

PERSONAL/CARER'S LEAVE

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Authority and Application

Clause 51 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 51 of the Agreement sets out an Employee's entitlement to be absent from the workplace because of:

- a personal illness or injury; or
- personal illness or injury of an Employee's immediate family, household member or Assistance Animal who requires the Employee's care or support; or
- an unexpected emergency affecting an Employee's immediate family, household member, or Assistance Animal, or
- attendance at a medical appointment with a Registered Practitioner subject to requirements in clause 51.6.

and the notice and evidence requirements an Employee must comply with to access their accrued Personal/Carer's Leave entitlements.

Relevant provisions of the VPS Agreement

Clause 51- Personal/Carer's Leave

Specific arrangements for Employees of the Department of Families, Fairness and Housing (Appendix 4-Part 1-7) and Employees of the Department of Health (Appendix 4- Part 8)

Appendix 4 – Clause 4- Leave at half pay

Supplementary Guidance Information

1. Amount of leave

1.1. Full-time Employees

1.1.1. A full - time Employee whose ordinary hours of work are 76 hours per fortnight is entitled to 114 hours of paid Personal/Carer's Leave per year of service.

1.1.2. A full - time Employee whose ordinary hours of work are 80 hours per fortnight is entitled to 120 hours of paid Personal/Carer's Leave per year of service.

1.2. Part-time Employees

A part-time Employee is entitled to a pro-rata amount of paid Personal/Carer's Leave based on the part-time Employee's ordinary hours of work.

1.3. Fixed term Employees

For fixed term Employees, Personal/Carer's Leave is calculated on a pro-rata basis according to the length of their service

2. Crediting of leave

2.1. Personal/Carer's Leave will be credited on commencement of employment and subsequently on the anniversary date of the Employee's employment for each completed year of service.

2.2. By agreement with the Employer, if an Employee has exhausted their Personal/Carer's Leave credits then the Employee may apply to access other accrued leave entitlements in lieu of Personal/Carer's Leave or leave without pay, provided that the Employee meets the evidence requirements set out in the Agreement (see section 8 for further information).

3. Payment for Personal/Carer's Leave

- 3.1. The Employer will pay an Employee for the hours of Personal/Carers Leave they take at the ordinary hourly rate of pay they would have received had they been at work.
- 3.2. A full - time or part-time Employee who works a 7.6 hour day and takes one full day of Personal/ Carer's Leave on that day will be paid 7.6 hours.
- 3.3. A full - time or part-time Employee who works more than a 7.6 hour day and takes one full day of Personal/Carer's Leave on that day will be paid for the hours they would have been paid had they been at work.
- 3.4. A part-time employee working less than the equivalent of a full-time day will be paid for the hours they would have been paid had they been at work

4. Deductions from Personal/Carer's leave balance

- 4.1. It is the intent of the parties in the Agreement to provide full-time equivalent Employees 15 days' paid Personal/ Carer's Leave per annum irrespective of the length of their ordinary hours of work or shift. To give effect to this, clause 51.5 of the Agreement describes how leave is to be deducted from an Employee's accrued Personal Carers' Leave balance.
- 4.2. From 1 July 2020, full-time Employees and part-time Employees who work the equivalent of a full-time day shall have their leave balance deducted at a nominal value of 7.6 hours (or 8 hours for Employees whose ordinary hours of duty average 80 hours per fortnight) for each day of Personal/Carer's Leave taken, irrespective of the actual ordinary hours worked on that day.
- 4.3. In some cases, for example, where an Employee works ordinary hours greater than 7.6 hours (or 8 hours for Employees whose ordinary hours of duty average 80 hours per fortnight), this will mean that the number of hours deducted from an Employee's balance will differ from the number of hours that is required to be paid to the Employee for the same absence.
- 4.4. Part-time Employees who work part-days which are less than the relevant full-time day will have their leave deducted by the number of hours they would have worked on that day had they been at work.
- 4.5. The tables below provide examples of different working arrangements and absence durations to illustrate how the provisions operate. The duration of the absence, hours to be deducted from the accrued balance and the hours to be paid to the Employee are shown.
- 4.6. **Employees working standard 7.6 or 8-hour days – full day absences**

Example 1 shows the effect of these provisions for a full-time or part-time Employee who ordinarily works 7.6 hours per day (or 8 hours) (i.e. the equivalent of a full-time shift) and who is absent for a full day on Personal/Carer's Leave.

Example 1: Full-time or Part-time Employee working 7.6 hours or 8 hours per day – full day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent hours to 7.6- or 8-hour day	Number of hours to be paid to Employee	Number of hours to be deducted from balance
7.6 hours	7.6 hours	7.6 hours	7.6 hours	7.6 hours
8 hours	8 hours	8 hours	8 hours	8 hours

4.7. Employees working standard 7.6 or 8 hour days – part day absences

Where a Full-time and Part-time Employee who ordinarily works 7.6 hours (or 8 hours) per day and is absent on paid Personal/Carer's Leave for part of a day, the number of hours to be deducted from the Employee's leave balance for that absence is calculated according to the formula in clause 51.5(b)(i).

$$\frac{\text{Number of hours of personal/carers leave taken}}{\text{Employee's ordinary hours of work on the day}} \times 7.6 \text{ (or 8 hours)}$$

The formula equates the part-day absence taken as a proportion of a nominal 7.6 (or 8) hour day.

Example 2a: Full-time or Part-time Employee, working 7.6 hours per day who takes a part day on personal leave – part day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to a 7.6 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from balance
3.8 hours	7.6 hours	3.8 hours	3.8 hours	3.8 hours

Example 3b: Full-time or Part-time Employee, working 8 hours per day who takes a part day on personal leave – part day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to an 8 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
4 hours	8 hours	4 hours	4 hours	4 hours

4.8. Employees rostered to work longer than 7.6 or 8 hour days – full day absence

Example 3 details the treatment of Personal/Carer's Leave absences for Employees whose ordinary hours on the day of their absence are longer than a nominal 7.6 or 8-hour day. In these examples, the Employee is rostered to work a 9 hour shift and is absent for the entire day on Personal/Carer's Leave.

Example 4a: Full-time or Part-time Employee ordinarily working longer than a nominal 7.6 hour (or 8 hour) day – full day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to a 7.6 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
9 hours	9 hours	7.6 hours	9 hours	7.6 hours

Example 5b: Full-time or Part-time Employee ordinarily working longer than a nominal 8-hour day – full day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to an 8 - hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
9 hours	9 hours	8 hours	9 hours	8 hours

4.9. Employees rostered to work longer than 7.6 or 8 hour days – part day absence

Where a full-time and part-time Employee whose ordinary hours on the day of their absence are longer than a nominal 7.6 (or 8) hour day but the Employee only takes a part-day absence on Personal/Carer's Leave, the formula in clause 51.5(b)(i) (replicated in section 4.7 above) is used to determine what portion of a nominal 7.6 (or 8) hour day has been taken for the purposes of determining how many hours to deduct from the accrued balance.

Example 6a: Full-time or Part-time Employee ordinarily working longer than a nominal 7.6-hour day – part day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to a 7.6 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
4.5 hours	9 hours	3.8 hours	4.5 hours	3.8 hours

$$\frac{\text{Number of hours of personal/carers leave taken}}{\text{Employee's ordinary hours of work on the day}} \times 7.6 \text{ (or 8 hours)}$$

e.g. (4.5 Hrs / 9.0 Hrs) x 7.6 Hour Day = 3.8 Hrs

Example 7b: Full-time or Part-time Employee ordinarily working longer than a nominal 8-hour day – part day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to a 8 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
4.5 hours	9 hours	4 hours	4.5 hours	4 hours

4.10. Full-time Employees rostered to work less than 7.6 or 8 hour days – full day absence

Where a full-time Employee is rostered to work less than a 7.6 hour day (or has a flexible work arrangement for short days), but that short day reflects a full-time day for that roster or workplace or individual, clause 51.5(b)(i) remains the relevant provision from which to determine the deduction to be made from the Employee's balance. Consistent with the intent that full-time Employees are entitled to one day of Personal/Carer's Leave, irrespective of the actual ordinary hours worked on that day, the treatment of short shifts is the same as longer shifts – see example 5 below:

Example 5a: Full-time Employee rostered to work a shift less than a nominal 7.6 hours per day – full day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to a 7.6 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
6 hours	6 hours	7.6 hours	6 hours	7.6 hours

$$\frac{\text{Number of hours of personal/carers leave taken}}{\text{Employee's ordinary hours of work on the day}} \times 7.6 \text{ (or 8 hours)}$$

e.g. (6.0 Hrs / 6.0 Hrs) x 7.6 Hour Day = 7.6 Hrs

Example 5b: Full-time Employee rostered to work a shift less than a nominal 8 hours per day – full day absence

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to an 8 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
6 hours	6 hours	8 hours	6 hours	8 hours

4.11. Full-time Employees rostered to work less than 7.6 or 8 hour days – part day absence

Where a full-time Employee takes a part-day absence during shifts shorter than the equivalent full-day, the formula at clause 51.5(b)(i) (replicated at section 4.7 of the policy) is used to determine the proportion of a nominal day which has been taken. In Example 6, the full-time Employee was rostered on to work six hours but took a half day absence on Personal/Carer's Leave.

Example 6: Full-time rostered to work 6 hours per day who takes a part-day absence on Personal/Carer's Leave

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to a 7.6 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
3 hours	6 hours	3.8 hours	3 hours	3.8 hours

4.12. Part-time Employees rostered to work less than 7.6 or 8 hour days – full or part day absence

Where a part-time Employee's ordinary hours of work are less than the equivalent of a full-time day, the deduction from the Employee's balance reflects the number of hours they would have worked on that day had they been at work. This means regardless of whether the Employee is absent for a part or full day, the number of hours to be deducted from the Employee's accrual and the number of hours paid to the Employee will always be the same – see example 5 below.

Example 7: Part-time Employee working less than the equivalent of a full - time day – full or part day absence

Amount of Leave Taken	Ordinary hours rostered to work	Number of hours to be paid to Employee	Number of hours to be deducted from leave balance
Full Day Absence			
5 hours	5 hours	5 hours	5 hours
Part Day Absence			
2.5 hours	5 hours	2.5 hours	2.5 hours

4.13. Full-time or part-time Employees on compressed working hours – rostered to work more than 7.6 or 8 hour days

Employees who work a formal compressed hours arrangement will have absences on Personal/Carer's Leave treated the same as any other Employees working longer than a standard 7.6 hour (or 8 hour) day. Examples 3 and 4 above demonstrate the application for full or part day absences in these circumstances.

4.14. Full-time Employees on compressed working hours – rostered to work less than 7.6 or 8 hour days

Where the Employee's formal compressed hours arrangement involves the Employee working a combination of days some of which are longer than the equivalent of a full-time day and others which are shorter, then similarly to Example 5 above, the short day is treated as a full day for the purposes of calculating what hours to deduct from an Employee's balance, consistent with the principle that a full-time Employee is entitled to a day of Personal Carer's Leave irrespective of the actual ordinary hours worked on that day.

- 4.15. Example 8 below, shows the treatment for a full-time Employee whose formal compressed hours arrangement involves working a combination of days longer than the equivalent of a full-time day and others which are shorter.

Example 8: Compressed hours long and short days – full day and part-day absences

Amount of Leave Taken (Number of Hours)	Ordinary hours rostered to work	Equivalent proportion of leave taken to a 7.6 hour day	Number of hours to be paid to Employee	Number of hours to be deducted from balance
9 hours	9 hours	7.6 hours	9 hours	7.6 hours
2 hours	2 hours	7.6 hours	2 hours	7.6 hours
1 hours	2 hours	3.8 hours	2 hours	3.8 hours

- 4.16. Employers must ensure that in all circumstances Employees receive no less than what is provided under the National Employment Standards (NES). It may be possible that where Employees exclusively or very regularly take short days as Personal/Carer's Leave under examples 6 and 8 above, their accrued personal/carers leave may diminish at a rate which would mean they do not receive a minimum ten days leave per annum as required by the NES. This risk is diminished where the pattern of an Employee's Personal/ Carer's Leave includes absences on both the short and long days.
- 4.17. Clause 51.3(c) of the Agreement confirms that the Employer must not apply the Agreement in a manner which is inconsistent with the NES. Employers should be mindful of this obligation with respect to the treatment of Personal/Carer's Leave under the Agreement, particularly for Employees whose ordinary working hours include days which are very short. To ensure compliance with the NES all Employees regardless of how their hours are arranged must receive a minimum of 10 days Personal Carer's Leave in any given year.
- 4.18. Generally, it will be without question that Employees have received a more beneficial entitlement under the Agreement. Where there is a question of whether an individual Employee has received a minimum of 10 days Personal Carer's Leave in any given year due to the treatment of their regular absences on Personal Carer's Leave, the Employer should conduct an audit of the leave taken by the Employee under the Agreement, against the accrual and deductions arrangements in the NES to confirm that the minimum entitlements have been met.

5. Personal/Carer's Leave for medical appointments

- 5.1. An Employee may access their accrued Personal/Carer's Leave to attend a medical appointment with a Registered Practitioner when the appointment cannot be reasonably scheduled outside the Employee's working hours.
- 5.2. The Employee must provide notice of attendance of a medical appointment and comply with the evidence requirements set out in the Agreement.
- 5.3. Attendance at routine medical appointments may, by agreement with the Employer, also be facilitated through a flexible working arrangement (such as agreement to make up the time taken to attend medical appointments) as an alternative to using Personal/Carer's leave.

6. Personal/Carer's Leave and other forms of leave

- 6.1. Where an Employee is on a period of paid annual or long service leave and an entitlement to Personal/Carer's Leave under the Agreement arises, the Employee may request that they be granted that Personal/Carer's Leave and re-credited their annual or long service leave.
- 6.2. An application to substitute leave must include documentary evidence as required by the Agreement (see section 8 for further information).
- 6.3. Where the application is granted, the applicable annual or long service leave amount will be re-credited, and the Employee will have the leave deducted from their Personal/Carer's Leave.

- 6.4. Where the Employee has already received an annual leave allowance 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 Employer procedure consistent with this provision).
- 6.5. An Employee requesting to use their Personal/Carer's Leave to support a person experiencing family violence should familiarise themselves with the Family Violence Leave Policy.

7. Personal/Carer's Leave taken on behalf of an Assistance Animal

- 7.1. Employees may request a period of Personal/Carers Leave because of illness, injury or an unexpected emergency affecting an Assistance Animal.
- 7.2. Assistance Animal is defined as an animal which is formally trained to assist a person with a disability to alleviate the effect of their disability. Assistance Animals can include:
 - 7.2.1. a guide dog for people with vision impairment, or
 - 7.2.2. hearing dogs for people with hearing impairment, or
 - 7.2.3. assistance dogs for people with a physical disability, or
 - 7.2.4. medical alert animals that help people before and during a medical emergency, or
 - 7.2.5. psychiatric service animals that help people with a mental illness, or
 - 7.2.6. any other animal agreed by the Employer or to which an Assistance Animal Pass granted by the Department of Transport applies.
- 7.3. The above examples are reflective of the types of Assistance Animals who may ordinarily be granted an Assistance Animal Pass by the Victorian Department of Transport or are recognised as formally trained to the requisite standard to assist a person alleviate the effects of their disability.
- 7.4. Where the Employer considers a request from an Employee for an animal to be deemed an assistance animal by the Employer, Employers are encouraged to use the evidence requirements from the Assistance Animal Pass application as issued by the Department of Transport. These requirements are:
 - 7.4.1. The role which the animal has in assisting the employee.
 - 7.4.2. Details of the Assistance Animal (i.e. type of animal, breed, size)
 - 7.4.3. Training of the Assistance Animal and details of the Trainer and training provided.
 - 7.4.4. Declaration of a health professional deeming that the Assistance Animal is required to assist with the Employee's disability.
- 7.5. Pet, companion, or therapy animals are expressly excluded from the definition of an Assistance Animal for the purposes of this provision. The fact an animal is house trained or has obedience training and/or is involved in providing therapeutic benefit or patient visits in a medical, rehabilitation or aged care setting (or similar) is not sufficient to qualify as an Assistance Animal for the purposes of this clause.

8. Evidence requirements

- 8.1. Employees are to provide appropriate documentary evidence to support their claim for Personal/Carer's Leave. In the case of Personal Leave, appropriate documentary evidence is a medical certificate or evidence of attendance at a medical appointment from a Registered Practitioner or in the case of Carer's Leave either a medical certificate from a Registered Practitioner, a statutory declaration or other relevant documentary evidence. Where an Employee wishes to take leave to provide care for an Assistance Animal, they must provide evidence from a registered veterinary practitioner.
- 8.2. An Employee may take Personal/Carer's leave without providing the relevant documentation for:

- 8.2.1. up to an aggregate of 5 days or equivalent pro-rata amount accrued Personal/Carer's Leave in each year of employment; and
 - 8.2.2. any absence which is for a continuous period not exceeding 3 days.
- 8.3. Where the consecutive period of Personal/Carer's Leave exceeds 3 days, the Employee must provide the relevant documentation as prescribed by clause 51.9 of the Agreement to support their application for Personal/Carer's Leave.
 - 8.4. Where it is not reasonable to provide documentary evidence from a Registered Practitioner or registered veterinary practitioner in the case of an Assistance Animal, the Employee may provide a statutory declaration. Statutory declarations can only be used for single day absences on no more than 3 non-consecutive occasions in the accrual year. Clause 51.1 of the Agreement defines who is a registered practitioner.
 - 8.5. Where the Employee seeks to rely on a statutory declaration in support of their request for Personal/Carer's Leave, the statutory declaration must include information as to why the Employee was unable to attend a Registered Practitioner and the reason they were unable to attend work.

Custodial Officers – Evidence Requirements

- 8.6. Clause 2.6 in Appendix 1 provides for full time custodial officers, working an 80-hour fortnight of 9 shifts or less over the fortnight, to take up to an aggregate of 44 hours of time rostered in each year without having to provide the required documentary evidence for personal leave. However custodial staff on these rosters will be provided with the overall more generous entitlement of 5 days without medical certificate for Personal/Carer's Leave. Should the circumstance arise where clause 2.7 in Appendix 1 is more generous, that provision will apply to eligible custodial officers.

9. Failure to provide documentary evidence

- 9.1. Employees are required to provide the relevant documentary evidence within a reasonable period of time. If an Employee fails to comply with a direction to provide the relevant documentary evidence within a reasonable timeframe, the absence may be regarded as unauthorised leave without pay. Leave taken without approval and without reasonable cause may be managed in accordance with the Management of Misconduct processes outlined in clause 25 of the Agreement.

10. Cessation of employment

- 10.1. Personal/Carer's Leave is not paid out on termination.

11. Movement between Employers covered by the Agreement

- 11.1. Personal/Carer's Leave entitlements will be transferred between departments and agencies covered by the Agreement where there is no break in service.
- 11.2. An Employee who is transferring to another Department or Agency covered by the Agreement, will have their accrued Personal/Carer's Leave entitlements transferred to their new Department or Agency through the Transfer of Personnel (TOP) process unless there is a break in service. An Employee appointed to a role with a new Department or Agency covered by the Agreement must advise the Employer prior to ceasing with their current Department or Agency so appropriate arrangements can be made to transfer the Employee's service and accrued leave entitlement to their new Department or Agency.

12. Personal/Carer's Leave during periods where an Employee is in receipt of workers' compensation payments

- 12.1. Consistent with clause 44.4(a)(i) of the Agreement, an Employee who is absent from work and in receipt of workers' compensation payments is entitled to take and accrue Personal/Carer's Leave.

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 51 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

- Other Leave
- Annual Leave
- Family Violence Leave
- Management of Misconduct
- Review of Action

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:

Key Details

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