

COMPASSIONATE LEAVE

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Authority and Application

Clause 54 of the *Victorian Public Service Enterprise Agreement 2020* (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their employees covered by the Agreement.

Overview

Clause 54 sets out an Employee's entitlement to paid and/or unpaid Compassionate Leave in the event a member of their immediate family or a member of the Employee's household contracts or develops a personal illness or sustains a personal injury which poses a serious threat to their life or dies. Casual Employees may have an entitlement to unpaid compassionate leave only.

Relevant provisions of the VPS Agreement

Clause 54 – Compassionate Leave

Supplementary Guidance Information

1. Definitions

1.1. Immediate Family means:

- (a) a Spouse, De Facto Partner, Child, parent, grandparent, grandchild or sibling of the Employee; or
- (b) a Child, parent, grandparent, grandchild or sibling of a Spouse or De Facto Partner of the Employee.

1.2. De Facto Partner means

- (a) 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 (whether the Employee and the person are of the same sex or different sexes); and
- (b) includes a former De Facto Partner of the Employee.

2. Notice and evidence requirements

- 2.1. In circumstances where it is not reasonably practicable to first discuss the taking of Compassionate Leave with their Employer, the Employee must submit their leave application as soon as practicable upon their return to duty, together with the required documentation supporting the absence.
- 2.2. An Employee who has given notice of the taking of compassionate leave is required to provide satisfactory evidence in accordance with clause 54.4(b) of the Agreement.
- 2.3. If the leave request is related to family violence, please refer to the Family Violence Leave Policy for further guidance, including other leave options which may be available.

3. Additional Eligibility Criteria – Stillbirth and Miscarriage

- 3.1. As of 10 September 2021, the National Employment Standards (see s.104 of the *Fair Work Act 2009*) have been amended to permit Compassionate Leave to be taken where an employee, a member of an employee's immediate family or a member of the employee's household has a child who is stillborn or has a miscarriage.
- 3.2. Stillbirth and miscarriage are, from 10 September 2021, valid grounds for the taking of Compassionate Leave under the Agreement. Employees may also have an entitlement to Special Parental Leave under clause 55.15 of the Agreement.

4. Additional paid leave for employees of Aboriginal or Torres Strait Islander descent

- 4.1. Employees of Aboriginal or Torres Strait Islander descent may also be eligible for additional paid Cultural and Ceremonial Leave in connection with the death of a member of their immediate family or extended family (see clause 60.4 of the Agreement).

5. Additional Compassionate Leave with or without pay

5.1. Additional leave with or without pay may be granted at the Employer's discretion where an Employee has exhausted their entitlement to Compassionate Leave, for example where:

- (a) the Employee is required to undertake significant travel;
- (b) there are religious or cultural requirements;
- (c) other special circumstances which may warrant special consideration; or
- (d) the employee has a child who is stillborn or has a miscarriage.

Employees wishing to take more leave than the Agreement entitlement provides should first discuss this with their manager and agree on the amount and type(s) of leave to be taken.

5.2. Compassionate Leave with or without pay may be granted at the Employer's discretion where a person with a significant family or personal connection to the Employee, but who is not a member of the Employee's immediate family or household, such as an extended family member:

- (a) contracts or develops a personal illness that poses a serious threat to their life;
- (b) sustains a personal injury or illness that poses a serious threat to their life; or
- (c) dies.

5.3. Approval of unpaid Compassionate Leave under clause 54.3 of the Agreement will not be unreasonably withheld. However, Employees must support their application with appropriate evidence to justify the additional leave.

6. Compassionate Leave during other periods of paid leave

6.1. Where an Employee is on a period of paid annual or long service leave and an entitlement to Compassionate Leave (clause 54) arises, the Employee may request that they be granted that Compassionate Leave and re-credited their annual leave or long service leave.

6.2. An application to substitute leave must include documentary evidence as required by the Agreement.

6.3. If the application is granted, the applicable annual or long service leave amount will be re-credited, and the Employee will be granted Compassionate Leave.

6.4. Where the Employee has already received the annual leave allowance payable under clause 45.4 of the Agreement for the period of annual leave to be re-credited, the recovery of the overpayment will be managed in accordance with clause 33.5 of the Agreement and any overpayment recovery process established by the Employer which is consistent with this provision.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities, and duties of an employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 54 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems, and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Related policies or documents

VPS Enterprise Agreement Common Policies

- Annual Leave
- Cultural and Ceremonial Leave
- Personal/Carer's Leave
- Long Service Leave
- Review of Actions
- Parental Leave

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Authorised by Industrial Relations Victoria:

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