



Personal/carer's leave and compassionate leave and the National Employment Standards

Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, help to resolve workplace complaints, conduct investigations, and enforce relevant Commonwealth workplace laws.

Personal carer's leave and compassionate leave forms part of the National Employment Standards (NES). As of 1 January 2010, the NES apply to all employees covered by the national workplace relations system, regardless of the applicable industrial instrument or contract of employment.

Terms in awards, agreements and employment contracts cannot exclude or provide for an entitlement less than the NES and those that do, have no effect. An employer must not contravene a provision of the NES. A contravention of a provision of the NES may result in penalties of up to \$10,200 for an individual and \$51,000 for a corporation.

In addition to the NES, an employee's terms and conditions of employment generally come from an award or agreement. All references to an award or agreement in this fact sheet include modern awards, enterprise agreements, and award or agreement-based transitional instruments.

Overview

The NES establish minimum entitlements for permanent employees to receive:

- paid personal/carer's leave
- unpaid carer's leave
- paid or unpaid compassionate leave.

These forms of leave are designed to help an employee deal with personal illness, caring responsibilities, family emergencies, and the death or serious illness of close family members.

Casual employees are eligible for unpaid carer's leave and unpaid compassionate leave.

Personal/carer's leave

What are the minimum entitlements to personal/carer's leave?

The term 'personal/carer's leave' effectively covers both sick leave and carer's leave. The minimum entitlement to paid personal/carer's leave for an employee (other than a casual employee) is 10 days per year.

An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the number of ordinary hours worked, and accumulates from year to year.

Personal/carer's leave continues to accrue when an employee takes a period of paid personal/carer's leave or paid annual leave. Personal carer's leave and compassionate leave will not accrue on unpaid leave unless it is community service leave or it is provided for in an award or agreement.

When can paid personal/carer's leave be taken?

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

- if they are unfit for work because of their own personal illness or injury (including pregnancy-related illness), or
- to provide care or support to a member of their immediate family or household, because of a personal illness, injury or unexpected emergency affecting the member. A member of the employee's immediate family means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of an employee; or a child, parent, grandparent, grandchild or sibling of the

employee's spouse or de facto partner.

However, if the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday, the employee is not on paid personal/carer's leave on that public holiday.

What payments are required when personal/carer's leave is taken?

When paid personal/carer's leave is taken, the minimum requirement is that an employee must be paid at their base rate of pay for the ordinary hours they would have worked during the period. An employee's 'base rate of pay' (other than a pieceworker) is the rate of pay payable to an employee for his or her ordinary hours of work, but not including any of the following:

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

Can paid personal/carer's leave be cashed out?

For employees covered by an award or agreement, cashing out of paid personal/carer's leave is permitted if all of the following applies:

- the award or agreement allows the practice
- there is a separate agreement in writing on each occasion
- the employee retains a balance of at least 15 days of untaken paid personal/carer's leave
- the employee is paid at least the full amount that would have been payable had the employee taken the leave they have cashed out.

It is unlawful for an employer to force (or try to force) an employee to make (or not make) an agreement to cash out personal/carer's leave under a term included in an award or agreement.

An award/agreement-free employee is not able to cash out paid personal/carer's leave.

Unpaid carer's leave

What are the minimum entitlements to unpaid carer's leave?

An employee (including a casual employee) is entitled to two days of unpaid carer's leave for each occasion when a member of the employee's immediate family or household requires care or support because of a personal illness, injury, or an unexpected emergency.

An employee may take unpaid carer's leave for each occasion as a single continuous period of up to two days, or any separate periods to which the employee and his or her employer agree. An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave. (This does not apply to casuals who have no entitlement to paid personal/carer's leave.)

Compassionate leave

What are the minimum entitlements to compassionate leave?

An employee (including a casual employee) is entitled to two days of compassionate leave to spend time with a member of their immediate family or household who has sustained a life-threatening illness or injury. Compassionate leave may also be taken after the death of a member of the employee's immediate family or household.

An employee may take compassionate leave for each occasion as:

- a single continuous two day period or
- two separate periods of one day each or
- any separate periods to which the employee and his or her employer agree.

What payments are required when compassionate leave is taken?

If an employee (other than a casual employee) takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the ordinary hours they would have worked during the period.

As mentioned above, casual employees are not entitled to any paid personal/carer's leave or compassionate leave. However, casuals are entitled to unpaid carer's leave or compassionate leave.

Are there notice and evidence requirements?

For all periods of personal/carer's leave or compassionate leave, an employee must give his or her employer notice of the taking of such leave.

The notice must be given to the employer as soon as practicable (which may be a time after the leave has started), and must advise the employer of the period, or expected period, of the leave.

An employer is entitled to request evidence that would substantiate the reason for leave. A failure to either provide notice or, if required, evidence that would satisfy a reasonable person to substantiate the reasons for the leave, means the employee is not entitled to the leave.

An award or agreement may include terms relating to the kind of evidence that an employee must provide in order to be entitled to paid personal/carer's leave, unpaid carer's leave or compassionate leave. For example, an employer may request that the employee provides a medical certificate.

Further Information

The Fair Work Ombudsman has published a fact sheet on each NES entitlement. For further information on a specific NES entitlement, please see the relevant fact sheets at www.fairwork.gov.au.

The Fair Work website also provides templates for employee leave records to assist employers.

For further information, visit www.fairwork.gov.au or contact the Fair Work Infoline on **13 13 94**.

Personal/carer's leave is provided for by sections 95–107 of the *Fair Work Act 2009*.

Related publications

Introduction to the NES

Maximum working hours and the NES

Requests for flexible working arrangements and the NES

Parental leave and related entitlements and the NES

Annual leave and the NES

Community service leave and the NES

Long service leave and the NES

Public holidays and the NES

Notice of termination and redundancy pay and the NES

Fair Work Information Statement and the NES

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

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Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94