

## The ACTU's Proposed Variation

Updated as at 22 February 2022

### ~~Subdivision CA~~ ~~Unpaid~~ ~~Family and domestic violence leave~~

#### 106A Entitlement to family and domestic violence leave

- (1) An employee is entitled to ~~5~~ 10 days of ~~unpaid~~ paid family and domestic violence leave in a 12 month period.
- (1A) Family and domestic violence leave is payable at an employee's ordinary hourly rate, including applicable shift loadings and penalties.
- (1B) For a casual employee, family and domestic violence leave is payable at the rate of pay that the employer would be required to pay the employee for the hours of work in the period for which the employee was rostered, including any casual and shift loadings applicable.
- (2) ~~Unpaid~~ Paid family and domestic violence leave:
  - (a) is available in full at the start of each 12 month period of the employee's employment; and
  - (b) does not accumulate from year to year; and
  - (c) is available in full to part-time and casual employees.
- (3) For the purposes of subsection (2), if an employee is employed by a particular employer:
  - (a) as a casual employee; or
  - (b) for a specified period of time, for a specified task or for the duration of a specified season;the start of the employee's employment is taken to be the start of the employee's first employment with that employer.
- (4) The employee may take ~~unpaid~~ paid family and domestic violence leave as:
  - (a) a single continuous ~~5~~ 10 day period; or
  - (b) separate periods of one or more days each; or
  - (c) any separate periods to which the employee and the employer agree, including periods of less than one day.
- (5) Upon exhaustion of the leave entitlement in clause X.1, employees will be entitled to up to 5 days unpaid family and domestic violence leave on each occasion for the purposes set out in Clause B(1). ~~for the purpose of attending to activities related to the experience of being subjected to family and domestic violence.~~ To avoid doubt, this section does not prevent the employee and the employer agreeing that the employee may take more than 5 days of unpaid leave to deal with the impact of family and domestic violence.

#### 106B Taking ~~unpaid~~ family and domestic violence leave

- (1) The employee may take ~~unpaid~~ family and domestic violence leave if:
  - (a) the employee is experiencing family and domestic violence; and
  - (b) the employee needs to do something to deal with the impact of the family and domestic violence; and

- (c) it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

Note 1: Examples of actions, by an employee who is experiencing family and domestic violence, that could be covered by paragraph (b) ~~are~~ include arranging for the safety of the employee or a close relative (including relocation), attending urgent court hearings ~~or~~ accessing police services or attending appointments with medical, financial or legal professionals.

Note 2: The notice and evidence requirements of section 107 must be complied with.

- (2) ***Family and domestic violence*** is violent, threatening or other abusive behaviour by a close relative of an employee or member of an employee's household that:
- (a) seeks to coerce or control the employee; and
  - (b) causes the employee harm or to be fearful.
- (3) A ***close relative*** of the employee is a person who:
- (a) is a member of the employee's immediate family; or
  - (b) is related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

Note: ***Immediate family*** is defined in section 12.

### **106C Confidentiality**

- (1) Employers must take steps to ensure information concerning any notice or evidence an employee has given under section 107 of the employee taking leave under this Subdivision is treated confidentially, as far as it is reasonably practicable to do so.
- (2) Nothing in this Subdivision prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information covered by this section that is personal information may also be regulated under the *Privacy Act 1988*.

### **106D Operation of ~~unpaid~~ family and domestic violence leave and leave for victims of crime**

- (1) This Subdivision does not exclude or limit the operation of a law of a State or Territory to the extent that it provides for leave for victims of crime.
- (2) If an employee who is entitled, under a law of a State or Territory, to leave for victims of crime is also entitled to leave under this Subdivision, that law applies in addition to this Subdivision.
- (3) A person who is a national system employee only because of section 30C or 30M is entitled to leave under this Subdivision only to the extent that the leave would not constitute leave for victims of crime.

Note: Leave for victims of crime is a non-excluded matter under paragraph 27(2)(h).

### **106E Entitlement to days of leave**

What constitutes a day of leave for the purposes of this Subdivision is taken to be the same as what constitutes a day of leave for the purposes of section 85 and Subdivisions B and C.

## **Subdivision D—Notice and evidence requirements**

### **107—Notice and evidence requirements**

#### *Notice*

- (1) An employee must give his or her employer notice of the taking of leave under this Division by the employee.
- (2) The notice:
  - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
  - (b) must advise the employer of the period, or expected period, of the leave.

#### *Evidence*

- (3) An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that:
  - (a) if it is paid personal/carer's leave—the leave is taken for a reason specified in section 97; or
  - (b) if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in subsection 103(1); or
  - (c) if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in subsection 105(1); or
  - (d) if it is ~~unpaid~~ family and domestic violence leave, and the employee has met the requirement specified in paragraph 106B(1)(a)—the leave is taken for the purpose specified in paragraph 106B(1)(b), and the requirement specified in paragraph 106B(1)(c) is met.

#### *Compliance*

- (4) An employee is not entitled to take leave under this Division unless the employee complies with this section.

#### *Modern awards and enterprise agreements may include evidence requirements*

- (5) A modern award or enterprise agreement may include terms relating to the kind of evidence that an employee must provide in order to be entitled to paid personal/carer's leave, unpaid carer's leave or compassionate leave.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.