



# *New Paid Family and Domestic Violence Leave*

The new paid Family and Domestic Violence Leave entitlement will replace the existing 5-day entitlement of unpaid Family and Domestic Violence Leave, as part of the National Employment Standards (NES).

Employees can still access 5 days of unpaid Family and Domestic Violence Leave until the new paid leave entitlement becomes available to them.

The new leave entitlement will be available from:

- 1 February 2023 - for employees of all businesses, except small business.
- 1 August 2023 - for all small business employers.

NB: Fair Work legislation recognises a small business as one that has less than 15 employees including casuals.

## *What is Family and Domestic Violence?*

Under the new provisions, Family and Domestic Violence means violent, threatening or other abusive behaviour by an employee's close relative, a current or former intimate partner, or a member of their household that both:

- seeks to coerce or control the employee
- causes them harm or fear.

A close relative is:

- an employee's
  - spouse or former spouse
  - de facto partner or former de facto partner
  - child
  - parent
  - grandparent
  - grandchild
  - sibling
- a child, parent, grandparent, grandchild or sibling of an employee's current or former spouse or de facto partner, or
- a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

## *Who can access the leave?*

All employees in the Fair Work system (including part-time and casual employees) will be entitled to 10 days of paid Family and Domestic Violence Leave in a 12-month period.

It will not be pro-rated for part-time or casual employees.

## How does it work?

The full 10-day leave entitlement will be available upfront.

Employees who start on or after the date that the paid leave entitlement becomes available at their new workplace, can access the full 10 days from their first day.

Employees who are already employed when the paid leave entitlement starts in their workplace, can access the full 10 days on the relevant start date. The leave then renews on the anniversary of when they started working for that employer.

The leave renews every year on each employee's work anniversary. It doesn't accumulate from year to year if it isn't used.

## In what situations can leave be accessed?

Other than an employee experiencing Family and Domestic Violence, employees can also take paid Family and Domestic Violence Leave if they need to do something to deal with the impact of Family and Domestic Violence and it's not practical for them to do so outside of their work hours. This could include, for example, the employee:

- making arrangements for their safety, or the safety of a close relative (including relocation)
- attending court hearings
- accessing police services
- attending counselling
- attending appointments with medical, financial or legal professionals.

## How is the leave paid?

Full-time and part-time employees can take paid Family and Domestic Violence Leave at their full pay rate for the hours they would have worked if they weren't on leave.

Casual employees will be paid at their full pay rate for the hours they were rostered to work in the period they took leave.

An employee's full pay rate is their base rate plus any:

- incentive-based payments and bonuses
- loadings
- monetary allowances
- overtime or penalty rates
- any other separately identifiable amounts.

An employee can use paid Family and Domestic Violence Leave during a period of paid personal/carer's or annual leave. If this happens, the employee is no longer on the other form of paid leave and is taking paid Family and Domestic Violence Leave instead.



## How much notice needs to be provided to the employer by the employee?

If an employee takes paid Family and Domestic Violence Leave, they must let their employer know as soon as possible. This could be after the leave has started.

Employees also need to tell their employer how long they expect the leave to last.

## Does the employee need to provide evidence?

An employer can ask their employee for evidence for as little as 1 day or less off work, to show that the employee needs to do something to deal with Family and Domestic Violence and it's not practical to do that outside their hours of work.

The evidence must convince a reasonable person that the employee took the leave to deal with the impact of Family and Domestic Violence. Types of evidence can include:

- documents issued by the police service
- documents issued by a court
- family violence support service documents, or
- a statutory declaration.

If the employee doesn't provide the requested evidence, they may not get paid Family and Domestic Violence Leave.

An employer can only use this information to satisfy themselves that the employee is entitled to Family and Domestic Violence Leave, unless:

- the employee consents
- the employer is required to deal with the information by law, or
- it's necessary to protect the life, health or safety of the employee or another person.

The employer can't use the information for other purposes, including to take adverse action against the employee.

Employers should consider such evidence as strictly confidential and sensitive and, therefore, should be shared on a *strictly* 'job-related need' basis. No-one, not even the employee's next of kin, should be told the employee is on Family and Domestic Violence Leave as this could place the employee at risk.

## Support Services – South Australia

### Domestic Violence Crisis Line

Phone: 1800 800 098 (free call 24 hours)

### 1800RESPECT

Australia's national sexual assault, domestic and family violence support service.

1800 737 732 (free call 24 hours)

<https://www.1800respect.org.au/>

### TRISH REABURN, Prime Partner

January 2023

Created by and for Solutions To Spec Pty Ltd, 2022.



PO Box 64, Welland SA 5007  
t 0408 744 827 e trish@solutionstospec.com.au

[solutionstospec.com.au](https://www.solutionstospec.com.au)

ABN: 41 467 551 174

