

Five days Family and Domestic Violence Leave now a National Employment Standard



Commencing 12 December 2018, unpaid family and domestic violence leave has been included as a National Employment Standard (NES)

Who will this apply to?

All employees are entitled to five days unpaid Family and Domestic Violence Leave (FDV Leave) as prescribed under the NES. Regardless of award coverage.

What is the entitlement?

Five (5) days unpaid FDV leave on commencement of employment. While this entitlement renews each twelve (12 months) it does not accumulate from year to year. This leave may be taken in increments of less than 1 day (for example 2 hours)

Workplace Policies

Where a workplace policy or employment contract provides for less than the minimum entitlement under the NES, the NES (5 days unpaid leave) will apply by law.

What is family and domestic violence?

FDV means violent, threatening or other abusive behaviour by an employee's close relative that

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

When can employees take DFV Leave?

Leave can be applied for if an employee needs to do something to deal with the impact of family and domestic violence and it's impractical to do so outside their ordinary hours of work. This could include:

- Making arrangements for their safety, or safety of a close relative (including relocation)
- Attending court hearings, or
- Accessing police services

Continuous Service

Unpaid FDV leave does not break an employee's continuous service but does not count as service when calculating

accumulated entitlements such as paid leave (sick, long service, annual)

Notice Requirements

The employer is to be advised as soon as possible of the requirement to take leave and how long the employee expects the leave to last.

Evidence Requirements

An employer can request evidence that the employee took leave to deal with FDV. Failure to provide this evidence may result in refusal of leave. Types of evidence can include documents issued by:

- the police service
- a court
- family violence support service documents
- a statutory declaration

Evidence may be requested for as little as 1 day or less.

Other types of leave

Employees may access other types of leave such as annual leave and depending on the circumstances, may be entitled to sick leave.

Confidentiality

Employers have an obligation to take practicable steps to maintain confidentiality when an application for FDV leave is received. However, employers are not prevented from disclosing information in the following circumstances:

It is required by law, or

Is necessary to protect the life, health or safety of the employee or another person.

Mishandling of sensitive information could have serious adverse consequences for the employee and could leave the employer at risk of legal action.

Employers should work with employees individually regarding the handling and sharing of confidential information on strictly "need to know" basis.

Support Services

Confidential information, counselling and support for people impacted by DFV is available from the National sexual assault, domestic and family violence counselling service by phoning

1800RESPECT

Phone: 10800 621 458
web: www.dvworkaware.org/queensland/

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.

X.8 Compliance

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



DFV Work Aware

when domestic & family violence comes to work