

Sick and carer's leave and compassionate leave

Overview

Sick and carer's leave (also known as personal/carer's leave) and compassionate leave form part of the National Employment Standards (NES) in the Fair Work Act 2009. The NES apply to all employees covered by the national workplace relations system. An award, enterprise agreement or other registered agreement, contract of employment or workplace policy can't provide for conditions that are less than the national minimum wage or the NES or exclude the NES.

The NES establish minimum entitlements for permanent employees, including:

- paid personal/carer's leave
- unpaid carer's leave
- paid compassionate leave.

These forms of leave are designed to help an employee deal with things like personal illness or injury, caring responsibilities, family emergencies, and the death or life-threatening illness or injury of close family members.

Casual employees are entitled to take leave such as unpaid carer's leave and unpaid compassionate leave.

Paid sick and carer's leave

What are the minimum entitlements to paid sick and carer's leave?

Sick leave can be used when an employee is ill or injured.

An employee may have to take time off to care for an immediate family or household member who is sick or injured or help during a family emergency. This is known as carer's leave but it comes out of the employee's personal leave balance.

Under the NES, employees get:

- 10 days each year for full-time employees
- pro rata 10 days each year for part-time employees.

An employee's entitlement to paid sick and carer's leave accumulates progressively during a year of service, based on their ordinary hours of work.

The entitlement to 10 days of sick and carer's leave can be calculated as 1/26th of an employee's ordinary hours of work in a year.

Sick and carer's leave accumulates from year to year.

Sick and carer's leave continues to accrue when an employee takes it or paid annual leave. Sick and carer's leave will not accrue on unpaid leave unless it is community service leave, or it is provided for in an award or agreement.

When can paid sick and carer's leave be taken?

An employee can take paid sick and carer's leave:

- if they are unfit for work because of their own personal illness or injury (including pregnancy-related illness), or
- to provide care or support to a member of their immediate family or household, because of a personal illness, injury or unexpected emergency affecting the member. A member of the employee's immediate family means their:
 - spouse or former spouse
 - de facto partner or former de facto partner
 - child
 - parent
 - grandparent
 - grandchild
 - sibling, or
 - child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse or de facto partner).

What payments are required when sick and carer's leave is taken?

When paid sick and carer's leave is taken, the minimum requirement is that an employee must be paid at their base rate of pay for the ordinary hours they would have worked during the period. An employee's 'base rate of pay' is the rate of pay payable to an employee for their ordinary hours of work, but not including any of the following:

- incentive-based payments and bonuses
- loadings
- monetary allowances
- overtime or penalty rates
- any other separately identifiable amounts.

Can paid sick and carer's leave be cashed out?

Employees covered by an award or agreement can cash out paid sick and carer's leave if all of the following apply:

- the award or agreement allows it
- there is a separate agreement in writing on each occasion
- the employee retains a balance of at least 15 days of untaken paid sick and carer's leave
- the employee is paid at least the full amount that would have been payable had the employee taken the leave they have cashed out.

It is unlawful for an employer to force (or try to force) an employee to make (or not make) an agreement to cash out sick and carer's leave under a term included in an award or agreement.

An award or agreement-free employee is not able to cash out paid sick and carer's leave.

Unpaid carer's leave

What are the minimum entitlements to unpaid carer's leave?

An employee (including a casual employee) is entitled to 2 days of unpaid carer's leave for each occasion when a member of the employee's immediate family or household requires care or support because of a personal illness, injury, or an unexpected emergency.

An employee may take unpaid carer's leave for each occasion as a single continuous period of up to 2 days, or any separate periods to which the employee and their employer agree. An employee can't take unpaid carer's leave during a particular period if the employee could instead take paid sick and carer's leave (this does not apply to casuals who have no entitlement to paid sick and carer's leave).

Compassionate leave

What are the minimum entitlements to compassionate leave?

An employee (including a casual employee) is entitled to 2 days of compassionate leave to spend time with a member of their immediate family or household who suffers a life-threatening illness or injury. An employee is also entitled to take compassionate leave:

- after the death of a member of the employee's immediate family or household
- if a child who would have been part of the employee's immediate family or household, is stillborn, or
- if an employee, or the employee's current spouse or de facto partner, has a miscarriage.

An employee may take compassionate leave for each occasion as:

- a single continuous 2-day period, or
- 2 separate periods of one day each, or
- any separate periods to which the employee and their employer agree.

What payments are required when compassionate leave is taken?

If an employee (other than a casual employee) takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the ordinary hours they would have worked during the period.

As mentioned above, casual employees are not entitled to any paid sick and carer's leave or compassionate leave under the NES. However, casuals are entitled to unpaid carer's leave and compassionate leave.

Are there notice and evidence requirements?

For all periods of sick and carer's leave or compassionate leave, an employee must give their employer notice of the taking of the leave.

The notice must be given to the employer as soon as practicable (which may be at a time after the leave has started), and must advise the employer of the period, or expected period, of the leave.

An employer is entitled to request evidence that would substantiate the reason for leave. A failure to provide notice or, if required, evidence that would satisfy a reasonable person to substantiate the reasons for the leave, means the employee is not entitled to the leave.

An award or agreement may include terms relating to the kind of evidence that an employee must provide in order to be entitled to paid sick and carer's leave, unpaid carer's leave or compassionate leave. For example, an employer may request that the employee provides a medical certificate.

CONTACT US

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Fair Work Infoline: **13 13 94**

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Call through the National Relay Service (NRS):

For TTY: **13 36 77**. Ask for the Fair Work Infoline **13 13 94**

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