leave may be taken on consecutive working days.

21.16.4 Absences on flex leave may be combined with other periods of authorised leave.

Further to your Award conditions, the NSW Industrial Relations Commission (IRC) made an important ruling in a recent case resulting in a member's reinstatement following an unfair dismissal. The decision can be found [HERE](#).

As part of the decision, the IRC addressed attempts by management to limit the member's access to flex time in the NSW Police Force. The Commissioner said:

"I agree with the submission put on behalf of the applicant, that neither the requirement for the work to be urgent, nor the necessity for a supervisor to be present, in order for the working of additional hours to be approved, is supported by any provision in the Award."



The Award establishes an entitlement for employees, such as the applicant, to work additional hours to accrue flex leave. That entitlement is subject to the following factors:

1. The convenience of the NSW Police Force in terms of:
 - a) the requirements of a particular work unit
 - b) the operational requirements of the NSW Police Force
 - c) the availability of work
2. The personal commitments and needs of the staff members.

The applicant's "incorrect" belief as to his entitlement to work flex time was more closely aligned to the Award provision than was the understanding of his two supervisors. **It is not open to individual supervisors to impose additional arbitrary limitations on an employee's right to accrue flex leave, such as restricting the working of additional hours to urgent work when a supervisor is present. Yet, those limitations were imposed on the applicant by certain of his supervisors in an inconsistent manner. It is little wonder that the flex time issue created a deal of frustration on the part of the applicant.**

This is a significant ruling by the IRC which upholds your right to take flex leave in accordance with your Award and without the imposition of arbitrary limitations by management.

The PSA fought hard for flex time provisions in your conditions of employment and they are your entitlement. Your right to access flex time is also reflected in your Departmental Flex Agreement. The PSA stands united with members to make sure Award entitlements are upheld across the NSW public sector.

If your request to take flex leave after giving reasonable notice is denied by your manager you can ask for an explanation as to exactly what are the operational requirements that prevent you taking a flex day.

Management intransigence does not constitute an operational requirement. If you are having problems getting flex time approved contact your PSA Delegate or alternatively you can contact the Member Support Centre on **1300 772 679** who will be able to refer your matter to the attention of one of the PSA's industrial officers.

