

## Paid Family & Domestic Violence Leave

This document has been created to provide Clubs SA members with a summary of paid family and domestic violence leave.

Please note that this is not an exhaustive list of everything that may apply to paid family & domestic violence leave.

### What is it and what is meant by Family & Domestic Violence?

On 27 October 2022 the Federal Government amended the *Fair Work Act 2009* to include an entitlement to paid family and domestic violence leave (FDV leave). This then came into effect in two stages with employees at businesses who are not deemed to be small businesses receiving entitlement on 1 February 2023. Employees at small businesses then received their entitlement on 1 August 2023.

FDV leave is available to all employees (including casuals) to assist them with taking time off in order to make arrangements for the safety of themselves and/or family members who are facing family or domestic violence.

In terms of what is meant by family and domestic violence, this means violent, threatening or other abusive behavior that seeks to coerce or control a person or cause them harm or fear. It can be from someone's close relative, a current or former intimate partner or a member of their household (or both).

Close relative includes:

- a spouse or former spouse;
- de facto partner or former de facto partner;
- child;
- parent;
- grandparent
- grandchild; or
- sibling of the employee.

A de facto relationship occurs where two people are not married but have a relationship as a couple that live together on a genuine domestic basis. Circumstances that indicate two people living together as a couple includes the relationship duration, financial dependence, ownership or acquisition of property etc.

The definition of close relative for this leave also includes a child, parent, grandparent, grandchild or sibling of a spouse / former spouse or de facto / former de facto of the employee. It also includes a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

Family and domestic violence can be in a number of forms including but not limited to:

- physical violence
- sexual assault or abuse
- verbal abuse
- emotional or physical abuse
- stalking
- financial abuse
- spiritual or cultural abuse;
- abuse or threatened abuse to pets
- damage to property or belongings
- technology assisted abuse
- serious neglect where there is a relationship of dependence

Signs that could indicate an employee is experiencing family and domestic violence includes:

- excessive absence or lateness
- a sudden or sustained drop in productivity
- frequent unexplained bruises or injuries
- wearing concealing clothing, even in warm weather
- frequent or unusual work breaks, or unusual start and finish times
- displaying anxiety
- appearing distracted, depressed or overly jumpy
- lack of concentration or difficulty making decisions
- inability to take work-related trips
- receiving excessive personal calls, texts or visits

## Entitlements

As explained earlier the day on which employees first receive an entitlement to FDV leave depends on whether or not their employer was a “small business” as at 1 February 2023. As for what this means, it is employers with less than 15 employees including regular and systematic casual employees but not irregular casuals.

Employees at non-small business employers received 10 days paid FDV leave on 1 February 2023 and those who were employed at a small business received 10 days entitlement on 1 August 2023. Unlike other forms of leave, FDV leave does not accrue throughout the year and any unused leave does not rollover.

Those who were employed prior to or started employment on the date paid FDV leave came into effect at their workplace (either 1 February 2023 or 1 August 2023) received this entitlement in full on this date. This amount then subsequently renews on the date of an employees work anniversary and on this date every subsequent year. For example:

*An employee commenced employment with a Club on 6 December 2021. The Club is considered a small business and as such 10 days of paid FDV leave became available to them on 1 August 2023. Their leave will then renew on 6 December 2023 and thereafter on 6 December each subsequent year.*

Employees who start at a club after the date the leave becomes available will automatically receive 10 days paid FDV leave from their first day and then have it renew each year on the date of their work anniversary. For example:

*An employee starts employment with a Club that is not a small business on 17 April 2023. From this date the employee can access paid FDV leave and their entitlement will then renew on 17 April each year.*

The amount of leave available can never exceed 10 days e.g. if an employee never took any FDV leave in a year then on their anniversary they would still have 10 days leave for the subsequent year. If they did take some or all of their FDV leave entitlement then on their anniversary their entitlement will renew back up to 10 days.

Employees can take the leave in single or multiple days or any separate periods which are agreed to be employer and employee e.g. periods of less than a day.

In regards to when casual employees can take leave they can do so on a day they have been rostered on to work. For example a casual employee needs to take a week of FDV leave to deal with the impact of family and domestic violence and they have received their roster for the week. Across this week they are rostered on for 5 shifts of 5 hours each. The casual employee can therefore utilise 5 days of paid FDV leave and will be paid for the 25 ordinary hours they would have worked and were rostered on for those days.

If an employee takes paid family and domestic violence leave during a period of other paid leave such as personal/carer's leave or annual leave then they will no longer be on the other form of paid leave.

## **Payment & Recording on Payslips**

Full-time and part-time employees will be entitled to their full rate of pay for the hours they would have worked and casuals will be entitled to their full rate of pay for the hours they were rostered to work.

Full rate of pay means the payment they would have received had they worked including any penalties, allowances, overtime etc.

It is important to note that whilst employers need to keep a record of leave balances, any time an employee takes FDV leave their pay slips must not mention paid family and domestic violence leave, including leave any leave taken and their balance. If an employee takes FDV leave then the amount taken should just be recorded as ordinary hours of work or another kind of payment for performing work. If requested by an employee it can also be recorded as another type of leave e.g. annual leave.

## **Notice and Evidence**

When someone wishes to take FDV leave they have to provide notice as soon as practicable including an expected return date. Given the nature of why this leave is taken, any notice given may have to be minimal.

A Club can ask for evidence and the employee would then need to provide such evidence that would satisfy a reasonable person that the leave is being taken for the purpose of dealing with family and domestic violence such as:

- a letter from the police;
- something in writing from support services; or
- a statutory declaration.

Any information obtained must only be used for the purposes of determining that the employee is entitled to use paid FDV leave unless:

- The employee consents for it to be used for another reasonable purpose;
- the employer needs to deal with the information in another manner by law;
- it is necessary to protect the life, health and safety of the employee or someone else.

An employer must not use this information for the purpose of taking adverse action against them.

### **Further Information on Family and Domestic Violence**

Clubs can also refer to the [Fair Work Ombudsman's Guide to Family and Domestic Violence](#) for a more in depth look at how they can set up a work environment that assists those suffering from family and domestic violence.

Employees suffering from family and domestic violence can also call 1800RESPECT on 1800 737 732 which is a national sexual assault, domestic and family violence support service.