

## Family and domestic violence leave

All employees (including part-time and casual employees) are entitled to **10 days of paid** family and domestic violence leave each year.

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.

Employees can access the full amount of leave from the day they start work. The leave can be taken as single or multiple days, or as part days by agreement. An employee's leave balance renews each year on their work anniversary and doesn't accumulate from year to year if it isn't used.

### What is family and domestic violence?

Family and domestic violence, for the purposes of the Fair Work Act, means violent, threatening or other abusive behaviour that seeks to coerce or control the employee and causes them harm or fear.

It can include behaviour by an employee's close relative. For the paid leave entitlement, it also includes behaviour by a current or former intimate partner, or a member of the employee's household.

Family and domestic violence can present in many forms, and **not all forms are visible**. Violence can be physical, sexual, emotional, psychological, social, cultural, spiritual or financial. It can also be facilitated through technology. For more information visit 1800RESPECT at [1800RESPECT.org.au](https://www.1800respect.org.au)

### How is the leave paid?

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.

### What are the notice and evidence requirements?

Employees must let their employer know as soon as possible if they need to take family and domestic violence leave. Sometimes this will be after the leave has started.

An employer can ask for evidence to show that the employee needs to do something to deal with family and domestic violence and it's not practical to do it outside their work hours. Types of evidence an employee can provide include:

- a statutory declaration
- family violence support service documents
- documents issued by a police service, or
- documents issued by a court.

### What are the privacy 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.

### Pay slips

**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. See **Case study 4** below for more information.

## Other entitlements

### 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.

Flexible working arrangements can include changes to hours of work (for example, start and finish times), patterns of work (for example, split shifts or job sharing) or locations of work (for example, working from home). Find more information about Flexible working arrangements at [fairwork.gov.au/flexibility](https://fairwork.gov.au/flexibility)

### Other leave

Employees can access sick and carer's leave (also known as personal leave) if they have a personal illness or injury, or need to provide care or support to a member of their immediate family or household who is affected by an unexpected emergency, illness or injury. This includes where this is caused by family and domestic violence. Employees may also agree with their employer to use their accrued annual leave or take unpaid leave.

### Protections from discrimination at work

It's unlawful for an employer to take adverse action against an employee (or potential employee) because they are (or have been) experiencing family and domestic violence.

Adverse action includes doing, threatening, or organising any of the following:

- firing an employee
- injuring the employee in their employment (for example, not giving an employee their legal entitlements, such as pay or leave)
- changing an employee's job to their disadvantage
- treating an employee differently than others (for example, treating someone differently based on their sex or gender identity)
- not hiring someone
- offering a potential employee different and unfair terms and conditions for the job compared to other employees.

For more information visit Protections at work at [fairwork.gov.au/protections](https://fairwork.gov.au/protections)

## Support services

**If someone is in immediate danger, call 000.**

- 1800RESPECT at [1800RESPECT.org.au](https://1800RESPECT.org.au) (or 1800 737 732) is the national domestic, family and sexual violence counselling, information and support service.
- No to Violence – Men's Referral Service at [ntv.org.au](https://ntv.org.au) (or 1300 766 491) works with men who use family violence to change their abusive and violent behaviour.
- Visit our Family and domestic violence leave page at [fairwork.gov.au/fdvleave](https://fairwork.gov.au/fdvleave)

## Family and domestic violence leave – case studies

### Case study 1: Estelle

Toby owns a small café. His full-time employee Estelle has been late for work twice this week and seems pre-occupied and distracted. Toby asks her about it, and she apologises, explaining that her car was recently repossessed, and she missed her bus. Estelle tells Toby, 'I'm a bit embarrassed about the whole thing. I didn't know we were behind in repayments; my partner has all the mail go to his post office box and he's the only one with access to our bank account. Now he says it's my car so it's my fault.'

A few weeks later Estelle approaches Toby and asks for 3 days off to see a financial counsellor and meet with a crisis accommodation provider. She discloses that her partner has become increasingly controlling and verbally abusive. She tells Toby, 'He's never actually hit me, but I am really worried how he'll react if he knows I plan to leave. I want to get my finances and accommodation sorted while he's at work'.

Toby knows employees experiencing family and domestic violence can access up to 10 days paid leave, but he's not sure if the leave can be taken in cases where there's been no physical violence.



### Is Estelle eligible for paid family and domestic violence leave?

Yes. Estelle appears to be experiencing abusive behaviour by her partner that is seeking to coerce or control her and is causing her fear. Estelle can access paid family and domestic violence leave to see a financial counsellor and crisis accommodation provider as it is not practical for her to do so outside of her work hours.

Family and domestic violence can include non-physical violence, such as verbal abuse, financial abuse and/or coercive control. The impacts of this type of violence are very real and serious.



### Can Toby ask for proof?

Toby can ask Estelle to provide proof that she is doing something to deal with the impacts of family and domestic violence, and that it's impractical for her to do so outside of her work hours. She does not have to provide proof that she is experiencing family and domestic violence.

In this case, reasonable evidence could be a statutory declaration, and/or documents from any support services she is accessing (for example, financial counselling or crisis accommodation providers).



### How much does Estelle get paid?

Estelle is entitled to be paid at her full rate of pay for all the hours she would have worked on that day if she wasn't on leave – this includes any overtime, penalties or allowances she would normally receive for that shift.

### Case study 2: Alex and Josh

Trish runs a local pizza shop and employs 20-year-old Alex on a casual basis, while he attends university full-time. Alex's cousin, Josh, also works for Trish as a casual delivery driver.

One afternoon before his shift, Alex asks to speak to Trish privately. Alex discloses that he and his mother have been experiencing family and domestic violence from his step-father. He asks to take time off to move out and help his mum relocate too. Trish tells Alex that she understands and asks how she can best support him during this time.

Alex says, 'I'm going to move into Josh's place. Mum's going to stay in a women's shelter for a while, so we'll put most of our stuff into storage. Josh is going to help us move, so if he can have the weekend off too that would be a huge help'.



### Are Alex or Josh eligible for paid family and domestic violence leave?

Alex is eligible to take paid family and domestic violence leave because he is experiencing family and domestic violence and needs to do something to deal with the impact of family and domestic violence that he cannot do outside of work hours. He can access this leave to move, and to assist his mother to relocate to safety.

Although Josh is also assisting family members who are experiencing family and domestic violence to relocate to safety, Josh is **not** eligible for paid family and domestic violence leave, as he is not experiencing family and domestic violence himself. Trish could consider coming to an agreement with Josh to swap some of his shifts so he is free to help Alex.



### How much does Alex get paid?

As a casual employee, Alex is entitled to be paid at his full rate of pay for the hours he was rostered to work in the leave period. For example, if Alex was rostered on Saturday and Sunday night from 4pm to 8pm, he would be paid for 8 hours at his base rate of pay plus 25% casual loading, and the relevant weekend penalty under his award or agreement.



### Can Trish tell other employees about this?

Trish **must** keep the information provided by Alex confidential. Trish may only disclose the information if Alex consents, it's required by law, or it's necessary to protect the life, health or safety of Alex or another person.

For example, if safety in the workplace is a concern, Trish could seek Alex's agreement to disclose necessary information to other staff.

### Case study 3: Mel

Trang manages a clothing store and hires Mel as a part-time shop assistant. After starting her new job Mel discloses that she recently left an abusive relationship and is fearful of her former partner, Jane. Trang and Mel discuss a safety plan, including what to do if Jane shows up at the workplace.

Mel has been employed for 3 months when she receives a phone call at work and suddenly leaves halfway through her shift. Trang is on a break at the time, so Mel tells her co-worker 'I have to go. Please tell Trang I'll explain later'. Trang tries calling Mel but is unable to reach her. Mel sends a message that evening saying 'I'm ok. There was an incident with my ex. I'll be back at work tomorrow'.

Mel returns to work the next day. She explains that the phone call she received was from her teenage daughter, telling her Mel's former partner was at their home in breach of a protection order. Mel called the police on the way home and attended the station with her daughter to provide a statement.

Mel requests to take the remainder of yesterday's shift as paid family and domestic violence leave. She also notifies Trang that she needs to take a separate day of leave next week to attend court in relation to the incident.



### Can Mel access paid family and domestic violence leave after 3 months employment?

Yes. Employees can take 10 days of paid family and domestic violence leave from the first day they start work. They don't have to accumulate the leave over time.



### How much notice is needed?

To access the leave Mel needs to have notified Trang as soon as reasonably practical that she is taking family and domestic violence leave – this can be after the leave has started.



### Can family and domestic violence leave be taken as single or half days?

Family and domestic violence leave can be taken as single or multiple days. Periods of less than 1 day can also be taken if agreed between the employer and employee.



### Can Trang ask for proof?

Yes, Trang can ask Mel to provide proof that she is doing something to deal with the impacts of family and domestic violence and that it is not practical to do so outside work hours. In this case, Mel could provide a statutory declaration and/or documents issued by the police or court in relation to the incident.

#### **Case study 4: Aachal**

Aachal has recently immigrated to Australia with her husband and three children. She has taken a job at a local textile factory.

Recently Aachal's manager, Tamara, had noticed Aachal has been withdrawn at work and has bruises on her body. Tamara begins to suspect that Aachal may be experiencing family and domestic violence. She contacts 1800RESPECT for advice on approaching the matter. The next day, Tamara brings Aachal into her office before her shift. Tamara mentions the bruises on Aachal's arms and asks if everything is okay at home. Aachal tells Tamara that everything is fine, but thanks her for being kind and checking on her.

Tamara says, 'It's ok if you don't want to talk about it, but if something is going on at home there are things we can do to help, and there are people you can speak to about it'. She gives Aachal a piece of paper with the phone numbers for 1800RESPECT and a translation service which is available if Aachal prefers to speak in her own language.

A few weeks later, Aachal comes to Tamara's office. She says, 'I called the phone number you gave me. Please, can I take a day off tomorrow to meet with a women's shelter? My husband can't know. I will tell him I am sick and need to go to the doctor. He checks on me to know where I am. If he calls, can you please tell him I am sick?'

Tamara agrees and Aachal takes a day of paid family and domestic violence leave.

Later Tamara is preparing Aachal's payslip. She knows she cannot mention family and domestic violence leave on payslips but wonders what she should record instead.



#### **How should the family and domestic violence leave be recorded on Aachal's payslip?**

Generally family and domestic violence leave must be shown on the employee's payslip as payment for performing work (for example, ordinary hours, overtime and allowances). This is to protect the safety of the person experiencing family and domestic violence.

The employer may record family and domestic leave as another kind of leave on the employee's payslip if the employee has requested it. This may be in situations where the employee wants their payslip to show the period as leave. For example, Aachal has told her husband she is sick, so she might request that her payslip show the period as sick leave. The best option is for Tamara to ask Aachal how she wants it recorded on her payslip.

### Case study 5: Heath

Chris runs a small marketing firm. One of his sales reps, Heath, discloses that his former girlfriend Marie is seeking a protection order against him.

Heath tells Chris, 'She's claiming "domestic violence" but I never hit her – and we weren't even living together before we broke up! Now she accuses me of stalking her because I left a tracking device in her car and we keep running into each other near her work. It's all a big misunderstanding.'

Heath asks Chris if he can take a day off next week to attend court using paid family and domestic violence leave.



### Is Heath eligible for paid family and domestic violence leave?

Heath is **not** eligible to take paid family and domestic violence leave, as he is not **experiencing** family and domestic violence himself.



### Could Heath's ex-girlfriend take paid family and domestic violence leave from her employer?

It's likely Marie would be eligible for paid family and domestic violence leave if she needs time off work to attend court for a protection order against Heath.

Intimate partners (current or former) don't need to be living together for family and domestic violence to occur.

## CONTACT US

Fair Work online: [fairwork.gov.au](https://fairwork.gov.au)

Fair Work Infoline: **13 13 94**

### **Need language help?**

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

### **Help for people who are deaf or have hearing or speech difficulties**

You can contact us through the National Relay Service (NRS).

Select your [preferred access option](#) and give our phone number: **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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