

Workplace resource: Your right to family and domestic violence leave

All employees are entitled family and domestic violence leave each year.

What your right will look like depends on which system of employment laws you are in. You need to know that:

- there are two different groups of laws that could apply to you;
- you could be in the national system of employment law or the state system of employment law; and
- you can't be in both systems.

We have more information about these systems here [Q&A: State or national for WA employees](#)

This is important because:

in the **national system**, employees are entitled to a minimum of 10 days of paid family and domestic violence leave.

in the **state system**, employees are entitled to a minimum of 5 days of unpaid family and domestic violence leave.

If you are having trouble figuring out if you are an employee, or which system you are in, you can contact us to make a [request for legal advice here](#).

This resource contains information about family and domestic violence.

Sexual assault, domestic and family violence comes in many forms. It can happen to anyone, in any relationship. It's never ok. If you have experienced violence and abuse, support is available.

1800RESPECT is Australia's national sexual assault, domestic and family violence support service. Anyone can access the confidential information, referral and counselling service at any time of the day, every day of the year through www.1800respect.org.au or 1800 737 732. The next step is always your choice.

This resource includes

- entitlement for national system employees;
- the entitlement for state system employees;
- frequently asked questions.

National system employees

All national system employees are entitled to 10 days paid family and domestic violence leave per 12-month period. This includes part-time and casual employees.

More information can be found on the Fair Work Ombudsman's website [here](#).

How much leave do I get?

You are able to access the leave **in full** at the start of every 12 month period, resets at the end of every 12 month period and does not accumulate year to year. This means you do not need to wait and accrue the leave (like holiday or personal leave).

You can take all 10 days:

- in one continuous 10 day period; or
- in separate periods of one or more days each; or
- in any separate periods to which the employer and employee agree (including periods of less than a day).

How do I take it?

Leave can be taken if you are experiencing family and domestic violence and need to do something to deal with its impact that you can't do outside work hours.

This can include:

- making arrangements to secure your safety or of the safety of a close family member (including relocation);
- attending court;
- accessing police services;
- attending counselling and attending appointments with medical, financial or legal professionals.

What does family and domestic violence mean under the Fair Work Act?

Family and domestic violence leave means:

- violent, threatening or abusive behavior by a close family member, former or current intimate partner or member of your household. It can also include a person related to you according to Aboriginal or Torres Strait Islander kinship rules; and
- the behaviour towards you is looking to control or coerce you, and the behaviour causes you harm or fear.

This could include:

- physical violence or threats of violence or damage;
- emotional or financial abuse;

- stalking or cyberstalking; and
- withholding financial support or the financial support for a child.

You can learn more about family and domestic violence from the Centre for Women's Safety and Wellbeing: <https://csw.org.au/what-is-domestic-and-family-violence/>

What do I need to tell my employer?

You will need to tell your employer that you are taking family and domestic violence leave as soon as practical. This can be after the leave has started.

You will also need to tell your employer how long you think you will be on family and domestic violence leave.

Your employer may ask you for evidence that you are experiencing family and domestic violence, what you need to do to deal with family and domestic violence and why it can't be done outside work hours. You will need to provide evidence that would satisfy a reasonable person.

Reasonable evidence may look like:

- a statutory declaration;
- family violence support service documents;
- documents issued by a police service; or
- documents issued by a court.

More information can be found on the Fair Work Ombudsman's website [here](#).

If you are having trouble figuring out your entitlement, or which system you are in, you can contact us to make a [request for legal advice here](#).

State system employees

State system employees are entitled to 5 days unpaid family and domestic violence leave per 12-month period. This includes part-time and casual employees.

More information can be found on the Department of Mines, Industry Regulation and Safety website [here](#).

How do I take it?

You are able to take unpaid family and domestic violence leave if:

- you are experiencing family and domestic violence; and
- you need to do something to deal with the impact of the family and domestic violence; and
- it is not practical to do outside work hours.

You need to let your employer know that you are taking it as soon as practical, and when you believe you will be able to return to work.

If you are unfit to attend work due to an illness or injury, you can use personal leave. You can find more information about personal leave [here](#).

What does family and domestic violence mean under the Minimum Conditions of Employment Act?

Under the Minimum Conditions of Employment Act, family and domestic violence means:

- violence, or a threat of violence, by a person towards a family member of the person; or
- any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.

This may include, but is not limited to:

- assault or sexual assault;
- stalking or cyber stalking;
- damaging property or hurting animals;
- unreasonably withholding financial support needed to meet the reasonable living expenses
- threats of violence or coercion; and
- preventing the family member from making or keeping connections with the member's family, friends or culture.

You can learn more about family and domestic violence from the Centre for Women's Safety and Wellbeing: <https://csw.org.au/what-is-domestic-and-family-violence/>

What do I need to tell my employer?

You will need to tell your employer that you are taking family and domestic violence leave as soon as practical. This can be after the leave has started. You will also need to tell your employer how long you think you will be on family and domestic violence leave.

Your employer may ask you for reasonable evidence that you are experiencing family and domestic violence, that you need to do something to deal with family and domestic violence and it is not practicable to do it during work hours.

Your employer should keep this information confidential unless required to disclose by law or is necessary to protect the life, health or safety of yourself or another person.

This could be a document issued by:

- a police service;
- a court or family violence support service;
- a medical practitioner;
- a legal service;
- a counsellor;
- a refuge service; or
- a financial institution.

Reasonable evidence can include a statutory declaration.

More information can be found on the Department of Mines, Industry Regulation and Safety website [here](#).

If you are having trouble figuring out your entitlement, or which system you are in, you can contact us to make a [request for legal advice here](#).

Frequently Asked Questions

Do I get paid my normal rate of pay?

If you are a national system employee your paid family and domestic violence leave is paid at your full rate of pay for the hours you would have worked.

State system employees do not have a minimum entitlement to paid family and domestic violence leave.

You should always check your employment contract to see if you have a greater or better entitlement than the minimum outlined in this resource.

What things can I ask my employer to do to help me feel safer at work if I'm experiencing family and domestic violence?

National system employees

You can look to informally speak to your employer about changes to your work that they may agree to that will make you feel safer.

A more formal process for national system employees is asking for flexible work arrangements. These are enforceable temporary changes to your work conditions because you are experiencing family and domestic violence. This can involve:

- changes to the hours of your work;
- a change in the location of your work, including to work from home; and
- changing the team that you are in at work.

You will need to outline that you are requesting the flexible work arrangement because you are:

- experiencing family and domestic violence, or
- providing care or support to an immediate family or household member who is experiencing family and domestic violence.

The Fair Work Ombudsman has a template letter that you can use [here](#).

Your employer must respond to a request within 21 days.

State system employees

You can look to informally speak to your employer about changes to your work that they may agree to that will make you feel safer.

Your employer has responsibilities to ensure you are safe at work. This can include ensuring an individual is not allowed to approach you while you are working.

You can talk to Wageline to clarify whether you are covered by a State award or agreement. Your award or agreement may contain flexible work arrangements.

Do I have to disclose family and domestic violence to my employer in order to access the leave?

If your employer asks for evidence, you will need to provide evidence.

Your employer is required to treat this evidence and information confidentially.

Your employer may ask you for reasonable evidence that you are experiencing family and domestic violence, that you need to do something to deal with family and domestic violence and it is not practicable to do it during work hours.

This may include:

- a statutory declaration
- family violence support service documents;
- counselling documents;
- documents issued by a police service, or
- documents issued by a court.

Will my payslip and/or timesheet state that I took family and domestic violence leave?

If you are a national system employee, the leave **must not** be included on your payslip.

Your employer must also take steps to ensure any information or evidence you provide to them is kept confidential. Generally, your employer should not identify that the leave you have taken is family and domestic violence leave.

There are limited circumstances where your employer is able to share the information. They may have to share it where:

- it's required by law; or
- is necessary to protect your life, health or safety or the life, health and safety of another person.

How do I find my employer's family and domestic violence policy?

Finding your employer's family and domestic violence policy may be different for each business or employer.

It may have been provided as part of your induction process. If you are unable to find any document you may want to ask HR or the person in charge of employee relations.

For some employers it may be found in an online employee portal.

If you are unsure you can speak to your line manager if you feel comfortable.

Will my work provide me with free support (including counselling)?

Generally, your employer will have an Employee Assistance Provider (EAP) that can provide assistance, including counselling, to employees.

Each employer may have different policies and providers that provide support services. If you are not sure you can find your employer's policy or speak to an HR representative if you feel comfortable.

SUPPORT RESOURCES

1800RESPECT

HOW YOU CAN OFFER SUPPORT TO SOMEONE EXPERIENCING DOMESTIC OR FAMILY VIOLENCE



The infographic is divided into several sections. At the top, it says 'BELIEVE AND TAKE THEIR FEARS SERIOUSLY' with an ear icon and 'LISTEN WITHOUT INTERRUPTING OR JUDGING'. Below that, it says 'NEVER BLAME THE PERSON EXPERIENCING THE VIOLENCE' with a hand icon and 'DON'T TELL SOMEONE WHAT THEY SHOULD OR SHOULDN'T DO.'. The middle section is titled 'OFFER PRACTICAL HELP' and includes icons for 'TRANSPORT', 'APPOINTMENTS', 'CHILD MINDING', and 'A PLACE TO ESCAPE'. The bottom section says 'HELP EXPLORE OPTIONS 1800respect.org.au' with a computer monitor icon. At the very bottom, it says 'IN AN EMERGENCY OR IF IS SOMEONE IS IN IMMEDIATE DANGER, CALL 000'.

1800RESPECT
NATIONAL SEXUAL ASSAULT, DOMESTIC
FAMILY VIOLENCE COUNSELLING SERVICE

Violence is never ok. If you are worried about violence or abuse in any of your relationships, support is available. #1800RESPECT is Australia's national sexual assault, domestic and family violence support service. Anyone can access the confidential information, referral and counselling service at any time of the day, every day of the year at <http://www.1800respect.org.au> or 1800 737 732.

MensLine

 **MensLine
Australia**

1300 78 99 78
mensline.org.au



MensLine Australia offers free professional 24/7 telephone counselling support for men with concerns about mental health, anger management, family violence (using and experiencing), addiction, relationship, stress and wellbeing.

Call 1300 78 99 78 for support or mensline.org.au/

Centre for Women's Safety and Wellbeing



**CENTRE FOR
Women's Safety
and Wellbeing**

The leading voice for women and children affected by gender-based violence in Western Australia. Find resources, support options and information.

csw.org.au/