

Commissioner's Orders



29 November 2012

2012/26

CURRENT NATIONAL SECURITY ALERT LEVEL: MEDIUM

Attendance management policy for permanent firefighters

This instruction rescinds In Orders 2008/24, *Attendance management permanent firefighters policy*.

It results from a decision of a Full Bench and a subsequent Order of the Industrial Relations Commission.

Policy statement

Managing attendance and reducing absenteeism are important goals for Fire & Rescue NSW (FRNSW): they form part of FRNSW's commitment to the health, safety and well being of firefighters. FRNSW has implemented a comprehensive range of preventative and support initiatives to maximise firefighter attendance.

Sick leave is provided for firefighters who are unable to attend work due to incapacity caused by ordinary illness or off duty injury, or to provide primary care and support (carer's leave) for a person who is incapacitated due to illness or injury.

The granting of sick leave to firefighters is designed for the following purposes:

- foster recuperation;
- assist in rehabilitation;
- facilitate a timely return to work, consistent with medical advice; and,
- protect the health, safety and welfare of all people at work.

Sick leave is to be used in times of genuine illness or off duty injury. It is not an alternative form of leave to be used at the discretion of the individual firefighter. Other leave types, such as consolidated leave, annual leave, long service leave and part change of shift arrangements, are available and can be used in circumstances where the use of sick leave is not appropriate.

Sick leave for firefighters (on average per annum per full time permanent firefighter) was 97 hours in 2006, 102 hours in 2007 and 107 hours in 2008.

The Fire Brigade Employees' Union (FBEU) and FRNSW committed to a reduction in average sick leave levels in 2008 to 87 hours. The joint commitment to that target was repeated in the 2011 Award. In the period 2008 to 2012 however, sick leave results further deteriorated as follows:

2009/10 – 110 hours
2010/11 – 114 hours
2011/12 – 118 hours

Application

This policy applies to permanent firefighters up to and including the rank of Chief Superintendent and references to “firefighter” shall be taken to include any and all such ranks. This policy does not cover absences related to workers compensation matters.

Maximising attendance

Preventative actions

FRNSW has implemented a comprehensive range of support initiatives to maximise firefighter attendance. These include health (medical) and fitness assessment services, rehabilitation, case management and program implementation, health and lifestyle counselling, critical incident support, peer support, employee assistance programs and the services of the Chaplaincy.

Reporting absences

Reporting sick

A firefighter may be unable to report for duty due to incapacity caused by ordinary illness or off duty injury or because they are required to provide primary care and support for a dependent person (as defined in the Award) who is incapacitated due to illness or injury. In these circumstances the firefighter shall, as soon as possible, inform the supervisor in charge of the work location to which the firefighter is attached, or to which the firefighter is due to report, of such inability to report for duty. Such information must, where possible, be provided prior to the commencement of the firefighter's shift, preferably as soon as the firefighter realises that he/she will be unable to attend for duty.

Medical certificates

A medical certificate issued by a registered medical practitioner is required as supporting documentation when a firefighter is absent on sick leave. The medical certificate shall indicate the nature of the illness or incapacity and the estimated duration of the same.

Firefighters are entitled to unsupported sick leave absences where no medical certificate is required, subject to the following provisions.

- Absences may not exceed three separate occasions in any calendar year.
- Absences must not be taken on consecutive days.
- Absences may not be taken on public holidays.

- Absences may not be taken in relation to any matter that may be covered by workers compensation.

FRNSW and the FBEU have agreed to trial the following arrangement.

The Trial:

- Effective on and from 1 January 2013, firefighters who took less than 87 hours sick leave and less than three unsupported sick leave absences over the 2012 calendar year will be permitted to carry over and accumulate their unused unsupported sick leave absence entitlement to 2013.
- For subsequent years, the unused unsupported sick leave entitlement will carry forward and accumulate, subject to less than 87 hours of sick leave being taken in the previous calendar year. Where sick leave was 87 hours or more in the previous calendar year, no carry over will occur.

The trial may be terminated by either party with four weeks' written notice. The parties agree that termination of the trial on notice will have effect despite the provisions on subclause 23.15 of the *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011*.

- In the event of termination of the trial, the number of accrued unsupported sick leave days in credit, as at the termination date, will remain available to be taken after that termination date but only within that calendar year.
- If still in operation, this trial will be reconsidered in the context of the 2014 Award negotiations.
- Unsupported sick leave days may only accrue to a maximum of 10 days and will be treated the same as sick leave generally in respect of "reports and triggers".

Carer's leave documents

Either a medical certificate issued by a registered medical practitioner or a Statutory Declaration (see appendix 1 for a copy of the Statutory Declaration) is required as supporting documentation for all instances of carer's leave of four days or less duration. A medical certificate issued by a registered medical practitioner will be required in all instances of five days or more carer's leave.

A medical certificate supplied in support of carer's leave need not state the nature of the person's illness but must confirm that the illness of that person is such as to require care by another person.

Failure to provide required sick leave and carer's leave documentation

Failure to provide timely notice of absence and the supporting documentation may result in a breach of this policy. Sick leave and carer's leave without the supporting documentation will, in the absence of reasonable explanation, be considered leave without pay.

Managing absences

Resumption of duty following illness or off duty injury

A firefighter is responsible for immediately advising the supervisor of his/her return to work after a period of sick leave and for ensuring the prompt submission of the required medical certificate/statutory declaration.

A firefighter who has been absent from duty due to incapacity caused by ordinary illness or off duty injury for a period of twenty-eight (28) or more calendar days must receive medical clearance by a medical officer nominated by FRNSW before returning to duty. The supervisor at the work location where the firefighter is reporting must ensure that this clearance has been obtained before allowing the firefighter to resume pre-injury/illness duties.

Reports and triggers

To assist Executive Officers in the management of sick leave absences, FRNSW has developed a system to record and analyse sick leave data (SLaNT). Executive Officers have a responsibility to generate reports from SLaNT, monitor absenteeism and take corrective action as outlined in this policy. This screening process will help eliminate those firefighters who are immediately recognisable as utilising sick leave for its intended purpose.

These SLaNT reports will highlight firefighters who, over the preceding 12 months, have recorded:

- 50 hours of sick leave within any 13 week period, or 96 or more hours in total;
- 4 or more separate sick leave occurrences within any 13 week period;
- an apparent pattern of sick leave (eg weekends, same day of week, pre or post annual leave rosters, pre or post public holidays, during school holidays or coinciding with special events); or
- failure to provide the required supporting documentation.

Show cause letter

Firefighters have a responsibility for managing their health and fitness and this is supported by FRNSW health promotion programs. Where a firefighter's sick leave activates one or more of the above triggers and the screening process does not immediately eliminate them from further investigation, the Executive Officer will write to the firefighter in the form of the attached template (see appendix 2) inviting the firefighter to show cause why they should not be subject to further action under this policy.

A firefighter who is invited to show cause must respond in writing to the Executive Officer within 12 calendar days of their receipt of the show cause letter or, if by that time the firefighter is on any form of leave, then by the completion of the next shift actually worked by the firefighter. For example, the deadline for a response to a show cause letter received only 2 days before a period of annual leave will be the end of the first shift worked following

that leave period. While a firefighter may choose to not respond, failure to do so without adequate reason will be considered a breach of the policy.

Response to show cause letter

Following consideration of the firefighter's response to the show cause letter, the Executive Officer will write to the firefighter confirming:

- that the firefighter's explanation has been accepted and that there will be no further action taken; or,
- that for the reason or reasons which the Executive Officer will summarise, the firefighter's explanation has not been accepted and that the firefighter is therefore in breach of the policy; and
- if it is the firefighter's second breach of the policy within the preceding 24 months, that the firefighter will be required to attend an attendance management interview.

In all cases where the firefighter's explanation has not been accepted, the firefighter will be invited to sign the Executive Officer's report and may, if he/she disagrees with the report, make a note to that effect on the report before it is placed on the firefighter's file. A firefighter who refuses to sign the report shall have their refusal noted on the report by the senior officer handling the report in accordance with subclause 38.4.4 of the *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011*.

Attendance management interview

When an attendance management interview is required, the following will apply:

- The firefighter will be advised in writing that an attendance management interview is to be conducted with the firefighter and the firefighter's Executive and/or Senior Officer.
- The firefighter may choose to have another person present (eg union delegate or colleague).
- The Executive and/or Senior Officer will outline the reasons for the interview.
- The Executive and/or Senior Officer and the firefighter will discuss the matter to determine whether or not anything may be done to maximise attendance.
- The Executive and/or Senior Officer will advise of the consequences of recurrent unsupported, inappropriate or unsatisfactory use of sick leave.
- The Executive and/or Senior Officer may, considering the circumstances, decide to monitor the firefighter's attendance and take no further action or refer the matter immediately to the Director for further action under this policy's "failure to comply" provisions.
- The Executive and/or Senior Officer will record the occurrence of the meeting and document identified expectations and any agreed outcomes. The firefighter will be

given a copy of the documentation and be invited to sign it and may, if he/she disagrees with anything therein, make a note to that effect on the documentation before it is placed on the firefighter's file. A firefighter who refuses to sign the documentation shall have their refusal noted on the documentation by the senior officer handling the report in accordance with subclause 38.4.4 of the *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2011*.

Failure to comply

Failure to comply with this policy may lead the firefighter's Director to sanction:

- the loss or restriction of the firefighter's non medical certificate provisions for up to 24 months, provided that any record of such loss or restriction will be removed from the firefighter's personal record if the firefighter has complied with the policy for at least 2 years since the loss or restriction; and/or,
- deduction of the firefighter's pay as outlined in subclause 23.7.5 of the Award; and/or
- the firefighter not being considered for overtime; and/or,
- change of the firefighter's roster (but not station/work location), in which case the firefighter shall be given 14 days notice to commence a 5 week AMP Roster comprising 10 hour day shifts to be worked as follows:

	1 st Week	2 nd Week	3 rd Week	4th Week	5th Week
Platoon	<i>F S S M T W T</i>	<i>F S S M T W T</i>	<i>F S S M T W T</i>	<i>F S S M T W T</i>	<i>F S S M T W T</i>
Q	DDD D	DDD D	DDDD D	DDD D	DDD D
Hours	40	40	50	40	40

- The duration of the 5 week roster will be extended by one additional day shift for each day of leave (of any kind) taken whilst on the AMP Roster so that the firefighter will be returned to their previous roster following their performance of the AMP Roster's requisite 21 day shifts.

This policy is intended to monitor absenteeism and take corrective action where a firefighter activates one or more of the identified triggers and is subsequently found to be in breach. It is not intended to deal with serious misconduct (for example, the making of a fraudulent Statutory Declaration), which will instead be dealt with by way of disciplinary action.

Repeated failure to comply with this policy may also lead to disciplinary action.

Performance review

On a six-monthly basis, Executive Officers will report to their Assistant Director/Area Commander on absence management intervention activities. Assistant Directors/Area Commanders will provide reports to their Directors.

Disputes

In the event of a dispute as to the deduction of a firefighter's pay, then provided the Union notifies a dispute within 7 days, the issue will be dealt with by the Industrial Relations Commission and during that process no deduction will occur unless otherwise ordered by the Commission.

Additional resources

Associated documents:

[*Crown Employees \(NSW Fire Brigades Firefighting Staff\) Award 2011*](#)

[*Fire Brigades Regulation 2008 \(or its successors\)*](#)

[*Fire and Rescue NSW Code of Conduct*](#)

Further information

For more information on this policy contact the HR/Payroll Helpdesk on (02) 9265 3900.

Contact Officer: Joanne Prados-Valerio, Industrial Relations Officer, (02) 9265 2683
File Reference: FRN12/1977

**Greg Mullins AFSM
Commissioner
29 November 2012**

Appendix 1 – Statutory Declaration**Statutory Declaration**

I, _____

of _____

in the State of New South Wales do hereby solemnly and sincerely declare that due to their illness, I was required to care for

(name of person)

who is my _____

(relationship to the employee)

on _____

(date or dates for which such care was required)

I understand that making a false statutory declaration is a criminal offence as detailed below and may lead to disciplinary action against me by my employer or referral to Police.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Subscribed and declared at _____

this _____ day of _____, 20____

(signature of deponent)

I _____ certify

(name of witness)

[* delete words that do not apply]

* I saw the face of the deponent OR

* I did not see the face of the deponent because she/he was wearing a face covering and I am satisfied that she/he has a legitimate medical reason for not removing it, AND

* I have known the person for at least 12 months OR

* I confirmed the person's identity with _____

[description of document]

_____ [signature of witness]

_____ [qualification]

The Oaths Amendment Act 1996 provides that if a Statutory Declaration is made to gain material benefit and the offence is dealt with by indictment the penalty is up to 7 years imprisonment. If dealt with summarily then the penalty is up to 2 years imprisonment and/or a fine of 100 penalty units (\$11,000). If the offence is swearing a false declaration that does not involve material benefit, the penalty is up to 12 months imprisonment and/or a fine of 50 penalty units (\$5,500).

Appendix 2 – Show Cause Letter Template



Date:

Dear _____

Re: AMP Show Cause Letter

As you would be aware, firefighter sick leave absences are regularly reviewed in accordance with the Attendance Management Policy (AMP) to ensure that sick leave is being utilised for its intended purpose. I have reviewed your sick leave and found that you have, over the preceding 12 months, recorded (*tick all that apply*):

- 50 hours of sick within a 13 week period;
- 96 hours or more hours within the preceding 12 months;
- 4 or more separate occurrences within a 13 week period;
- an apparent pattern of sick leave (e.g. weekends, same day of the week, pre or post annual leave rosters, pre or post public holidays, during school holidays or coinciding with special events);
- failure to provide the required supporting documentation.

Necessary further information (e.g. relevant date/s breach(es) occurred):

You are invited to show cause within 12 calendar days of your receipt of this letter why you should not be subject to further action under the policy. If, by that time, you are on some form of leave then you will need to show cause by the completion of the next shift actually worked by you after that date.

You may choose to not respond, however failure to do so without adequate reason will be considered a breach of the policy.

Yours sincerely,
Superintendent [insert name]
[insert zone]