

Earlier this year, the Fair Work Commission handed down a [decision](#) granting unpaid family and domestic violence leave to award-covered employees. Last night, the Federal Government passed [legislation](#) that extended this entitlement to all [employees](#) by including this as part of the personal leave provisions of the National Employment Standards (NES).

This legislation commences operation on 12 December 2018.

What is the entitlement?

Employees (including casuals) experiencing family and domestic violence are entitled to five days' unpaid domestic violence leave per year. This includes all award-covered, enterprise agreement-covered and award/agreement free employees.

Family and domestic violence is "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". The five day's unpaid leave entitlement is:

- Available in full at the start of each 12 month period of employment,
- Does not accumulate from year to year, and
- Is available in full to part-time and casual employees.

When can the leave be accessed?

The unpaid leave can be taken in circumstances where the employee is "experiencing family and domestic violence" and "needs to do *something* to deal with the impact [of the violence]" which would be "impracticable" for the employee to do this outside of his or her ordinary hours of work (e.g. attending court hearings, relocation or accessing police or other services).

The qualifying circumstances are not clearly defined, and the use of the word "something" implies a broad application. The question of whether that something is "impracticable to do outside of [work]" will require consideration of the nature of the activity, and the employees normal work time(s).

What notice / evidence is required?

Similar to other forms of personal leave, employees must provide notice *as soon as practicable* of their intention to take the leave, including the expected period of absence or they are not entitled to it. This means that a late notification of a court appearance may mean the employee does not qualify for the leave, although care (and caution) should to be exercised when considering disqualifying an employee from the entitlement.

Upon request employees are also required to provide evidence that would satisfy a reasonable person that the leave is taken for the purpose described above. Any notice or evidence provided must be treated confidentially, as far as it is reasonably practicable to do so.

Need more information

If you would like further information about the application of this provision, or more generally about employee entitlements, please contact the team at Fair Work Lawyers.

The information contained in this publication is general in nature and does not constitute legal advice. The reader should seek legal advice in relation to their own specific circumstances.

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