

Personal Leave FAQs



The below information is provided as general guidance regarding evidence requirements under the Fair Work Act¹. Information provided in this fact sheet should be read in conjunction with any company policy² or relevant enterprise agreement/industrial award.

Personal/Carer's leave is paid leave that can be taken by a worker when:

- They are unable to attend work due to an illness or injury (also known as "sick leave"); or
- They are caring for a member of their immediate family or household who has an illness or injury; or
- They must deal with an unexpected emergency in relation to a member of their immediate family or household.

The National Employment Standards (NES) guarantee 10 days paid personal/carers leave each year for employees who are not casual employees.

- Personal/Carer's leave accrues during the year and unused leave accumulates from year to year.
- The NES does not differentiate between sick leave and carer's leave.
- The NES also provides for unpaid carer's leave to cover workers who are either not eligible for paid leave or have exhausted all their paid personal leave entitlements. This leave is up to 2 days on each occasion.
- In order to receive personal/carers leave or unpaid carer's leave a worker must comply with the notice and evidence requirements contained in the Act.



Notice Requirements for Personal/Carer's Leave

- Notice must be given to an employer as soon as practicable that leave is being taken. This may be after the leave commences (if the sick or carer's leave is unplanned).
- The notice must include the expected period of the leave (if known).
- Employers may include specific procedures in enterprise agreements or policies about how and when notice is given. If the direction is a reasonable one (i.e. call a particular telephone number, call within an hour of shift start time) then employees should try and comply as best as possible.

1. As of June 2020
2. Subject to development in consultation under health & safety laws

FAQs

General Absences for Personal Leave



Evidence Requirements for Personal/Carer's Leave

Under the NES, employers may require evidence to support any absence. Where required, evidence must be of the kind that would satisfy a reasonable person that the leave has been taken for a reason specified in the Act. What is considered reasonable may depend on the circumstances or the facts on each occasion.

Factors may include:

- The length of the absence
- An employee's history of absences
- Where the absences occur as part of a pattern- such as Fridays, Mondays, and days around public holidays

Evidence requirements for personal/carers leave can be included in enterprise agreements (or policies), but they cannot be more restrictive than the requirements contained in the Act.

The requirement to produce a medical certificate for all absences might not be reasonable when compared to the NES. However the same requirement to produce a medical certificate for all absences might be appropriate for someone who is on an attendance management plan.

The Fair Work Ombudsman stated "medical certificates or a statutory declaration is generally considered an acceptable form of evidence" for most employees. The medical certificate does not need to go into detail, just stating that you "are unfit for work" is adequate.

A worker does not have to disclose the full nature of their illness (or family member's illness) except in limited circumstances, for example:

- A person who has been on leave for a significant amount of time and may need readjustment to return to work.

- A person who may have restrictions on the work they are performing due to an injury.

Someone with a history of absence may need more detailed evidence and an employer may have reasonable grounds to refuse a medical certificate - such as an absence coinciding with a period when annual leave was refused.

Employers' are subject to the Privacy Act in relation to the access, storage and use of personal information.

If a worker is on medication that may affect their ability to work, they should inform their employer that they are on medication and any restrictions they may have. They should not disclose what the medication is or why they are on that medication

Protection from Adverse Action or Unlawful Dismissal

An employer must not harm an employee's employment or dismiss them because they have exercised a workplace right including being temporarily absent from work due to an illness or injury provided that the employee:

- Has notified the employer and provides evidence of the illness or injury (if required) in a reasonable period of time;
- Has complied with any notice and/or evidence requirements contained in any award or enterprise agreement;
- Has been absent for less than three months or less than three months out of the past 12 months; and
- The employee is on paid personal/carers leave because of the illness or injury.