

CLUBS SA FACT SHEET PERSONAL (SICK) / CARER'S LEAVE & COMPASSIONATE LEAVE



SMARTER CLUBS | SAFER CLUBS

Personal (Sick)/Carer's & Compassionate Leave Fact Sheet

This document has been created to provide Clubs with a summary of personal (**hereafter referred to as sick**)/carer's leave and compassionate leave entitlements and rules primarily under the *Registered and Licensed Clubs Award 2020 (The Clubs Award)*. Please note that this is not an exhaustive list of everything that may apply to sick/carers leave.

Personal (Sick)/Carer's Leave

Entitlement

A full-time employee is entitled to the equivalent of 10 days of paid leave each year e.g. if they work 38 ordinary hours a week they will accrue 76 hours a year. This leave accrues progressively throughout the year with entitlement accruing from an employee's first day.

Paid sick/carers leave will rollover year to year e.g. if a full-time employee was employed for 3 years and didn't take any leave then they would have 30 days accrued.

A part-time employee accrues paid sick/carers leave at a pro rata rate, meaning that if a part time employee worked an average of 20 hours a week then they would receive the equivalent of 40 hours of leave a year.

Sick/carers leave will accumulate when an employee is on:

- paid leave e.g. annual leave and paid sick/carers leave;
- community service leave including jury duty; and
- long service leave.

Sick/carers leave doesn't accumulate when the employee is on:

- unpaid leave such as unpaid sick/carers leave and unpaid parental leave.

There is no maximum amount of leave an employee can take at a time.

Casual employees have no entitlement to paid sick/carers leave, however, they are entitled to take unpaid sick/carers leave e.g. they can be absent when they are ill.

When can it be used?

An employee is entitled to use sick leave when they are ill or injured.

It can only be used for medical appointments and elective surgery that are pre-arranged if an employee is also unable to come to work because of a personal injury or illness.

An employee is entitled to use carer's leave when they are required to take time off to care for an immediate family or household member who is sick or injured or where there is a family emergency.

The *Fair Work Act 2009* (Cth) defines an immediate family member as:

- a spouse or former spouse;
- a de facto partner or former de facto partner;
- someone's child;
- a parent;
- a grandparent;
- a grandchild;
- a sibling; or
- the child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse or de facto partner).

All of the above also includes any step-relations or adopted relations and a household member is any person who lives with the employee.

What is considered as a family emergency is not black and white and limited to where someone is ill or injured. It will however generally be an unexpected event that involves a family member that requires an employee to be absent from work after exploring reasonable alternative options.

When trying to determine if something meets the definition of an unexpected emergency things that should be considered are how much notice of the emergency the employee had, what alternate arrangements could be made to care for someone etc.

It is important to note that both sick and carer's leave come out of the same balance.

Medical Appointments and Elective Surgery

When determining if pre-arranged medical appointments or elective surgeries can be covered by sick leave it will depend on the individual circumstance and whether the employee is also unable to work due to illness or injury.

For example if an employee has pre booked a general checkup but is otherwise healthy and would be able to attend work then an employer could likely reject their request to use sick leave for this appointment. Alternatively if an employee pre-arranged a medical appointment for an injury and they would be unable to work then they can use sick leave for the medical appointment.

Payment

An employee who takes paid sick/carer's leave is entitled to be paid at their ordinary rate for the hours they would have worked during that period. It does not include:

- incentive-based payments;
- bonuses;
- loadings;
- allowances;
- overtime; or
- penalty rates.

Unpaid Carer's Leave

All employees are entitled to two days of unpaid carer's leave on each occasion that an immediate family or household requires care or support because of a personal illness, injury, or an unexpected emergency.

This can be taken in the one continuous period or in separate periods as agreed by employer and employee.

If a permanent employee has paid sick/carer's leave accrued then they can't use unpaid carer's leave instead.

Notice and Evidence

An employer can ask for evidence of absence due to illness, injury or caring duties for as little as 1 day or less off work.

An employer however should generally remain consistent in its approach when asking for evidence and should not be imposing different requirements on different employees. Some employers may also have a leave policy that sets out when someone is required to bring a certificate and if this is the case this needs to be followed.

Where an employee is asked or should be reasonably aware of the need to provide evidence of absence and does not do so without a reasonable excuse an employer can elect to not pay them any paid sick/carer's leave they have accrued.

There are no rules that set out exactly what form of evidence is needed and instead it is just required to be sufficient to convince a "reasonable person" that the employee was genuinely entitled to use the leave.

Suitable examples of evidence would include medical certificates and statutory declarations. A medical certificate from a pharmacist is also considered to be an acceptable form of evidence of absence for a general illness.

Cashing Out

Cashing out of paid sick/carer's is not allowed for under the Clubs Award or the *Fair Work Act* and provisions for this are only included in 2 out of the many Modern Awards (Timber and Stevedoring Awards). As such an employee at a Club can only do so where they are covered by an enterprise agreement that has a provision clearly allowing this.

Long Periods of Leave - Protection

An employee is protected from dismissal where they have been off for a lengthy period of time due to an illness or injury. This general protection applies for up to 3 months where the whole, part or none of the period is paid, or for as long as they are absent regardless of length where the whole time is on paid sick/carer's leave.

Where someone has been absent for over 3 months with at least part of it being unpaid, they no longer have this general protection. **This does not however mean an employee can automatically be terminated once this occurs and doing so will bring a great deal of risk e.g. they could make a general protections claim.**

Should an employer wish to look at ending the employment of someone who has been off for a lengthy period and is no longer generally protected, they would have to show the employee could not undertake the fundamental duties of their role for at least the foreseeable future. This would be making an argument for a frustration of contract and **Clubs need to seek further advice in this instance before taking any action against an employee.**

Compassionate Leave

When can it be used?

Compassionate leave is separate to sick/carer's leave and does not come out of this balance. It can be used where:

- a member of an employee's immediate family or household dies, contracts or develops a life-threatening illness or injury;
- a baby in their immediate family or household is stillborn;
- the employee has a miscarriage; or
- an employee's spouse or de facto partner has a miscarriage.

In regards to what will be considered as an immediate family member and household member this will be the same as the definition for sick/carer's leave.

Entitlement

An employee is entitled to 2 days of compassionate leave on each occasion that they meet the above criteria and it does not accumulate and rather it is available when needed.

These 2 days can be taken in one continuous period, 2 separate periods of a day each, or in any other manner as agreed between employer and employee.

Payment

When part-time or full-time employees take compassionate leave they are entitled to be paid for the ordinary hours they would have normally worked that day at their base rate of pay. It does not include:

- incentive-based payments;
- bonuses;
- loadings;
- allowances;
- overtime; or
- penalty rates.

Compassionate leave can't be cashed out and casual employees are entitled to unpaid compassionate leave.

Notice and Evidence

An employee needs to give notice ASAP and provide details on how much leave they will be taking.

An employer can ask for evidence of the absence and reasoning for it e.g. a funeral notice, a doctor's certificate but this can only be done where it is reasonable.