

# Family and Domestic Violence Leave in Modern Awards – An Overview



DFV Work Aware

when domestic & family violence comes to work

By way of a decision released by the Fair Work Commission (FWC) 6 July 2018, a model term providing for family and domestic violence leave has been developed for inclusion in all Modern Awards effective 1 August 2018, as part of the 4 yearly Modern Award Review.

It would be prudent for employers to ensure they have measures in place for administering this new entitlement and dealing with employees experiencing turbulent circumstances at home.

## Who will this apply to?

This unpaid entitlement will apply to all employees including casuals, to be used in circumstances that include:

*“Violence, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful”*

### The broad term “family member” encompasses

- A spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- A child parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- A person related to the employee according to Aboriginal or Torres Strait Island kinship rules.
- The reference to a “de facto partner” includes a former spouse or de facto partner.

(see over page for model clause)

## What are employees entitled to?

- 5 day’s unpaid leave to deal with family and domestic violence.
- Does not accumulate from year to year
- Is available in full at the start of each 12-month period of the employee’s employment
- The period of leave can be less than a day by agreement.
- The employer can agree to provide more than 5 days’ unpaid leave to deal with family and domestic violence, also by agreement.

## When can employees take this leave?

- If the employee is experiencing family and domestic violence; and
- Needs to do something to deal with the impact of such violence where it is impractical to do so outside their ordinary hours of work.
- This may include making arrangements for their safety or the safety of a family member, such as a dependent child, for attending urgent court hearings or accessing police services.
- Employees must provide notice for taking leave as soon as practicable, which may be after the leave has started; and
- Must advise their employer as to the expected period of leave
- The employer may require employees to provide evidence of the purpose for taking family and domestic violence leave.
- Such evidence must be sufficient to satisfy a reasonable person; however, employers have a duty to ensure that the information concerning any notice the employee has provided is treated confidentially.

**Employers may consult with the employee individually regarding the handling of such confidential information.**

# Model Clause for Family and Domestic Violence Leave in Modern Awards

X.1 This clause applies to all employees, including casuals.

## X.2 Definitions

(a) In this clause:

- family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.
- **family member means:**
  - i. a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
  - ii. a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
  - iii. a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of family member in clause X.2(a) includes a former spouse or de facto partner.

## X.3 Entitlement to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- b) the leave does not accumulate from year to year; and
- c) is available in full to part-time and casual employees.

**Note 1:** A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer

**Note 2:** The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

## X.4 Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- a) is experiencing family and domestic violence; and
- b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

**Note:** The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

## X.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

## X.6 Notice and evidence requirements

(a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause X. The notice:

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

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause X must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause X.4.

**Note:** Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

## X.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause X.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause X prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

**Note:** Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

## Compliance

An employee is not entitled to take leave under clause X unless the employee complies with clause X.

**For information, support and enquiries about the delivery of training in your workplace, please contact:**



**DFV Work Aware**

when domestic & family violence comes to work

web: [www.dvworkaware.org/queensland/](http://www.dvworkaware.org/queensland/)

**Free call: 1800 621 458**