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## FAQs for Family and Domestic Violence Leave

### **Q: When do I have to start allowing this type of leave?**

**A:** Paid Family and Domestic Violence leave comes into effect on 1 February 2023 for all non-small business employers and on 1 August 2023 for small business (less than 15 employees). The entitlement to 10 days paid leave of FDV leave commences immediately from those dates.

### **Q: What proof can an employer legally request to ensure the application for family and domestic violence leave is valid?**

**A:** The legislation does not define what evidence an employer can request an employee provide in order to prove FDV leave is valid.

Employers may request evidence that would satisfy a reasonable person that the employee took the leave to deal with the impact of family and domestic violence.

Examples of actions by an employee who is experiencing family and domestic violence, include (but are not limited to) arranging for the safety of the employee or a close relative (including relocation), attending court hearings, accessing police services, attending counselling and attending appointments with medical, financial or legal professionals.

If you consider those actions, an employee should be able to provide some form of evidence that they undertook any of the above (e.g. a document from a court, letters or documents showing that an appointment took place, medical certificates/records etc.).

Employers need to be mindful of what evidence they are prepared to be responsible for as there are strict requirements imposed on employers once they hold information regarding an employee's FDV leave – and therefore employers should exercise caution when requiring employees to provide large amounts of evidence or particularly sensitive evidence.

### **Q: Is there a minimum employment period required before this leave becomes available to employees e.g., after 12 months of service?**

**A:** There is no minimum employment period required to be served in order to access the leave (including for casuals). All employees have an entitlement to the 10 days of paid leave that arises upon the commencement of employment (it does not accrue over time like other forms of leave i.e personal leave). It is not cumulative and doesn't accrue year after year.

### **Q: How does this leave impact on Long Service Leave provisions?**

**A:** FDV leave will count towards an employee's continuous service and is included for the purposes of long service leave as it is a form of paid leave. The leave is to be treated the same as other forms of paid leave such as personal leave and annual leave.

### **Q: If a casual employee notifies that they are accessing FDV leave, what hours should they be paid for?**

**A:** Casual employees are entitled to be paid for the for any hours in the period for with the employee was *rostered*.

An employee is taken to have been rostered to work hours in a period if the employee has accepted an offer by the employer of work for those hours. However, if a casual employee takes a period of paid family and domestic violence leave that does not include hours for which the employee is rostered to work, the employer is not required to pay the employee in relation to such a period.

For example, a casual employee who asks for a week off for FDV reasons and had a confirmed roster of 2 days of 8 hours each in the coming week, would be entitled to take paid FDV Leave for those 2 days.

This highlights the importance of clear and thorough rostering processes to reduce the grey area that may exist if an employee believes they were rostered to work certain hours and the employer holds a different perspective.

**Q: What happens if an employee has multiple, unrelated employers?**

**A:** If an employee has multiple employers, they will have multiple entitlements to leave and this is the same for every other type of leave under the NES. Meaning if a single employee has two jobs, they will have an entitlement to have 10 paid days FDV leave with employer A and 10 paid days FDV leave with employer B.

**Q: Can the employee claim family and domestic violence leave from multiple employers within a 12-month period? E.g., could an employee have a seasonal job for 1 month, claim family and domestic violence leave for 2 weeks and then move to a second employer and access the leave again?**

**A:** See above re the entitlement being available from commencement. Each employer/employment arrangement remains separate. And so the employee would be entitled to the leave under each employer.

**Q: What if there are doubts as to whether the leave request is genuine?**

**A:** Firstly, we know that this question can feel awkward, or harsh to ask - we get that, but it is a question on a lot of employer's lips, and we won't shy away from it.

Like any other type of leave, if an employer were to have concerns that the leave was not used for a legitimate purpose, we would encourage that employer to reasonably investigate the concerns. For example, they may wish to request the employee provide further information/evidence to substantiate the period of leave. Where the leave has been identified as being non-genuine, just like any other type of misconduct, a fair and thorough disciplinary process based on evidence may be implemented.

**Q: What can't an employer put on a payslip?**

**A:** New regulations have been added to the Fair Work Regulations 2009 (Cth) to govern what can and can't be noted on a payslip for the purposes of paid FDV leave.

Regulation 3.47 states that the following information must not be included in a pay slip:

- a) a statement that an amount paid to an employee is a payment in respect of the employee's entitlement to paid family and domestic violence leave; and
- b) a statement that a period of leave taken by the employee has been taken as a period of paid family and domestic violence leave; and
- c) the balance of an employee's entitlement to paid family and domestic violence leave.

Regulation 3.48 goes on to state that such leave must be reported on the pay slip as an amount paid to the employee:

- a) for the performance of the employee's ordinary hours of work; or
- b) as another kind of payment made in relation to the performance of the employee's work, including (but not limited to) an allowance, bonus or a payment of overtime.

Or - if the employee has requested the employer to report the amount on the pay slip as an amount paid for taking a period of a particular kind of leave (other than FDVL), the amount may be reported on the pay slip as an amount paid to the employee for taking a period of that kind of leave.

There is a 4-month grace period (from 4 February 2023) for the implementation of this, within which time any FDVL can be shown on pay slips as 'leave.