

> Industrial Relations Fair Work Information Sheet Personal Leave

This fact sheet is relevant to all employers in Queensland.

What is Personal Leave?

Personal leave includes paid and unpaid sick and carer's leave, and is an entitlement provided by the Fair Work Act 2009 ('the Act'), contained within the National Employment Standards (NES). The NES overrides all other industrial instruments unless the provisions of that instrument are more generous towards the employee.

Personal Leave Entitlements

Under the Act, permanent employees are entitled to and accrue paid personal leave on the basis of $\frac{1}{26}$ of the number of nominal hours worked by the employee in a four week period.

Employees accrue the equivalent of 10 days paid personal leave per annum, accrued on a pro-rata basis for part time employees. The employee can use these days as sick leave, carer's leave, or a mix of both.

There is no limit to the amount of paid personal or carer's leave or unpaid personal leave that an employee can use at any time, however once their paid personal leave entitlement is exhausted, an employee is entitled to take 2 days per occasion as unpaid carer's leave for each occasion that they are required to care for a member of the family or household.

Casual employees have no entitlement to paid personal leave, however they can access unpaid leave in accordance with the requirements for permanent employees.

Accrual and Credit of Paid Personal Leave

An employee's entitlement to paid personal leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year. The accrued leave is credited to an employee at the end of each 4 week period. Once the leave has been credited to the employee, the employee is able to use the entitlement, provided that they satisfy the notice and documentation requirements in the Act or industrial instrument.

Notice and Documentation Requirements

An employee is required to give notice as soon as practicable when taking personal leave regardless of it being paid or unpaid. If the employee fails to provide notice, unless it is due to circumstances outside of their control, the employer does not have to recognise the absence as personal leave and as such can withhold payment for the absence and may be able to commence disciplinary action.

For absences of two days or more, or if requested by the employer, an employee must provide a medical certificate from a state registered health practitioner stating either that the employee is unfit for duty, or that a member of the employee's immediate family or household requires care. A list of state licensed health practitioners can be accessed at www.healthregboards.qld.gov.au. This not only includes general practitioners but also health practitioners such as occupational therapists, pharmacists, optometrists and physiotherapists. If it is not practicable for the employee to provide a medical certificate, a statutory declaration can be provided instead. If an

employee fails to provide the relevant documentation, the employer is not required to pay the employee for the absence, and may be able to commence disciplinary action against the employee, depending on the seriousness and frequency of the breach.

Payment for Personal Leave

An employee who is entitled to paid personal leave should receive payment of wages at their ordinary rate of pay. This does not include incentive-based payments and bonuses, loadings, monetary allowances or penalty rates such as shift penalties, rostered overtime, meal allowances, and public holiday rates.

Cashing Out Personal Leave

An employee may only cash out personal leave if it is expressly permitted by the relevant industrial instrument, and their application to do so meets the requirements of that instrument. There is no provision in the Act for non-award or non-agreement employees to cash out this leave.

Compassionate Leave

Under the Act, all employees are entitled to two days of compassionate leave per occasion, paid for permanent employees and unpaid for casuals. It is separate from the personal leave entitlement and is not debited from an employee's personal leave accrual. There is no limit to the amount of compassionate leave that an employee can access each year. The entitlement is available to an eligible employee for each occasion where a member of their immediate family or household:

- Contracts or develops a personal illness that poses a serious threat to their life
- Sustains a personal injury that poses a serious threat to their life
- Dies

Where the occasion is the contraction or development of a personal illness, or sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

Payment for compassionate leave is at the employee's ordinary rate of pay.

Definitions

An immediate family member includes a spouse, child, parent, grandparent, grandchild or sibling of the employee, or of the spouse of the employee.

Spouse includes a former spouse, a de facto spouse, and a former de facto spouse.

A child includes: an adopted child, a stepchild, an ex-nuptial child and an adult child.

For further information contact the Chamber of Commerce and Industry Queensland's Employer Assistance Line on 1300 135 822 or lodge a query at our Online Portal found on the CCIQ website under Employer Assistance Line.

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