

Family and Domestic Violence Leave – Model Clause

- 1.1 The employer recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work, the employer is committed to providing support to employees who experience family and domestic violence.
- 1.2 An employee will not be discriminated against because of their disclosure of, experience of, or perceived experience of, family and domestic violence.
- 1.3 The employer will not tolerate employees perpetrating family and domestic violence in or from the workplace. Employees must not use work facilities to perpetrate family and domestic violence. Any such conduct may constitute a breach of discipline.

Definition of Family and Domestic Violence

- 14 (a) The meaning of family and domestic violence is in accordance with the definition in the *Restraining Orders Act 1997* (new Section 5A) as amended by the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016*.
- (b) To avoid doubt, this definition includes behaviour that:
 - (i) is physically or sexually abusive; or
 - (ii) is emotionally or psychologically abusive; or
 - (iii) is economically abusive; or
 - (iv) is threatening; or
 - (v) is coercive; or
 - (vi) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or
 - (vii) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

Access to family and domestic violence leave

- 15 In accordance with the following subclauses, an employee, including a casual employee, may make application for leave to deal with activities related to family and domestic violence. The employer will assess each application and give consideration to the personal circumstances of the employee seeking the leave.

- 1.6 Such activities related to family and domestic violence may include attendance at medical appointments; legal proceedings; counselling; appointments with a medical or legal practitioner; relocation or making other safety arrangements; and other matters of a compassionate or pressing nature related to the family and domestic violence which arise without notice and require immediate attention.
- 1.7 Subject to clauses 1.5 and 1.6, an employee experiencing family and domestic violence will have access to ten non-accumulative days per year of paid family and domestic violence leave, in addition to their existing leave entitlements.
- 1.8 Upon exhaustion of the leave entitlement in clause 1.7, employees will be entitled to up to two days unpaid family and domestic violence leave on each occasion.
- 1.9 Family and domestic violence leave does not affect salary increment dates, long service leave entitlements or annual leave entitlements.
- 1.10 Subject to the employer's approval of the application, family and domestic violence leave may be taken as whole or part days off.
- 1.11 Application of the leave entitlement for casual employees will be considered by the employer on a case by case basis.

Notice and Evidentiary Requirements

- 1.12 The employee shall give his or her employer notice as soon as reasonably practicable of their request to take leave under this clause.
- 1.13 Supporting evidence of family and domestic violence may be required to access paid leave entitlements however this should not be onerous on the employee. Leave can be granted without supporting documentation when the employer is satisfied that it is not required.
- 1.14 Evidence may be in the form of a document issued by the police, a court, a legal service, a health professional or a counsellor, or a refuge service. A statutory declaration may also be provided.
- 1.15 Such evidence will be dealt with in accordance with the confidentiality provisions in this clause. Only the employee will retain a copy of the evidence and information will not be kept on an employee's personnel file.

Access to other forms of leave

- 1.16 Subject to the leave provisions of an employee's industrial agreement and/or award, an employee experiencing family and domestic violence may use other leave entitlements.
- 1.17 Subject to the employer's approval of the application, and sufficient leave credits being available, leave may be taken as whole or part days off.

- 1.18 Forms of other paid leave include:
- (a) personal/sick leave entitlements; and/or
 - (b) annual leave; and/or
 - (c) accrued long service leave; and/or
 - (d) purchased leave; and/or
 - (e) accrued time off in lieu of overtime, flexi leave or banked hours.
- 1.19 Approval of leave without pay is subject to the provisions of the employee's industrial agreement and/or award.

Confidentiality

- 120 The employer will take all reasonable steps to ensure any information disclosed by employees regarding family violence is kept strictly confidential. Disclosure will be on a need-to-know basis only and only to maintain safety. Where possible, disclosure will only occur with the express consent of the employee.
- 121 Employers will take reasonable steps to ensure any information or documentation provided by an employee regarding family and domestic violence is kept confidential.
- 122 Only the employee will retain a copy of evidence for accessing family and domestic violence leave and information will not be kept on the employee's personnel file unless otherwise agreed. The employer will record that any evidence produced was sighted.
- 123 Subsequent disclosure within an organisation should be on a need-to-know basis, for example if there is a potential for workplace safety to be impacted and generally with the consent of the employee.
- 124 This clause does not override any legal obligations to disclose information.

Contact person

- 125 The employer will identify contact/s within the workplace who will be trained in family and domestic violence and associated privacy issues. The employer will advertise the name of any family and domestic violence contacts within the workplace.

Individual Support

- 126 Where there is a risk to the personal health or safety of an employee who is experiencing or has experienced family and domestic violence, the employer, where appropriate, may:

- (a) facilitate flexible working arrangements, such as changes to hours/days worked, working different days or length of days, changed shift/rostering arrangements, in accordance with the provisions of the employee's industrial agreement and/or award; and/or
- (b) make workplace modifications including changes to the employee's telephone number and email address and, where appropriate/practicable, the employee's work location.

127 An employee who is experiencing or has experienced family and domestic violence may access confidential counselling support via the employer's employee assistance program.

Workplace Safety

128 Where an employee raises issues of family and domestic violence the employer should establish with the employee the level of risk and seek advice from their human resource/safety specialist to review and implement specific safety and emergency management systems and plans.

129 With the exception of access to the employer's employee assistance program which is available to all employees, the provisions of this clause are only applicable to employees who are victims of family and domestic violence.