

As part of the [4 yearly review](#) of modern awards, the Fair Work Commission handed down a [decision](#) granting unpaid family and domestic violence leave. From the first full pay period on or after 1 August 2018 award-covered employees will now be entitled to unpaid family and domestic violence leave.

What is the entitlement?

Under the [model clause](#), award-covered employees (including casuals) experiencing family and domestic violence are entitled to five days' unpaid leave per year. 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 personal leave, employees are required to provide notice *as soon as practicable* of their intention, and advise of the expected period of leave 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 of evidence provided must be treated confidentially, as far as it is reasonably practicable to do so.

Who does this affect?

This decision affects all employees who a modern award applies to. Employers who have enterprise agreements in place or who are award-free are not entitled to the leave. Note that it is foreshadowed that the National Employment Standards (NES) will be amended to include this leave and, if this does occur, the entitlement under the NES will apply to all employees.

Need more information

If you would like further information about the application of this provision, or more generally about the operation of awards, 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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