

EMPLOYERS GUIDE TO LEAVE VOLUME 2

Made for Allied Health Professionals such as Physio's, Chiropractors, Osteopaths and
Yoga/Exercise Specialists

HR/IR is a HR consultancy firm based out of Wollongong. We are legally trained and focus on workplace/employment problem solving and advice. We work with management teams to help manage workplace relations. In addition to advice/problem solving, we write any formal documentation that you require including contracts, policies and onboarding procedures.

Personal Leave (Sick and Carers Leave)

All full-time and part-time employees are entitled to Sick & Carer's Leave

Workers are covered by the NES, meaning full-time, and part-time workers will be entitled to, at a minimum, personal leave. Casual employers are not entitled to paid personal leave.

Paid sick/carers leave:

The NES allows employees to take 1/26 of their ordinary hours of work in a year as sick/carers leave. For full-time employees, this works out to be 10 working days.

Case Study: Back to our permanent part-time receptionist who works 20 hours per week from booklet 1.

To calculate personal leave, you must use this formula:

$$\text{Personal Leave per week} = \text{Hours worked per week} \times \frac{1}{26}$$

In this case, the answer is 0.77 hours of personal leave accrued per week. This equates to about 40 hours per year.



When you have employees who are entitled to personal leave, it is important to have a policy in place so both you and your employee know each other's rights. For a new set of policies, talk to John at 040706507



Personal leave is accumulated throughout the year, starting on the first day of work. Personal leave continues to accumulate for as long as the employee is in your business. Personal leave will not be paid out or cashed out at any point in employment or upon termination.

Sick/carer's leave accumulates:

- During regular hours of work
- On paid leave like annual leave and carer's leave
- Community service leave
- Long Service leave
- Workers' compensation leave

Sick/carer's leave does **not** accumulate when the employee is on:

- Unpaid annual leave
- Unpaid sick/carers leave
- Unpaid parental leave
- Unpaid family and domestic violence leave

There is no maximum number of personal leave days that can be taken at a time.

Carer's leave:

All employees, including casuals, are entitled to two days unpaid carer's leave each time an immediate family member or household member of the employee needs care and support because of illness, injury or another emergency.

Full-time/part-time employees must use paid sick/carer's leave before using unpaid leave.

Proof of sickness or carers responsibilities that must be provided to an employer:

As an employer, you are entitled to ask for a valid doctor's certificate if your employee is taking personal leave. Make sure you do this before taking any formal action. You can request evidence of sickness or carers responsibilities for any period of personal leave.

Long periods of sick and carer's leave:

If an employee requires to stay home because of an illness or family emergency, they cannot come to work but are not paid.

As an employer, long periods of personal leave are tricky because you must balance compassion and the needs of your business. You cannot take any adverse action such as dismissal before your employee takes over 13 weeks of unpaid leave over the last 12 months.

Termination of employee:

You are entitled to terminate an employee who is unable to perform the requirements of the role for which they are employed. This cannot occur in the first 3 months of unpaid leave. Once past this point, it becomes a question of whether the employee will return to duties in the short and medium term. Usually, medical advice will be important to that consideration.

Tip: A medical assessment can only be requested by the employer when it is a clause in the employment contract.

You should also note that an employee cannot be terminated when on workers compensation. Injuries which occur in the workplace will always complicate matters. If injured in the workplace, the employee cannot be terminated for a period of six months.

Beware that if you choose to dismiss your employee, they are still entitled to challenge the dismissal by making:

- An unfair dismissal application
- A general protections claim
- An unlawful termination claim
- A claim under a state or federal anti-discrimination law



If you plan on dismissing an employee on an extended period of leave, you should talk to a professional and seek legal advice. Talk to John Morrissey on 0407069507.

Compassionate Leave:

All employees are entitled to compassionate leave. This is two days of paid leave for full time and part-time employees. Casuals will not receive payment. The leave is for life threatening illness or death of an immediate family member or household member. It can also be taken if a baby in the household is stillborn and if an employee or their spouse/de facto partner suffers a miscarriage.



The leave can be taken in a singular two-day period, or two separate days. Employees should let their employer know as soon as they can about the leave, plus the dates of the leave. Evidence can be requested such as a death/funeral notice or statutory declaration. Leave may not be paid out if this request is refused.

Confidentiality:

It is important to note the importance of keeping personal information about employees confidential. This includes applications and reasons for leave. You are not required to keep information confidential if it is required by law or necessary to protect the life, health or safety of the employee or another person.

Questions about Personal Leave:

Question 1: An employee has been away from the workplace for a week, and the doctor's certificate has expired. Can the business not pay the employee who is on sick leave?

Answer:

An employee is not entitled to be paid if they do not have a valid certificate. If the employee fails to provide a certificate, effort should be made to contact the employee/the employee's emergency contact. If there is no response, then abandonment of employment can be started.

Question 2: Company policy states that a medical practitioner or chemist must provide a certificate. The NES says that says professionals can provide a certificate. The employee uses a certificate from a naturopath for three weeks. The three weeks will use up all the employee's personnel leave. Can the employer refuse to accept the certificate and not pay the employee?

Answer: Yes, but be careful. An employer must not discriminate against or terminate an employee because of illness. Simply write to the employee and state that the certificate is unacceptable, draw the employee's attention to the company's policies and the NES and ask the employee to get a medical certificate. When that happens, the employee will be paid.

Payslips:

Once again, it can be good practice to show an employee's personal leave balance on payslips, but it is not a requirement. You must tell your employee how much personal leave is accrued if asked.