



## New paid family and domestic violence leave – key information for employers

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From next year, the Fair Work Act (FWA) will provide for paid family and domestic violence leave. The changes mean that all national system employees (including part-time and casual employees) will be entitled to **10 days of paid** family and domestic violence leave each year.

The changes will replace the current minimum statutory entitlement of five days of unpaid leave available for family and domestic violence under the National Employment Standards.

Like the current entitlement to unpaid leave, the new paid leave will be available to employees upfront and won't accumulate year to year if it is not used within the 12 month period.

### When do I need to comply?

The new leave entitlement will commence from:

- **1 February 2023**, for employees of non-small business employers (employers with 15 or more employees on 1 February 2023); and
- **1 August 2023**, for employees of [small business employers](#) (employers with less than 15 employees on 1 February 2023).

Employees who commence work on or after the leave entitlements come into place will be able to access the full 10 days from their start date. Existing employees will be able to access 10 days of leave from the commencement of the new leave provisions and the 10 days will subsequently renew on the employee's work anniversary.

From the above dates a failure to comply with the new leave entitlements may result in a breach of the civil remedy provisions in the FWA and exposes managers to monetary fines and other court orders.

### Payment for leave

Employers will need to pay family and domestic violence leave as follows:



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- Full-time and part time employees at their full rate of pay, on the basis that the employee had not taken the period of leave; and
- Casual employees at their full rate or pay for the hours they were rostered to work in the period they took leave.

Payment must cover the employee's full rate plus any incentive-based payments and bonuses, loadings, monetary allowances, overtime or penalty rates and any other specific identifiable amounts.

### Taking family and domestic violence leave

Employees will be able to take the leave if they need to do something to deal with the impact of family and domestic violence, which is not practical for them to do during regular work hours. For example, this might include attending court hearings, making safety arrangements, accessing police services, attending counselling and appointments with medical, financial or legal professionals.

The definition of family and domestic violence means 'violent, threatening or other abusive behavior by an employee's close relative, a member of their household, or a current or former intimate partner of an employee, that (a) seeks to coerce or control the employee, and (b) causes the employee harm or to be fearful.' The new provisions expand the current definition by including a current or former intimate partner and a member of the employee's household.

A close relative includes a current or former spouse or de facto partner, child, parent, grandparent, grandchild or sibling.

### Evidentiary requirements

Employers will be entitled to ask for evidence to show that the employee needs to do something to deal with the family and domestic violence. Employers can only use this information to satisfy themselves that the employee is entitled to take leave, and not for example any disciplinary action. Mishandling the information can have an adverse impact on their employee. Employers are not prevented from disclosing the information if:

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

Failure to comply with an employer's request for evidence means an employee may be deemed ineligible for the leave.

### What do I need to do?

We suggest you prepare ahead of the new changes to ensure compliance, by:

- **Communicating** changes to staff;
- **Educating** managers on compliance;
- **Updating** systems to reflect the process of new leave; and
- **Revising** relevant policies and procedures to reflect the entitlement.

The new leave provisions will be reviewed after 12 months to consider the impacts on small businesses, sole traders and people experiencing family violence.

Leading not-for profit relationship support organisation, Relationships Australia, recently tabled a submission that the leave entitlements should be extended to perpetrators. We will provide an update of any necessary changes to the proposed amendments.

### How we can help?

If you need any advice on this issue, contact a member from our [Workplace Relations, Employment and Safety team](#).

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