



PERSONAL/CARER'S LEAVE

Workplace Relations Fact Sheet – July 2016

Paid Personal/Carer's Leave

Employees, other than casual employees, are entitled to accrue paid personal/carers leave.

Full time employees accrue up to 10 days' paid personal/carers leave per year under the National Employment Standards (NES).

Part time employees are generally entitled to paid personal/carers leave on a pro rata basis.

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

When can Paid Personal/Carer's Leave be Taken?

An employee may take paid personal/carers leave:

- If they are unfit for work because of their own personal illness or injury; 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 the employee's:

- Spouse or a de facto partner;
- Child;
- Parent;
- Grandparent;
- Grandchild;
- Sibling; 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/carers leave includes a day that is a public holiday, the employee is not on paid personal/carers leave on that public holiday. The employee will receive public holiday entitlements for that day.

What Payments are Required when Personal/Carer's Leave is Taken?

The *Fair Work Act 2009* (Cth) requires an employer to pay personal/carers leave at the employee's base rate of pay for their ordinary hours during the period of leave. This doesn't include separate entitlements such as incentive-based payments and bonuses, loading, allowances, overtime or penalty rates. However, an applicable modern award or enterprise agreement may require that some allowances (such as tool allowance, first aid allowance, etc) are continued during a period of personal/carers leave.



Can Paid Personal/Carer's Leave be Cashed Out?

Cashing out of paid personal/carers leave by an employee is only permitted if the practice is allowed by the modern award or enterprise agreement that applies to the employee, and the cashing out is done according to the terms set out in the award or agreement. Employers should note that **most modern awards do not allow cashing out of personal/carers leave**.

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/carers leave.

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

Employee Responsibilities

Employees must notify their employer as soon as practicable that they cannot attend work because of an illness or injury. The employee should also specify how long they expect to be absent from work.

The employer may also request the employee to provide evidence of the reason for the leave which would satisfy a reasonable person. Examples of evidence may include a medical certificate or a statutory declaration. A policy or enterprise agreement may specify when the employee has to give evidence to their employer and the type of evidence requested.

If an employee doesn't provide evidence, if requested, they may not be entitled to paid personal/carers leave.

An employee is not entitled to take paid personal leave if the employee is receiving workers' compensation payments, unless expressly provided for in an applicable law of a Commonwealth, state or territory relating to workers' compensation.

Unpaid Carer's Leave

An employee (including a casual employee) is entitled to two (2) 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 either:

- A single continuous two (2) day period; or
- Any separate periods to which the employee and the employer agree.

An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carers leave. Note that this does not apply to casuals who have no entitlement to paid personal/carers leave.

***Note:** This information is provided for convenient reference only on the basis that it is not to be relied upon without reference to the Workplace Relations Advisers of the Canberra Business Chamber, as the circumstances in each matter are different and no one piece of advice will apply to all circumstances. For more information please contact the Workplace Relations Hotline on 1300 277 881.*