

Updating Letters of Employment

It's that time of year again when services are reviewing and updating their staffing arrangements for the following year. This will include confirming existing arrangements for 2022 as well as formally proposing any changes, such as rostered hours of work.

For those employees that are continuing existing employment arrangements into 2022, you can simply update their Letter of Employment using the ELAA resource, Early Childhood Management Manual (v.3) 2019.

For those employees for which your service is proposing changes – such as rostered hours of work or a change in responsibilities – there is an obligation under clause 9 of VECTEA 2020 to consult with affected employees. It is essential this obligation is followed to avoid a breach of VECTEA 2020 and possible action at Fair Work Commission.

For general advice about your obligations to consult please call ELAA on 9489 3500 (Press 2).

For expert assistance in proposing and implementing changes to staffing arrangements you may complete a consultancy request here: [ELAA consultancy services - Early Learning Association Australia](#)

Employer Capability Assessments

Under the VECTEA 2020, Committees of Management and Employers are required to conduct an employer Capability Assessment for their eligible Level 2.5 teachers to progress to Level 3.1 (clause 50.2). The Department of Education and Training is developing resources for the sector to assist employers and

employees with conducting this teacher assessment, which is expected to be published in early Term 1, 2022. Committees and Employers are not required to utilise these resources and they are intended to be a support tool to facilitate this process.

Committees and Employers may elect to conduct their assessments in early Term 1, 2022, once the DET resources have been made available to the sector. Should an employer elect to delay the Capability Assessment, we recommend that your teachers be consulted regarding this change and advised of expected timeframes for their scheduled assessment.

Committees and Employers electing to delay the assessment should also be aware of arrears requirements for assessments that occur after 1 February 2022. Employers will also be required to provide arrears from 1 February 2022, for Level 2.5 teachers who have successfully completed their assessment and were eligible to do so prior to this date based on clause 50.3 (eligibility criteria).

Teachers who become eligible to undertake their capability assessment after 1 February 2022 do not qualify for arrears.

Alternatively, Employers or Committees who conduct the assessment in lieu of DET's resources In Term 4 this year are strongly advised to ensure consistency with the principles and requirements of clause 50.4.

End-of-Year Pay Processing Calculations

It is that time of year again! Our Member Solutions team is here to support members with calculations

(pro-rata annual leave, long service leave and work history) for your end-of-year pay processing.

Members can request a calculation on our website by completing the relevant form under their My Membership portal at: [Calculations - Early Learning Association Australia \(elaa.org.au\)](https://www.elaa.org.au/resources/calculations-early-learning-association-australia)

To facilitate this process, we kindly request that any calculations for end-of-year pay processing are submitted to ELAA by the following timeframes:

ADP clients:

- **Arrears:** processed between Wednesday 8 December and Tuesday 14 December. All calculations must be submitted to ELAA no later than **Monday, 6 December 2021**.
- **Advance:** processed between Monday 29 November and Friday 3 December. All calculations must be submitted to ELAA no later than **Friday, 26 November 2021**.

Non-ADP clients:

All calculations must be submitted to ELAA no later than Friday, 10 December 2021.

Our Member Solutions team receive a high volume of requests for calculations during this period. Therefore, please allow up to five business days for completion.

Understanding the VECTEA 2020

Organisational Days

Employers who are respondents (signatories) to the VECTEA 2020 are required to provide a total of three (3) organisational days during 2022. Two of these organisational days must be held on the first two days of term 1, 2022, and one day at the last day of Term 4.

Under the VECTEA 2020, clause 34.1, organisational days are child-free days which are used to undertake organisational activities as approved by the employer.

These would typically relate to activities to setting up at the start of the year and packing up at the end of the year. Other organisational activities may be included as discussed with staff and approved by the employer.

These three organisational days are referred to as 'common' organisational days, which are child-free days and are excluded from a service's requirement to provide 600 hours of funded 4-year-old kindergarten (or 3-year-old programs).

When are the common organisational 'child-free' days?

Term 4, 2021: Friday, 17 December 2021.

Term 1, 2022: Friday, 28 January and Monday 31 January 2022. *Children commence on Tuesday, 1 February 2022.*

Term 4, 2022: Tuesday, 20 December 2022.

Are employees required to attend common organisational days?

Part-time employees who are ordinarily rostered to work on a common organisational day (based on their normal roster) are expected to attend on that day. Part-time employees work and are paid for their normal rostered hours on this day (clause 34.2).

Part-time and casual employees who are not ordinarily rostered to attend on that day of the week are not expected to attend. However, if your part-time employee elects to attend a common organisational day that they are not normally rostered to work, they will be asked to work and paid for 7.6 hours on that day (clause 34.4).

Full-time employees are expected to attend common child-free days and are rostered and paid for their normal 7.6 hours per day (clause 34.2).

Scheduling alternative organisational days

Part-time and casual employees who are not ordinarily rostered to work that day (and as an alternative option

to clause 34.4), can take their organisational day on another day. This day can be arranged by agreement with the employer within the first two weeks of term 1 and the last two weeks of term 4 (clause 34.3).

2021/2022 Term Holidays

During the end-of-year Christmas/New Year break, teachers and educators on both the 10-week and 4-week leave model under the VECTEA 2020 are entitled to four weeks annual leave (pro-rata for part-time) with a 17.5% leave loading. This is accrued based on the employee's ordinary hours of work.

Payment for surplus annual leave days

The four weeks of annual leave are exclusive of Public Holidays throughout the Christmas/New Year period as specified under clause 29.2. This means that when counting the period between the last day of Term 4, 2021 (17 December 2021), and the first day of Term 1, 2022 (28 January 2022), there will be approximately 53 days of leave.

As term dates shift slightly from year to year, as gazetted by the Department of Education and Training (DET), an employee may be awarded additional days one year, but not be as fortunate the following year. This means that whilst not explicitly specified in the VECTEA, employees should be not adversely affected by this shift in term dates. Refer to: [School term dates and holidays in Victoria \(education.vic.gov.au\)](https://www.education.vic.gov.au/school-term-dates-and-holidays-in-victoria)

As such, out of these 53 days for the 2021/2022 holidays, any surplus leave days (In addition to the four weeks for a full-time employee) should be granted to the employee with payment and entered as leave.

Payment for public holidays

Per section 89 of the *Fair Work Act 2009* (Cth), an employee cannot be on annual leave on a public holiday.

For an employee whose ordinary hours of work fall on a public holiday that employee is entitled to not attend

the workplace as well as be paid at the ordinary rate of pay for those hours.

The employee is not entitled to payment if the employee is a casual employee who is not rostered on for the public holiday, or is a part-time employee whose part-time hours do not include the day of the week on which the public holiday occurs.

Covering Lunch Breaks

Early Childhood Teachers

Part-time Early Childhood Teachers do not have a minimum engagement time for lunch covers and can work additional hours by agreement. The employee will be paid for actual additional hours at their ordinary rate plus a 25 per cent loading (up to 38 hours per week) (clause 15.4(f)), unless clause 15.4(g) applies.

Casual teachers (casual relief) have a minimum engagement period of 3.5 hours per day (clause 15.6) and must be provided with a minimum of 20% of their contracted hours for the first five consecutive working days of each engagement as non-teaching time (clause 54.6).

Part-time and full-time Early Childhood teachers must be provided with 30 minutes of non-teaching (non-contact time) for each hour of teaching time, including lunch cover time (clause 54.5). Lunch cover is not excluded for the requirement for non-teaching (non-contact time) for Early Childhood Teachers.

Educators

Part-time Educators do not have a minimum engagement time for lunch covers, and can work additional hours for this purpose by agreement.

The employee will be paid for actual additional hours at their ordinary rate plus a 25 per cent loading (up to 38 hours per week) (clause 15.4(f)), unless clause 15.4(g) which allows the employee to accrue entitlements instead of the 25 per cent loading).

Casual educators (casual relief) have a minimum engagement period of 2 hours per day (clause 15.6).

Diploma educators are not required to be provided with non-contact time for covering a teacher's lunch break or if they are engaged and performs duties as an additional educator, surplus to regulated staff ratios (clause 63.2).

Out of Hours Work by Direction

Under clause 25 of the VECTEA 2020, teachers and educators are entitled to payment when they are directed to attend out of hours meetings or events. Please note that an employee may request non-attendance if it would unreasonably affect the employee's personal and family commitments.

Out-of-hours meetings or events include but are not limited to staff meetings, employee/committee meetings, annual general meetings, parent/teacher interviews and special events (open days, fetes, parent/caregiver nights, working bees).

Clause 25 (Out of Hours Work by Direction) also interacts with other clauses within the Agreement, which can affect a teacher or educator's payment at an ordinary hours rate. As specified in the table below, educators are paid at overtime rates under clause 61 in certain circumstances.

Payment for out-of-hours meetings or events (clause 25)

Position	Time of meeting/event	Payment
Part-time Educator	Outside contracted hours between 7am-6pm, Monday to Friday.	Clause 15.4(f) applies, unless 15.4(g) has been agreed which provides leave accruals. Ordinary hours plus a 25 per cent additional hours loading (1.25)

		or the accrual of entitlements.
Part-time Educator	Outside 7am - 6pm, Monday to Friday and/or If the Direction results in the Educator working more than 38 hours in one week	Clause 61 (overtime) applies.
	Saturdays, Sundays and Public Holidays.	Clause 61 (overtime) applies.
Full-time Educator	All hours above 38 hours per week.	Clause 61 (overtime) applies.
Part-time Early Childhood Teacher	Outside contracted hours (up to 38 hours per week).	Clause 15.4(f) applies, unless 15.4(g) has been agreed which provides leave accruals. Ordinary hours plus a 25 per cent additional hours loading (1.25).
Full-time Early Childhood Teacher	All hours above 38 hours per week.	Ordinary time rate. Note: all additional hours must be 'reasonable' and on an ad hoc basis (noting that an employee may request non-attendance if it would unreasonably affect the employee's personal or family commitments.

Full-time Early Childhood Teacher	All hours above 38 hours per week (continued).	The maximum number of weekly rostered hours for a full-time employee under the VECTEA is 38 hours per week (clause 15.3).
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Management of unvaccinated employees

For general advice about your staff management obligations for unvaccinated workers, please call ELAA on 9489 3500 (Press 2). ELAA can further support members by providing a referral for specialist advice by employment lawyers with FCB Workplace Law.

Mandatory vaccinations

The current requirements for mandatory vaccinations in the ECEC sector are determined by the current Directions by the Chief Health Officer, the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 12)**. These Directions are in force from the 5 November 2021 until the 18 November 2021, and are expected to be extended after this date.

Medical exception requirements have changed

Under the Directions (clause 9(5)), a person is an excepted person if the person holds acceptable certification from a medical practitioner that the person is unable to receive a dose, or a further dose, of a COVID-19 vaccine due to a medical contraindication; or an acute medical illness (including where the person has been diagnosed with SARS-CoV-2).

From 6:00 pm, Friday 12 November 2021, medical certificates issued by an employee's medical practitioner are no longer considered an acceptable certification. Employees claiming a medical exemption must now also provide evidence of a medical exemption in the form of their Immunisation History Statement (listed from the Australian Immunisation Register) of a medical contraindication to the COVID-19 vaccine.

For a medical contraindication to be listed on the Australian Immunisation Register, an employee's medical practitioner must complete an Immunisation Register immunisation medical exemption form.