

Fair Work | Fact Sheet

Personal/Carer's Leave

The information in this sheet concerns national system and Victorian employers. It refers to the personal/carer's leave provisions in the National Employment Standards (NES). The NES is contained in the Fair Work Act 2009 (Cth) and comes into effect on 1 January 2010.

Overview of entitlement and eligibility

Paid personal/carer's leave

An employee is entitled to 10 days of paid personal leave, which includes sick leave and carer's leave, per year after 12 months of service. Leave accrues on the basis of a 38 hour week. This entitlement is pro-rated for employees who have not completed 12 months service.

An employee may take paid personal/carer's leave:

- if the employee is not fit for work because of a personal illness, or personal injury; or
- to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of a personal illness or personal injury, or an unexpected emergency.

The entitlement to paid personal/carer's leave does not extend to casual employees.

Unpaid carer's leave

Employees who have exhausted their paid personal leave entitlements will be entitled to two days of unpaid carer's leave per occasion in the event of an unexpected emergency. This entitlement extends to casual employees.

Compassionate leave

Employees are entitled to two days of paid compassionate leave per occasion in the event of a death or serious illness of a family or household member. This entitlement also extends to casual employees however they will not be paid for the leave.



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Documentary requirements

An employee must provide notice to their employer as soon as practicable of their intention to take paid personal/carer's leave, unpaid carer's leave or compassionate leave.

An employer may request evidence that would satisfy a reasonable person of an employee's entitlement to the leave. This may be in the form of a medical certificate or statutory declaration.

However, it will not be viewed as reasonable to request a medical certificate for each and every absence due to personal illness. It may be reasonable to request evidence where absence is for more than a few days or for repeated absences on particular days e.g. before or after a weekend.

An employee who has not complied with the notice and evidence requirements is not entitled to take the leave.

Calculating leave payments (when taken or paid out on termination)

If an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for their ordinary hours of work in the period of leave taken.

Leave accrues based on a 38 hour week, which means that a full-time employee who works 38 hours a week over five days (Monday to Friday) will accrue the same amount of leave as a full-time employee who works 38 ordinary hours over four days per week.

Employees (other than some award based employees) will not be entitled to have any unused personal/carer's leave paid out upon termination of their employment.

Cashing-out leave

Paid personal/carer's leave may only be cashed out in accordance with the terms included in a modern award or enterprise agreement. The terms must require that:

- employee's must retain a minimum balance of 15 days' leave after the cash out;
- each cashing out arrangement be a separate agreement in writing between the employer and the employee; and
- the employee receive at least the full amount that would have been payable had the employee taken the leave.

Employees not covered by an award or agreement will not be able to agree to cash out personal/carer's leave.

Employers and award/agreement free employees may agree to the provision of extra personal/carer's leave in exchange for foregoing an equivalent amount of pay e.g. 4 weeks leave (rather than 2 weeks) on half pay.



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Tips for compliance

- Employers should make sure employees have enough leave 'in the bank' before any cashing out of leave is permitted.
- It might be helpful for employers to develop a template cashing out agreement to be used in the event an employer and employee decide on such an arrangement.
- When an employee requests a portion of their personal leave be cashed out, it may be helpful for employers to utilise a register type document which deals with and processes these requests.
- To ensure all employees are aware of their obligations, employers may wish to implement a company policy, circulated to all employees, which outlines (amongst other things) the notice and evidentiary requirements for taking personal/carers' leave.



Find out more at:
www.fairworkaustralia.ahri.com.au