

Family and Domestic Violence Leave

Released 23 August 2024

Defining Family and Domestic Violence

According to Fair Work, family and domestic violence means violent, threatening or other abusive behaviour by certain individuals known to an employee that both:

- Seeks to coerce or control the employee; and
- Causes them harm or fear.

Family and Domestic Violence, includes* the following:

- Physical Violence
- Sexual assault/abuse
- Verbal abuse Emotional or psychological abuse
- Threatened abuse of pets
- Financial Abuse
- Stalking
- Obsession/jealous behaviour
- Serious neglect where there is a relationship of dependence
- Damage to property or belongs
- Coercive control and coercive behaviours including isolating a person from their friends and family, controlling freedom of movement and independence, monitoring a person by wanting to know their location.

*Note: this is not an exhaustive list

Paid Family and Domestic Violence Leave

Employees can access **10 days of paid family and domestic violence leave each year**. This is now an entitlement under the NES - it's a paid minimum leave entitlement, just like annual or personal / carer's leave.

To access paid family and domestic violence leave, the individual known to the employee could be:

- An employee's close relative; or
- A member of an employee's household, or
- A current and/or former intimate partner of an employee

A close relative is defined by Fair Work as an employee's:

- Spouse or former spouse
- De facto partner or former de facto partner
- Child
- Parent
- Parent
- Grandparent
- Grandchild
- Sibling

Employees who are experiencing family and domestic violence can take this leave to deal with the impacts of family and domestic violence where it is not practical to do so outside their work hours. This might include:

- making arrangements for their own or a family member's safety (including relocation)
- attending court or accessing police services
- attending counselling, or appointments with medical, financial, or legal professionals.

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Eligibility to take Paid Family and Domestic Violence Leave

- The full 10-day entitlement is available to all full-time, part-time, and casual employees.
- Employees must experience family and domestic violence to be eligible to take paid family and domestic violence leave.
- The leave does not need to be taken as 10 consecutive days, it can be taken as single or multiple days, or as part days by agreement.
- An employee's paid leave entitlement is available in full immediately and resets on their work anniversary. It doesn't accumulate from year to year if the full entitlement isn't used.
- Paid family and domestic violence leave doesn't break an employee's period of continuous service.
- It also counts as service when calculating accumulated entitlements, such as paid annual or personal/carer's leave.
- This paid leave will also count towards an employee's hours worked in that week for the purposes of calculating overtime.

Pay Rates for Family and Domestic Violence Leave

- For full-time or part-time employees with a paid entitlement, family and domestic violence leave must be paid at the employee's full rate of pay for the hours they would have worked had they not taken leave.
- Casual employees with a paid entitlement must be paid at their full rate of pay for the hours they were rostered to work in the period they took leave.
- The employee's full pay rate is their base rate plus any:
 - Loadings
 - Allowances
 - Overtime and penalty rates
 - Bonuses
 - Incentive payments or,
 - Other separately identifiable amounts

Confidentiality Requirements

Employers must take reasonable steps to keep information about notice or evidence for family and domestic violence leave confidential.

Employers can only use this information to satisfy themselves that the employee is entitled to family and domestic violence leave, unless the employer is using or dealing with the information where:

- the employee consents
- it's required by law, or
- it's necessary to protect the life, health or safety of the employee or another person.

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Confidentiality Requirements - Pay Slip Requirements

- Pay slips must not mention paid family and domestic violence leave, however employers must keep a record of this leave balance and any leave taken by employees.
- This leave must be shown on a pay slip as ordinary hours of work, or another kind of payment for performing work such as an allowance, bonus or overtime payment. It is best practice to show this time on the pay slip in a way that makes it appear that the employee has not taken leave.
- However, the pay slip may record the time as another type of leave (such as annual leave or sick leave) at the employee's request.

Employee Responsibilities

- An employee approaches their employer about being a victim of domestic violence
- An employee will notify their employer of their intention to take leave
- The employee may be required to provide the relevant documentation
- In the meantime, the employer should provide the employee with a list of relevant support services and make inquiries with the employee about how they wish to be supported during this time
- Once the leave has been approved, the employee will take leave
- **Note: leave can also be requested by the employee after the leave has commenced. In these circumstances, employees should contact their employer as soon as possible.*
- In the next pay cycle, the employee will receive their wage as normal (as if they worked their ordinary or rostered hours)
- After the leave has been taken, the employee will return to work

Employer Responsibilities

- Employers should check-in with the employee (support should be ongoing).
- Provide paid family and domestic violence leave to employees upon request and cannot unreasonably refuse a request for leave.
- Employers are entitled to ask for evidence, and this can include:
 - documents issued by police;
 - documents issued by the courts;
 - statutory declaration; and
 - family violence support service documents
- Employers must keep accurate records of leave taken and all leave balances (however they must be kept confidential).
- Adhere to pay and pay slip requirements.
- Employers have a duty of care to provide employees with a safe and supportive working environment.

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Flexible Working Arrangements

Employees who are experiencing family and domestic violence or who are providing care and support for a member of their household or immediate family who is experiencing violence may also be entitled to request flexible working arrangements.

Work Health and Safety Requirements

Family and domestic violence can become a WHS issue if the perpetrator makes threats, intimidates or carries out violence on a partner or family member at the workplace, including if working from home.

Workplaces can be a place of refuge for workers experiencing family and domestic violence and be a crucial source of social and economic support. Employers are more likely to be able to do more to control the risk of family and domestic violence where they control the workplace.

WHS laws and an employer's duty to manage WHS risks still apply if workers are working from home.

Workers experiencing family and domestic violence may be at greater risk because of working from home arrangements, so before starting work from home arrangements employers must identify and manage the risks in consultation with workers.

Protection from Adverse Action

Employees are protected from adverse action because they're experiencing (or have experienced) family and domestic violence. This also applies to future employees. This is because experiencing family and domestic violence is now a 'protected attribute'. Employers can't take adverse action against an employee because of a protected attribute.

Support Services

1800RESPECT

1800 Respect
24-hour counseling
service



Lifeline
Crisis & suicide
prevention services



**Men's Referral
Service**
Counseling for men



The Orange Door
Assistance for family
violence concerns



WIRE
Legal, employment, and
health support for women



Safe Steps
Crisis accommodation
and legal support



Switchboard / Rainbow Door
Support for LGBTQIA+
individuals