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# VPS Enterprise Agreement Common Policies

## COMPASSIONATE LEAVE

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# Authority and Application

Clause 50 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their employees covered by the Agreement.

## Overview

Clause 50 sets out an Employee's entitlement to paid and/or unpaid Compassionate Leave in the event a member of their immediate family contracts 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 Enterprise Agreement

### Clause 50. Compassionate Leave

#### 50.1 Definitions

In this clause the Employee's immediate family means:

- (a) the Employee's spouse (including the Employee's former spouse, de facto partner and former de facto partner). A de facto partner means a person who, although not legally married to the Employee, lives with the Employee as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes); and
- (b) a child or adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the Employee or the Employee's spouse or de facto partner.

#### 50.2 Amount of Compassionate Leave

- (a) An Employee, other than a casual Employee, is entitled to up to three days paid Compassionate Leave on each occasion when a member of the Employee's immediate family or a member of the Employee's household:
  - (i) contracts or develops a personal illness that poses a serious threat to his or her life;
  - (ii) sustains a personal injury that poses a serious threat to his or her life; or
  - (iii) dies,each of which constitutes a permissible occasion for the purposes of this **clause 50**.

- (b) An Employee may take Compassionate Leave for a particular permissible occasion if the leave is taken:
  - (i) to spend time with the member of the Employee's immediate family or household who has contracted or developed a personal illness or sustained a personal injury referred to in **clause 50.2(a)**; or
  - (ii) after the death of a member of the Employee's immediate family or household referred to in **clause 50.2(a)**.
- (c) An Employee is not required to take Compassionate Leave in respect of a permissible occasion consecutively.
- (d) Compassionate Leave will not accrue from year to year and will not be paid out on termination of the employment of the Employee.

### **50.3 Payment for Compassionate Leave (other than for casual Employees)**

An Employee, other than a casual Employee, who takes paid Compassionate Leave, is entitled to be paid at his or her salary for ordinary hours of work in the period in which the Compassionate Leave is taken.

### **50.4 Unpaid Compassionate Leave**

- (a) An Employee, including a casual Employee may take unpaid Compassionate Leave by agreement with the Employer.
- (b) In addition to the other provisions of this clause, Employees of Aboriginal or Torres Strait Islander descent may be granted paid and unpaid leave in relation to the death of a member of their immediate family or extended family in accordance with **clause 53.4**.

### **50.5 Notice and Evidence Requirements**

- (a) An Employee who is taking Compassionate Leave under this clause must give notice to the Employer "as soon as practicable" (which may be at a time after the Compassionate Leave has started) and must advise the Employer of the period, or expected period, of the Compassionate Leave.
- (b) An Employee must provide the Employer with satisfactory evidence to support the taking of Compassionate Leave. Satisfactory evidence may include a medical certificate from a Registered Practitioner (as that term is defined in **clause 47.5(c)**), a statutory declaration or other relevant documentary evidence to the reasonable satisfaction of the Employer.
- (c) The Employee is not entitled to Compassionate Leave under this clause unless the Employee complies with the evidence and notice requirements set out in this clause.

# Supplementary Guidance Information

## 1. Notice and evidence requirements

- 1.1. 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.
- 1.2. An Employee who has given notice of the taking of Compassionate Leave is required to provide satisfactory evidence in accordance with clause 50.5(b) of the Agreement.
- 1.3. Note that 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.

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

- 2.1. 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 53.4 of the Agreement).

## 3. Additional Compassionate Leave with or without pay

- 3.1. 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; or
  - (c) other special circumstances which may warrant special consideration.

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

- 3.2. Compassionate Leave with or without pay may be granted at the Employer's discretion where an extended family member beyond those captured by the definition of immediately family at clause 50.1 of the Agreement:
  - (a) contracts or develops a personal illness that poses a serious threat to their life;
  - (b) sustains a personal injury that poses a serious threat to their life; or
  - (c) dies.
- 3.3. Approval of unpaid Compassionate Leave under clause 50.4 of the Agreement will not be unreasonably withheld. However, Employees must

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support their application with appropriate evidence to justify the additional leave.

#### **4. Compassionate Leave during other periods of paid leave**

- 4.1. Where an Employee is on a period of paid annual or long service leave and an entitlement to Compassionate Leave (clause 50) arises, the Employee may request that they be granted that Compassionate Leave and re-credited their Annual Leave.
- 4.2. An application to substitute leave must include documentary evidence as required by the Agreement.
- 4.3. If the application is granted, the applicable annual or long service leave amount will be re-credited, and the Employee will access their Compassionate Leave.
- 4.4. Where the Employee has already received the annual leave allowance payable under clause 41.4 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 29.5 of the Agreement.

## 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 50 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 12 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).

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## Related policies or documents

### VPS Enterprise Agreement Common Policies

- Annual Leave
- Cultural and Ceremonial Leave
- Long Service Leave
- Personal / Carer's Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpsc.vic.gov.au/vps-enterprise-agreement-common-policies/>