

UNPAID FAMILY AND DOMESTIC VIOLENCE LEAVE

Employer Assist recently notified members about the upcoming changes to Modern Awards in regard to compulsory unpaid Family and Domestic Violence Leave (FDVL)

By way of update, the Fair Work Commission (FWC) has released a final model clause which will soon be introduced into all Modern Awards.

The FWC announced that the entitlement to FDVL will be available for all employees governed by Modern Awards from 1 August 2018.

What are the entitlements:

- five days unpaid FDVL;
- available in full at the start of each 12-month period of the employees employment;
- does not accumulate;
- available to all employees (including casuals);
- it is not pro-rated for part-time or casual employees; and
- does not require employees to access paid leave entitlements before accessing unpaid FDVL.

The Model Clause

X Leave to deal with Family and Domestic Violence

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:

- 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 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:

- the leave is available in full at the start of each 12 month period of the employee's employment; and
- the leave does not accumulate from year to year; and
- 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. 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:

- is experiencing family and domestic violence; and
- 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:

- 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.

(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.

What you will need to do in preparation for FDVL

- Review your leave policy documents and insert provisions dealing with the new FDVL;
- Ensure all of your employees are made aware of the above changes to your policy documents and advise all employees of the process for applying for the new type of leave; and
- Review your employment contracts and insert provisions dealing with the new FDVL.

This article is intended for information purposes only and should not be regarded as legal advice. Please contact Employer Assist for specific advice.

AAAA Member Benefits

Please contact Employer Assist on 1300 735 306 or aaaa@employerassist.com.au if you have any questions about the content of this article or if you require any assistance with your workplace.

Employer Assist can provide assistance with drafting workplace policies and procedures and employment contracts which are tailored to your workplace or amending and updating existing documents.

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