



Premier & Cabinet

Type:

Premier's Memorandum

Identifier:

M2022-13

Status:

Active

M2022-13 Support for Employees Experiencing Domestic and Family Violence

Description

The NSW Government strongly supports initiatives that enable and support victims of domestic and family violence to continue to participate in the workforce.

The workplace can make a significant difference to employees experiencing domestic and family violence by providing appropriate safety and support measures. Fostering a workplace culture where employees experiencing domestic and family violence are supported at work while also having access to adequate leave contributes to a health and safe working environment for all.

The Government will increase the quantum of paid domestic and family violence leave available for all NSW Government Sector employees from 1 January 2023.

Detailed Outline

1. Support for Employees Experiencing Domestic and Family Violence

(a) Effective from 1 January 2023 Government Sector employees, including casual employees, are to have access to 20 days paid domestic and family violence leave per calendar year (non-cumulative) which can be taken in part-days, single days, or consecutive days.

(b) The leave is not pro-rated for part-time or casual employees.

(c) Employees experiencing domestic and family violence may take leave including for the following purposes:

(i) seeking safe accommodation or establishing safety;

- (ii) attending medical, legal, police or counselling appointments relating to their experience of domestic and family violence;
 - (iii) attending court and other legal proceedings relating to their experience of domestic and family violence;
 - (iv) organising alternative care or education arrangements for their children;
 - (v) other activities that will assist them to establish safety, and recover from their experience of domestic and family violence; or
 - (vi) any other purpose associated with the impact of experiencing domestic and family violence which is impractical to do outside of their normal hours of work.
- (d) The leave does not have to be approved before an employee can access the leave, but an employee should advise their employer as soon as possible of the need to take such leave.
- (e) The leave entitlement can be accessed without the need to exhaust other existing leave entitlements first.
- (f) When approving the leave, the agency needs to be satisfied, on reasonable grounds, that domestic and family violence has occurred, and may require evidence such as:
- (i) a document issued by the Police Force, a court, a domestic violence support service or a member of the legal profession;
 - (ii) a provisional, interim or final Apprehended Violence Order (AVO) or Apprehended Domestic Violence Order (ADVO), a certificate of conviction or family law injunction;
 - (iii) a medical certificate;
 - (iv) a statutory declaration by the employee experiencing domestic and family violence, or
 - (v) any other evidence that would satisfy a reasonable person that domestic and family violence has occurred.
- (g) Approving managers should use their discretion when assessing whether evidence, or what type of evidence, is required to satisfy them that domestic and family violence has occurred and should only require evidence in exceptional circumstances.

2. Application of Entitlement to Casual Employees

- (a) A casual employee can take a period of paid domestic and family violence leave for the hours for which the casual employee has an approved roster for work. In this circumstance, the employer is not required to pay the casual employee for hours that the casual employee had not been approved to work.
- (b) A casual employee is taken to have been rostered to work hours in a period if they have accepted an offer by the employer of work for those hours.

(c) A casual employee who is not able to make themselves available for a shift, and who has not been rostered for a shift, cannot be adversely treated because they need to do something to deal with domestic and family violence during that period.

3. Payment of Domestic and Family Violence Leave

(a) Full-time and part-time employees taking a period of paid domestic and family violence leave are entitled to be paid at their full rate of pay for the hours they would have worked if they were not on leave.

(b) Casual employees will be paid at their full rate of pay for the hours they were rostered to work in the period they took leave.

(c) The intention is that employees taking paid domestic and family violence leave will receive the same remuneration they would have received had they not taken the leave.

4. Extending Access to Carers Leave and Family and Community Services Leave to Employees Providing Support and/or Care to a Family or Household Member who is Experiencing Domestic and Family Violence

(a) Employees providing care and support to a member of their family or household experiencing domestic and family violence can access existing leave entitlements such as Family and Community Service Leave and Sick Leave to Care for a Family Member (or their equivalent, depending on the industrial arrangements applicable to the employee).

(b) The reason for the leave must fit within the definitions of “family” or “household member” as referred to in Family and Community Service Leave, Sick Leave to Care for a Family Member and Carer’s Leave (or their equivalent, as they relate to the employee’s industrial arrangements).

(c) If required by an agency to establish the reasons for accessing leave to provide support, employees may be required to provide evidence.

5. No Adverse Action

Agencies must not take adverse action against a person who is an employee because the person has experienced, or is experiencing, domestic and family violence or has utilised leave provisions outlined in this Determination.

6. Other Rights

An employee should refer to the industrial instrument, legislation and policies which apply to their employment for all other provisions relating to domestic and family violence leave, family and community services leave, and carer’s leave.

Application

For public servants, the leave provisions are provided for in Industrial Relations Secretary Determination No. 5 of 2022 made under s.52 of the *Government Sector Employment Act 2013*.

These leave provisions are to be adopted by all Public Service departments and agencies, and other Government Sector agencies and State-Owned Corporations are strongly encouraged to provide the same leave provisions to their employees.

The provisions in this Memorandum supersede the provisions in *Premier's Memorandum M2018-03 Support for Employees Experiencing Domestic and Family Violence* from 1 January 2023.

Date of Effect

The above arrangements shall take effect on and from 1 January 2023 and shall remain in force until varied or replaced.

Overview

Who needs to know and/or comply with this?
Departments
Executive agencies related to Departments
Separate agencies
State Owned Corporations
Statutory Authorities/Bodies
Subsidiaries of the NSW Government established under the Corporations Act

Compliance
Mandatory

AR Details	
Date Issued	Dec 23, 2022

Review Date	Dec 31, 2023
Replaces	<u>M2018-03-Support for Employees Experiencing Domestic and Family Violence</u> <i>(https://arp.nsw.gov.au/support-employees-experiencing-domestic-and-family-violence/)</i>
Replaced By	

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