

# GENDER TRANSITION LEAVE

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## Authority and Application

Clause 58 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 58 of the Agreement sets out an Employee's entitlement with respect to gender transition leave.

Employees (other than Casual Employees) are entitled to paid and unpaid gender transition leave to support an Employee's transition to commencing to living as a member of another gender (gender affirmation), subject to the conditions set out in clause 58 of Agreement.

Casual Employees are entitled to unpaid gender transition leave under clause 58.5 of the Agreement.

This policy recognises that gender affirmation and transition is a deeply personal experience and that this will differ from one person to the next. As self-determination is at the core of the affirmation and transition process, an Employee's individual circumstances and needs must be taken into account.

Employers must ensure appropriate support and a safe environment is provided throughout the Employee's gender transition.

## Relevant provisions of the VPS Agreement

### Clause 58. Gender Transition Leave

#### Supplementary Guidance Information

##### 1. Gender affirmation

- 1.1. Gender affirmation is the process where a person intends to or is transitioning their gender. Where an Employee chooses to tell their Employer that they intend to or are transitioning, there are a range of ways the Employer can support them in the workplace, including working with the Employee to plan any leave they require to enable their gender affirmation process.
- 1.2. While it is up to the individual employee to decide when and if they wish to inform their Employer, an Employee who is affirming their gender is encouraged to raise this with their Employer as soon as they are comfortable. This will more easily enable planning and arrangement of appropriate support and or a period of leave. Employees seeking to access gender transition leave must comply with the notice and evidence requirements in clause 58.6 of the Agreement.
- 1.3. The Employer must ensure the Employee affirming their gender is acknowledged by the gender with which they identify. This includes acknowledging the Employee by the name, pronouns and gender the Employee has stipulated (which may change over time). The Employer will also make sure that the Employee has access to toilets and other facilities that align with their identified gender.
- 1.4. The Employer must ensure the Employee is treated with dignity, courtesy, respect and provided appropriate support throughout their gender affirmation. The support provided may include a designated person in the People and Culture area or equivalent of their organisation to have oversight of workplace matters associated with the Employee's gender affirmation process. An Employee may also wish to have a support person with them, such as someone from outside the workplace or another employee when discussing their transition needs with their Employer.
- 1.5. A gender affirmation plan to support the Employee is strongly encouraged. If the Employee wishes to develop a gender affirmation support plan, the plan should be developed, and agreed upon, through discussion between the Employee, the Employer who may include a designated person in the People and Culture area or equivalent, and any other support people the Employee would like in attendance, including a union representative. Where applicable this may include involvement of a specialised third party to provide guidance and education.
- 1.6. If the Employee doesn't want to develop a gender affirmation support plan, the Employer should make efforts to support the employee with their transition process in the workplace and check in regularly and remind them they can raise any concerns or negative experiences with you.
- 1.7. A gender affirmation plan outlines practical considerations (such as establishing a timeframe, identifying a support team, leave options, implementing reasonable adjustments or a transfer to safe work, use of pronouns, and preparing for advising staff and managing their responses) to facilitate an employee's gender affirmation process and identify how the employee will be supported.

- 1.8. A gender affirmation plan should be reviewed quarterly to check-in and make amendments that the Employee requires. An Employee can request a review of their affirmation plan at any time and bring it to close when they see fit. The Employer will provide at least 24 hours' notice in writing to the Employee, should the Employer want to discuss the gender affirmation plan with the Employee to ensure the Employee can access a support person if they wish.
- 1.9. Employers should, where the issue is known to them, consider the impact gender transition can have on an Employee's performance and be sensitive to their transitioning experience when seeking to address attendance and/or performance issues.
- 1.10. No adverse action will be taken against an Employee if their attendance or performance at work suffers as a result of taking gender transition leave. 'Adverse action' is action taken by the Employer against an Employee that is detrimental or prejudicial to an Employee in their employment, including disciplining or dismissing the Employee.

## **2. Privacy and confidentiality**

- 2.1. The privacy and confidentiality of the Employee must be maintained at all times. The Employee has the right to discuss their gender affirmation openly, or to keep information private. It is the decision of the Employee what information is shared, when, with whom and how much they share about their gender affirmation. It is integral to their health and safety that the Employee always remain in control of these decisions.
- 2.2. Information disclosure must be managed in line with the Employer's record keeping practices and accord with provisions in the *Privacy and Data Protection Act 2014* and *Health Records Act 2001* (Vic).

## **3. Notice and evidence requirements**

- 3.1. Employees seeking to access gender transition leave must comply with the notice and evidence requirements in clause 58.6 of the Agreement. The Employer should not withhold access to leave where an Employee cannot give more than 4 weeks' notice due to circumstances beyond their control. In which case, the Employee should provide any required supporting documentation or evidence as soon as reasonably practicable.
- 3.2. Gender affirmation is different for each individual and the evidence to support a request for leave may not be the same in each circumstance.

## **4. Records management**

- 4.1. Where the Employee requests a change of name, pronouns, gender or other related information to their employment records as part of their gender affirmation, the Employer must support the required changes.
- 4.2. The Employer will make requested changes to employment records and for the purposes of accessing technology and systems. Where that does not require legal proof, no additional evidence will be required.
- 4.3. The Employer should not maintain records of the Employer's previous name, sex or transition, post-transition unless required by law or the Employee requests it.

## **5. Flexible work arrangements**

- 5.1. The Employee may request flexible work arrangements, for instance to change their hours or days, to work from home or other options during their gender affirmation in accordance with clause 8 of this agreement. Casual Employees should be offered reasonable flexibility (such as shift swaps) to assist with them attending appointments. The Employer must reasonably and genuinely consider such requests.

## **6. Ensuring a supportive approach for an Employee who affirms their gender.**

- 6.1. The Employer acknowledges that gender affirmation transition is an ongoing process, that is different for every Employee. For many people, it may not be possible to complete gender affirmation within the first 52-week period, and requiring Employees to do so could cause harm, and could contribute to an unsafe and discriminatory working environment.
- 6.2. Given this and notwithstanding the entitlements set out in clause 58.4(a) and (b) of the Agreement, Employer's should take an understanding and flexible approach to administering the entitlements under this clause.
- 6.3. The Employer may for example, allow the Employee to use the paid entitlement over a period greater than the first 52 weeks (as required in clause 58 of the Agreement), provide additional paid or unpaid other leave (clause 70) or agree to flexible work arrangements (clause 8) to support an Employee who commences living as a member of another gender through their entire journey.

### **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 58 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
- Flexible Working Arrangements
- Other Leave
- Review of Actions

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>

### **Gender Affirmation in Victorian public sector workplaces**

The VPSC have prepared a guide for managers who are supporting employees during their gender affirmation journey. Contact the VPSC for further information.

Authorised by Industrial Relations Victoria:

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