

# Industrial Relations News



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ISSUE NO. 8  
NOVEMBER 2015

ISSN: 1834-5069

## Welcome from the Executive Director

Welcome to the November 2015 edition of *Industrial Relations News*.

Term 4 of the 2015 school year is fast drawing to a close. At this time of the year, it is timely to consider the employer's duty of care around work functions. This edition of *Industrial Relations News* contains prudent advice on this matter.

This newsletter also contains timely information on pro-rata school holiday pay and leave loading and the recall and end-of-year processes for Category B staff.

With the summer weather approaching and the prospect of extreme conditions, articles on managing excess heat and emergency management regarding bushfires are particularly relevant.

Schools should continue to remain vigilant regarding asbestos issues. For this reason we have included an article regarding asbestos management in this edition.

The *Implementation Guide Part 3B: Salary and Allowances* (2016 school year) is available on the CECV website [www.cecv.catholic.edu.au](http://www.cecv.catholic.edu.au) under *Industrial Relations / 2013 Agreement Implementation*. It provides guidance for incremental salary progression in the last year of the *Victorian Catholic Education Multi Enterprise Agreement 2013 (VCEMEA)*.

For any questions about any of the articles in this newsletter, please contact the Industrial Relations (IR) Unit on 03 9267 0431 or [ceoir@cem.edu.au](mailto:ceoir@cem.edu.au),

Stephen Elder  
EXECUTIVE DIRECTOR

## Asbestos Reminder

Asbestos management may be an issue in schools built before 2004.

Schools can manage asbestos by:

- ensuring all asbestos has been clearly identified by a competent asbestos consultant
- keeping the asbestos consultant's report easily accessible
- developing an asbestos register that includes:
  - the location and type of the asbestos (consider using photos, diagrams or building plans to assist in accurate position identification)
  - the nature of the asbestos (friable or non-friable)
  - the condition of the asbestos
  - any work activities that may affect or cause damage or deterioration to the asbestos.
- providing access to the asbestos register for staff and contractors (such as electricians, plumbers, maintenance staff, builders, painters and carpenters)
- reviewing and updating the asbestos register every five years – or earlier, if asbestos products have been removed, enclosed or sealed or additional products discovered.

Further information and assistance on how to manage asbestos can be obtained from an IR Unit OHS Officer.

Templates and examples of a completed asbestos register can be found in the [Asbestos Guidelines](#) on the [CECV website](#) under *Industrial Relations / Occupational Health and Safety / Occupational Health and Safety Guidelines*.

## Non-Renewal of Appointments

### **Notice for fixed-term employees (clause 11.2(f))**

If a principal is not going to immediately re-employ or extend the contract of a fixed-term employee whose contract period will expire, then the principal **must**, not less than seven calendar weeks (including school holidays) prior to the expiry date, issue the employee with a letter advising them that their employment is terminating.

If a principal fails to issue this letter, then the employee is entitled to be paid an amount equal to their ordinary wages for any part of the seven weeks notice not given.

### **Fixed-term employees and ongoing vacancies (clause 11.2(e))**

Where an ongoing position is advertised at a school, the principal must provide each suitably qualified fixed-term employee at the school with notice of the ongoing vacancy in writing. Written notice can be provided by attaching a copy of the advertisement to a letter to the employee or by sending an email to the employee attaching the advertisement.

If a suitably qualified fixed-term employee at the school applies for the ongoing vacancy, the employee must be interviewed for the position. Any subsequent appointment to the ongoing position should be based on an assessment as to who is most suitably qualified and suited to the position.

### **Positions of Leadership (POL) – end of tenure (clause 58.4)**

Where an employee's position of leadership is not going to be renewed, the employee must be provided with not less than seven calendar weeks notice prior to the end of the appointment.

If the principal does not provide seven weeks notice of the termination of the POL, then the employee should continue to receive the POL allowance for any part of the seven weeks notice not given.

Although such notice is not required to be provided in writing, it is recommended that principals provide written notice in these circumstances.

### **Deputy principal – non-renewal (clause 54.5)**

Although there is no prescribed notice period and no requirement to put the notice in writing, it is good practice that principals provide written notice of seven weeks where possible.

[Template Letters](#) for non-renewal of appointments can be found on the [CECV website](#) under *Industrial Relations / Template Letters*.

## Principal's Checklist

A checklist identifying the key practical industrial issues in preparation of the 2016 school year is provided for schools on the [CECV website](#) under [VCEMEA 2013 Implementation Update](#)

### Induction

Schools must provide induction to all newly appointed employees upon their commencement of employment. The program must include:

- materials relevant to the ethos of the school
- provision of and training on school policy and procedures documents
- identification of lines of support and contact persons
- salary assessment information.

### Salary assessments – teaching staff

Teachers on appointment to fixed-term or relieving contracts should have a salary assessment at the commencement of each new contract.

Teachers may be required to provide evidence of previous teaching experience (outside Victorian Catholic education) or additional qualifications gained at Master's level (or its equivalent) or higher.

Schools are reminded that the Salary Assessment Calculator is available on the CEVN website <http://cevn.cecv.catholic.edu.au> under *Staffing & IR / About Staffing and IR / Salary Assessment* to assist schools with the commencement salary for teachers. Further information can also be found under the [Salary Assessment Guidelines](#) document available on the [CECV website](#) under *Industrial Relations / Salary Assessments*.

### Salary assessments – non-teaching staff

During the 2016 school year, there are no scheduled pay increases in February or August 2016. However, structural changes will affect the classification for primary school principals, education support employees and school services officers from 1 May 2016. It is important that salary tracker tables in the Agreement Implementation Guide [Part 3B](#) are used to ensure that the correct classification and salaries

are implemented for all staff covered by the [VCEMEA](#) during the 2016 school year. The use of the tables in the Guide will also minimise instances of both under and overpayment of employees covered by the [VCEMEA](#).

### Letters of appointment

A letter of appointment is necessary at the start of every contract.

Ongoing staff members should be given a letter of appointment at the start of their appointment. There is no need to give ongoing staff members a new letter of appointment every year. However, if there is a significant change to a staff member's role, they should be given a letter regarding the variation to their contract.

Fixed-term and casual relieving employees should be given a letter of appointment at the start of every contract. For emergency teachers or casual employees, the best practice is to give each employee on your casual or emergency list a letter that outlines the terms and conditions of employment that apply to them when they are employed at your school. For practical reasons, it is not expected that a new letter of appointment is to be signed for casual employees.

[Template Letters](#) of appointment can be found on the [CECV website](#) under *Industrial Relations / Template Letters*.

## Update to CECV Website

The process of redeveloping the current [CECV website](#) is underway. The aim of the redevelopment project is to create a website that:

- communicates effectively to all CECV website users and school personnel
- has a fresh new design with improved navigation
- provides a friendly, interactive user interface appealing to schools
- enables accurate search results.

It is anticipated that the new website will be available to users in January 2016.

## Category B Staff – Recall & End of Year

In relation to recall days and end-of-year procedures for Category B staff, schools should ensure their arrangements meet the requirements of the Guidance Note: [Recall and end-of-year attendance](#) requirements – Category B employees, available from the [CECV website](#) under *Industrial Relations / 2013 Agreement Implementation*.

### Recommended approach

- Principals are not required to change arrangements for the finish dates for Category B staff that were in place in 2013, where those arrangements have been fair and workable.
- Principals should consult with Category B staff about the last day of attendance at the end of the school year.
- Category B staff should commence school holidays at the end of the year on or around the same day as teachers.
- Any requirement for Category B staff to work beyond the last day of attendance for teachers must be demonstrably based on a need to perform purposeful tasks which are relevant to the employee's normal duties.
- Subject to local arrangements, the recall allowance is generally only payable for recall days worked during the gazetted school holidays.

## Pro-Rata School Holiday Pay and Leave Loading

Circumstances may arise when an employee takes their entitlements to Long Service Leave (LSL) at half pay in conjunction with Leave without Pay (LWOP).

In accordance with Implementation Issues – *Half Pay Long Service Leave*, entitlements to public holidays, school holiday pay and annual leave loading that fall during periods of LSL at half pay are paid at the employee's ordinary rate of pay (substantive Full-Time Equivalent). This situation may result in the employee being required to repay an overpayment of

salary at the end of the school year, and the employee receiving no school holiday pay at the end of Term 4, 2015.

If a staff member with upcoming holiday pay is likely to be affected, it is recommended that the principal meet with the staff member to explain the situation.

If a staff member is taking LSL at half pay or leave without pay in 2016, it is recommended that the principal meet with the staff member to explain the situation, preferably before the leave commences.

By continuing to take school holiday pay (during Terms 1, 2 and/or 3) at half pay during school holiday periods, the employee will not have any overpayment issue at the end of the school year and will receive a payment for the Term 4 school holidays.

Further advice can be sought from your relevant diocesan Finance Office or from the CECV IR Unit.

## Government Paid Parental Leave

A reminder that schools may be responsible for administering the government paid parental leave scheme to eligible employees. Eligible employees are entitled to parental leave payments at the National Minimum Wage (currently \$657.00 per week before tax), for up to 18 weeks, to be paid in the employee's normal pay cycle. The government paid parental leave is in addition to any entitlement the staff member may have to maternity leave payment under the [VCEMEA](#).

For further information on the processing of these payments, please contact the relevant diocesan Finance Department.

For further information about the government-paid parental leave scheme, please contact the [Department of Human Services](#).

## Employers' Duty of Care around End-of-Year Work Functions

The festive season is almost upon us. It is therefore timely to note that end-of-year functions organised or sanctioned by employers are held to be a work activity under Occupational Health & Safety and Workers Compensation legislation. Schools and their employees have a duty of care towards the safety and welfare of other workers and guests during these functions just as they do during ordinary working hours at the workplace. This applies no matter where or when the function is held. If there is no advertised end time for a work function and employees continue the celebrations at another venue after the work function this could potentially be seen as a continuation of the work function.

Employers may also be responsible for inappropriate behaviours at work functions including those out of hours; for example, bullying, sexual harassment or discrimination.

Unwelcome staff behaviour such as bullying or sexual harassment may result in:

- claims against the school for workers compensation
- damages against both the offending individual and the employer
- a WorkSafe investigation.

These claims have the potential to create ongoing relationship issues within the school and can be costly and damaging.

Principals need to be mindful of the workplace rights of employees whose behaviours are allegedly inappropriate or unwelcome. These behaviours do not absolve an employer's responsibilities around work-related social events, in particular in regard to the Responsible Service of Alcohol (RSA). Employers must ensure procedural fairness in the investigation of complaints regarding any alleged inappropriate behaviours.

In a recent decision of the Fair Work Commission (FWC), a team leader who swore at managers and sexually harassed colleagues on the night of his work

Christmas party won his unfair dismissal case. The FWC criticised the employer for failing to:

- take responsibility for ensuring RSA
- properly communicate expected standards of behaviour
- investigate the inappropriate behaviour with procedural fairness.

(See full article in the [August edition](#) of the *Industrial Relations News*.)

The IR Unit provides the following tips to ensure staff safety at end-of-year work functions:

### Before:

- Remind staff of their behavioural responsibilities (including those contained in school policies) in advance via email, and pin a reminder to the notice board.
- Audit the venue beforehand for possible hazards and cordon off potential risk areas if possible.
- Specify the function's start and finish times in advance and ensure that you stick to these times (in particular the finish time).
- Nominate an appropriate person to address any issues promptly and to bring the function to an end if necessary. This person should refrain from the consumption of alcohol during the function.
- Specify a dress code for the function such as smart casual. Open-ended footwear should be avoided.

### During:

- Alcohol should be served only by the holder of a RSA certificate, ideally a professional bartender.
- A clearly intoxicated person should not to be served alcohol or allowed to access it.
- Last drinks should be served no less than 30 minutes prior to the end of the function.
- Low alcohol and non-alcoholic beverages including water should be readily available and displayed.

Finish the work function at the advertised time. Make attendees aware that all post-function activities are considered to be non-work related.

**After:**

- Review the end-of-year function and determine where any improvements can be made in respect of the safety and welfare of workers and guests during this function and any other functions organised or sanctioned by the school.

## Part-time Teachers' Additional Hours

Principals should be familiar with the requirements and entitlements of part-time teachers when working additional hours.

### General obligations

The number of hours of scheduled class time and duties (refer clause 56.3 of the [VCEMEA](#)) of a part-time teacher shall be set out in writing at the time of employment or when any subsequent variation occurs (refer clauses 55.2 and 15 of the [VCEMEA](#)).

Where a part-time teacher is required and agrees to work 'ad hoc' additional:

- class time
- hours that are regarded as professional expectations (refer clause 56.3(b) of the [VCEMEA](#)) but in excess of what is reasonable or proportionally appropriate compared to full-time employees

then that teacher is entitled to be paid for each additional hour or part thereof as follows:

- at the normal part-time hourly rate of pay of that teacher; plus
- a loading of 18% for each additional hour or part thereof (clause 55.2 of the [VCEMEA](#)).

In such circumstances, there will be no proportional adjustment to any other entitlements (e.g. school holiday pay accruals) as the 18% loading is in lieu of such entitlements.

### Calculation of 'part-time hourly rate of pay'

The following examples illustrate how to calculate the applicable rate for both a T2–1 level primary teacher

and T2–1 level secondary teacher who are required to work ad hoc additional hours on their non-work day from 9.00 am until 12.30 pm, equating to 3.5 hours. Student contact hours at both schools commence at 9.00 am.

### Primary teacher

Use the annual salary for the teacher concerned, (in this case a T2–1, which is \$75,940 per annum as at August 2015) and divide the annual salary by 52.18 to obtain the weekly salary (\$1,455.35 per week).

To obtain the hourly rate, the weekly salary is divided by 24.5 hours per week in 2015 (scheduled class time of 22.5 hours plus release time of 2 hours equals 24.5 hours).

The hourly rate as at August 2015 would be \$59.40. An 18% loading is then applied (i.e. multiply hourly rate by 1.18). For August 2015, the hourly rate that is payable for additional ad hoc hours is \$70.09.

The teacher in the example would therefore be paid \$245.32 for the 3.5 hours work.

### Secondary teacher

Use the annual salary for the teacher concerned, (in this case a T2–1, which is \$75,940 per annum as at August 2015) and divide the annual salary by 52.18 to obtain the weekly salary (\$1,455.35 per week).

The hourly rate is obtained by dividing the weekly rate by 20 hours per week (scheduled class time).

The hourly rate as at August 2015 would be \$72.77 and with the extra 18% loading becomes \$85.87.

In this example, the teacher would be paid \$300.53 for the 3.5 hours work.

### Regular additional hours

If an employer requires a part-time teacher to perform additional hours that are regular, at the same time each week and over an extended or fixed period, then those changes should be included in a variation of hours arrangement (see clause 15 of the [VCEMEA](#)). In such circumstances, a proportional adjustment to other entitlements would apply (e.g. school holiday pay), but the loading of 18% would not apply.

## Managing Excess Heat

As summer approaches, it is important to manage the risks posed by excessive heat.

Some suggested strategies for managing excessive heat conditions:

- Ensure staff know how to recognise the symptoms of heat stress including headache, fainting, confusion, nausea and vomiting.
- Ensure first aid officers are available, with processes in place to manage symptoms of heat stress for students and staff.
- Ensure monitoring of students with special needs to maintain adequate hydration.
- Encourage students and staff to stay hydrated by providing regular drink breaks, with water being the most suitable fluid to drink.
- Outdoor or sporting activities may need to be modified or postponed, as required.

The [CECV website](#) has OHS guidelines for [Managing Excessive Heat](#) under *Industrial Relations / Occupational Health and Safety / Occupational Health and Safety Guidelines*.

Further tips and resources for staying healthy in the heat can be found at [www.betterhealth.vic.gov.au/health/healthyliving/heat-stress-preventing-heat-stroke](http://www.betterhealth.vic.gov.au/health/healthyliving/heat-stress-preventing-heat-stroke).

## Emergency Management – Bushfires

There are a number of useful resources available for assisting schools in preparing for the upcoming bushfire season.

The official Victorian Government *FireReady* app provides timely, relevant and tailored warnings and information in Victoria.

The *FireReady* app puts CFA, Metropolitan Fire Brigade (MFB) and Department of Environment and Primary Industry (DEPI) emergency warnings and information at your fingertips.

The *FireReady* app is available for both Apple and Android devices and can be downloaded from [www.cfa.vic.gov.au/plan-prepare/fireready-app](http://www.cfa.vic.gov.au/plan-prepare/fireready-app).

## VicEmergency

The state's primary site for emergency warnings, which shows incidents in Victoria on a real-time Google Map display <http://emergency.vic.gov.au>

## CFA

Resources to assist in planning and preparing the fire season [www.cfa.vic.gov.au/plan-prepare/](http://www.cfa.vic.gov.au/plan-prepare/)

## OHS Services

The IR Unit provides a range of OHS services to schools that include:

- telephone advice on OHS matters
  - telephone advice on workers compensation and return-to-work issues
  - OHS training sessions that can be booked on IPLS
  - School safety assessments
  - OHS guidelines on the CECV website
- Contact the CECV IR Unit to avail yourself of these services.

## Catholic Education Melbourne Christmas Office Closure

Catholic Education Melbourne (including the IR Unit) will be closed from midday on 24 December 2015, until the office reopens in January 2016.

The IR Unit staff wish you a happy Christmas and a safe New Year.

If you have an urgent industrial relations matter during this time, contact Mr John Jordan, Manager, at [jjordan@cem.edu.au](mailto:jjordan@cem.edu.au).

## Summary of Communications: October & November 2015

### October

VCMEA Implementation Update [Implementation Update](#)

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