

Personal and Compassionate Leave Public Service

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Overview

The Personal and Compassionate Leave policy applies to all public service employees including those covered by the Victorian Public Service Enterprise Agreement (the VPS Agreement), the Nurses (Department of Education and Training) Agreement (the Nurses Agreement) and Executive Officers.

For the purposes of this guide 'immediate family' includes both:

- A spouse (including a former spouse, a de facto partner and a former de facto partner) of the employee. A de facto partner means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (irrespective of gender); or
- A child or an adult child (including an adopted child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or the employee's spouse or de facto partner.

Personal leave is not available to an employee in the following circumstances:

- during a period of leave without pay. However, personal leave can be accessed immediately following the expiration of the approved period of leave without pay.
- on account of being pregnant or giving birth, unless the employee is experiencing illness or injury resulting from pregnancy or childbirth.
- as a result of illness or injury due to the misconduct of an employee or if an employee is absent from duty without sufficient cause.

Personal leave entitlement

Personal leave is available to enable an employee to be absent from duty due to personal illness or injury; or to provide care or support to a member of their immediate family or household who is ill, injured or has been affected by an unexpected emergency; or to support a person experiencing family violence in order to accompany them to court, to hospital, or to care for affected children. Employees receive credit of 114 hours (15 days) personal leave on full pay on commencement of employment. Employees employed on a part-time basis have access to personal leave entitlements on a pro-rata basis according to the time fraction worked.

Prior service with an approved employer may be recognised for personal leave purposes. In this case personal leave credits will be calculated as if the approved prior service had been with the Department including the deduction of any personal leave taken during the period of prior service. Prior casual service is not included for the purposes of calculating an employee's personal leave entitlement, but is recognised for the purpose of maintaining continuity of service. Employees employed on a fixed term basis for one or more periods can only accrue 114 hours personal leave in respect of each completed year of service. Employees receive credit of a further 114 hours (15 days) personal leave for each completed year of service. Unused personal leave credits accumulate. To determine the current net personal leave entitlement for an employee, all paid personal leave granted during their service is deducted from the amounts credited during their service and the period remaining is the net amount of personal leave entitlements.

In exceptional circumstances, an employee who has exhausted all of their personal leave credits may make application to access personal leave credits in advance, subject to terms and conditions as determined by the Department. In such circumstances, a briefing outlining the request should be forwarded to the Executive Director, People Division for endorsement and the Secretary for approval.

The date on which an employee's personal leave is credited will be deferred in the following circumstances:

- an employee has taken any period of leave without pay (of any type that does not count as service) in excess of one month in any twelve month period unless otherwise approved by the Secretary or, any other period determined by a relevant industrial agreement.
- an employee has taken a period of leave, either continuous or in aggregate, of greater than 261 working days in respect of a particular injury or incapacity, where he/she is in receipt of compensation payments under the *Workplace Injury Rehabilitation Compensation Act 2013*.

An employee, other than a casual employee, who takes paid personal leave, is entitled to be paid at their salary rate for their ordinary hours of work in the period during which the leave is taken.

An employee is entitled to take up to two days' unpaid personal leave for carer's purposes on each occasion when a member of the employee's immediate family or household requires care or support due to personal illness or injury or unexpected emergency.

Alternatively, an employee may elect, with their manager's consent, to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time during the employee's spread of ordinary hours.

Unpaid personal leave, taken for carer's purposes, may be taken for a particular occasion as a single continuous period of up to two days or any separate periods, which are agreed between the employee and the manager.

Generally, two employees would not be granted personal leave for carer's purposes to provide care for the same person at the same time.

Where an employee (other than a casual employee), who has exhausted all paid personal leave entitlements, makes application for unpaid personal leave they will be required to provide satisfactory documentary evidence to support their request for unpaid personal leave.

A casual employee may be unavailable to attend work if they need to provide care or support to a member of their immediate family or household who is ill or injured or in the case of an unexpected emergency. In such cases the employee and their manager will agree on the period for which the casual employee may be unavailable to attend work, which may be up to two days per occasion.

A casual employee is not entitled to any payment for periods of non-attendance but is required to comply with notice and evidence requirements outlined in this policy.

In exceptional circumstances, and where an employee will be absent for a period of four weeks or more, a delegate may grant an employee approval to convert any or all of their accrued paid personal leave entitlement to half pay for a period equal to twice the period to which the employee would otherwise be entitled. To be eligible for personal leave at half pay an employee is required to comply with all notice and documentary evidence requirements as set out in this policy. An employee granted personal leave on half pay will be restored to full pay from the day they resume duty.

If there is occasion to doubt the cause or the reason for a personal leave absence the Medical Advisory Service may be contacted for advice.

Payment in lieu of accumulated personal leave entitlements is not available on cessation of employment.

Compassionate leave entitlement

Compassionate leave is available to an employee following the death of a member of their immediate family or household, or to spend time with a member of their immediate family or household in the event that person has contracted or developed a serious illness or sustains a personal injury that poses a serious threat to their life.

An employee, other than a casual employee, is entitled to up to three days paid compassionate leave on each permissible occasion. Compassionate leave will not accrue from year to year and will not be paid out on termination of employment.

Compassionate leave does not have to be taken consecutively. An employee who takes paid compassionate leave will be paid at their salary rate for ordinary hours of work for the period in which the compassionate leave is taken.

Paid compassionate leave is not granted for the execution of any legal business associated with the death of an immediate family or household member. Other forms of leave with or without pay (such as annual leave or long service) may be granted for this purpose.

An employee may be granted paid compassionate leave in the event of a death of a person who is not a member of the employee's immediate family or household in special circumstances such as the death of a:

- step or foster parent or child
- relative who has taken the place of a parent
- person where the employee is the only relative of the deceased person and is the only person available to make the funeral arrangements
- person with whom the employee had a close relationship that is akin to that of an immediate family relationship and would not, for example, include friendships or normal acquaintances between people.

In such circumstances, a briefing outlining the request should be forwarded to the Executive Director, People Division for endorsement and the Secretary for approval.

Access to other forms of leave with or without pay (such as annual leave or long service leave) may be granted if the delegate is satisfied that three days is inadequate because of special circumstances (for example, funeral delay or extensive interstate or international travelling involved).

Compassionate leave is not normally granted beyond the date of the funeral. Any subsequent request for leave on account of grief after the funeral should be granted as personal leave and supported by a medical certificate in accordance with the personal leave provisions.

An employee may take unpaid compassionate leave as approved by the delegate.

Casual employees may take up to three days leave without pay for each permissible occasion, unless otherwise approved by the delegate.

An employee covered by the Nurses Agreement who is of Aboriginal or Torres Strait Islander descent may be granted unpaid compassionate leave of up to three days in relation to the death of an extended family member.

Employees of Aboriginal or Torres Strait Islander descent may also be granted leave in accordance with cultural and ceremonial leave provisions.

Applications for personal and compassionate leave

Applications for personal and compassionate leave must be supported by documentary evidence as set out below.

For the purposes of this guide:

- **Registered Health Practitioner** means one of the following: Aboriginal and Torres Strait Islander health practitioner, Chinese medicine practitioner, Chiropractor, Dental care practitioner, Medical practitioner, Midwife, Optometrist, Osteopath, Pharmacist, Physiotherapist, Podiatrist or Psychologist or other registered health practitioner within the meaning of the *Health Practitioner Regulation National Law (Victoria) Act 2009*.
- **Statutory declaration** means a statement or declaration which is sworn or affirmed (depending on religious beliefs) to be true by the deponent (person making the declaration) in the presence of an authorised witness. Further information is available at Statutory Declarations and Affidavits on HRWeb.

Where there is cause to doubt the cause of an illness or injury or the reason for absence, the delegate may refer the documentary evidence to a registered practitioner for report or contact the Medical Advisory Service for advice.

Notice And Evidence Requirements For Personal Leave

An employee must give their manager notice of the taking of personal leave, including the period or expected period of leave, as soon as practicable, which may be a time after the leave has started.

Applications for personal leave must be supported by documentary evidence as outlined below.

In the case of an application for personal leave for personal illness or injury, the employee must provide a medical certificate from a registered health practitioner or, if it is not reasonable to provide a medical certificate, a statutory declaration. A statutory declaration must state why the employee was unable to attend a registered health practitioner, and the reason they were unable to attend work. The judgement as to whether the employee could reasonably have provided a medical certificate is a matter for decision by the delegate having regard to the circumstances of the individual case.

In the case of an application for personal leave taken for carer purposes, the employee must provide a medical certificate from a registered health practitioner or a statutory declaration stating the condition of the person concerned and that this condition requires the employee's care or support, or other relevant documentary evidence to the reasonable satisfaction of the delegate.

VPS employees may only use a statutory declaration for single day absences and on no more than three occasions per annum.

An employee may take up to 38 hours (5 days for a full-time employee) personal leave in total in any one year without having to provide documentary evidence, subject to any one continuous absence not exceeding 22.8 hours (3 days for a full-time employee).

Notwithstanding the exceptions listed above an employee may be required to provide documentary evidence to support any absence on personal leave including where the delegate has reason to doubt the authenticity of the employee's illness or injury or the reason for the absence or where personal leave occurs on a day of stop work action authorised by a relevant union.

Unless otherwise approved, documentary evidence must be provided for personal leave which occurs either immediately before and/or after a period of long service leave, annual leave or public holiday. If a part-time employee is absent on personal leave the day before or after a public holiday and that public holiday is not one of their designated working days, documentary evidence for that absence may not be required.

Where an employee is seeking to return to work following a period of personal leave greater than six weeks, documentary evidence from a registered practitioner may be requested for the purposes of determining when the employee is fit to return to work and any reasonable adjustments that may be necessary in the workplace. Information regarding reasonable adjustments is available on HR Web.

Where an employee takes personal leave for carer's purposes for a continuous period of two weeks or longer, an employee may be required to provide further documentary evidence to the reasonable satisfaction of the delegate, stating the condition of the person concerned and that this condition requires the continued care or support of the employee.

Where personal leave is taken for carer's purposes to support a person experiencing violence, evidence of family violence can be in the form of an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, district nurse, maternal and child health nurse or lawyer. A signed statutory declaration can also be offered as evidence.

Where an application for personal leave is granted and documentary evidence required is not provided, the absence will be without pay unless otherwise approved.

Notice And Evidence Requirements For Compassionate Leave

An employee must give their manager notice of the taking of compassionate leave, including the period or expected period of leave, as soon as practicable, which may be at a time after the leave has started.

An employee taking compassionate leave must provide satisfactory evidence to support the taking of compassionate leave which may include a medical certificate from a registered health practitioner stating the condition of the person concerned, a statutory declaration or other relevant documentary evidence to the reasonable satisfaction of the delegate. In the case of compassionate leave on account of death, the employee should provide a death/funeral notice with advice establishing the employee's relationship to the deceased.

Where an application for compassionate leave is granted and documentary evidence required is not provided, the absence will be without pay unless otherwise approved.

Medical assessment

Where a manager has concerns regarding an employee's state of health, the manager should make reasonable efforts to discuss their concerns with the employee. Any relevant matters raised by the employee should be considered prior to further action being taken, including providing any available support.

An examination by a medical practitioner may be required where:

- a) an employee has been continuously absent due to illness or injury for six weeks or longer, to assess whether the employee is fit to resume work or should be granted further personal leave (illness or injury), or
- b) an employee resumes duty following an absence due to illness or injury and the delegate is of the opinion the employee is not fit to resume duty, or
- c) the delegate has reason to believe that an employee's state of health may make the person a risk to the health, safety or welfare of other employees, themselves or persons at the workplace including students.

There may be circumstances where the treating practitioner's assessment of an employee is not sufficient to satisfy the delegate in relation to an employee's fitness or otherwise. Where this is the case the delegate may seek an independent medical assessment.

In relation to (b) and (c) above the delegate may direct the employee to be absent from duty on personal leave (illness or injury), with or without pay, until the employee is examined by a medical practitioner. If the examination discloses that the employee is unfit for duty, the employee shall be granted such further personal leave (illness or injury) as the medical report indicates is necessary. If the examination discloses that the employee is fit for duty, the personal leave debited as a result of such direction shall be restored.

Any such medical examination will be undertaken as soon as is reasonably practicable. A direction by the delegate must not be for a period of more than ten working days. Provided that, where the employee unreasonably refuses to attend a medical examination, the delegate may direct the employee to absent him or herself from duty on personal leave (illness or injury), with or without pay, until the employee attends the medical examination or the delegate is otherwise satisfied that the employee is fit to resume duty.

Further information is available at Fitness for Duty on HRWeb. The Medical Advisory Service may be contacted for further advice.

Other related leave provisions

An employee who has exhausted all paid personal leave entitlements may make an application for other leave, paid or unpaid, such as annual leave, long service leave or leave without pay. Information about other leave entitlements is available on HRWeb.

ANNUAL LEAVE AND LONG SERVICE LEAVE

An employee who becomes ill or is injured during annual leave or long service leave may be granted personal leave on the provision of documentary evidence to the reasonable satisfaction of the delegate. Where this occurs, an equivalent period of leave will be re-credited or the period of leave extended by the amount of personal leave approved.

PUBLIC HOLIDAYS

Public holidays observed during a paid personal or compassionate leave absence are not regarded as part of that leave.

LEAVE TO ATTEND AN ALCOHOL AND DRUG OR PROBLEM GAMBLING REHABILITATION PROGRAM

Where an employee (other than a casual employee) seeks leave to address the misuse of alcohol, drugs and/or problem gambling, special leave provisions may apply consistent with clause 52 of the VPS Agreement and clause 41 of the Nurses Agreement.

Further assistance

Further information, advice or assistance on any matters related to personal leave is available by:

- accessing the A-Z topic list on [HRWeb](#);
- using the [related topics](#) list; or
- contacting [Corporate People Services](#).