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# VPS Enterprise Agreement Common Policies

## PERSONAL / CARER'S LEAVE

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## Authority and Application

Clause 47 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 47 of the Agreement sets out an Employee's entitlement to be absent from the workplace because of:

- a personal illness or injury;
- personal illness or injury of an Employee's immediate family or household member who requires the Employee's care or support; or
- an unexpected emergency affecting an Employee's immediate family or household member;

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

## Relevant provisions of the VPS Enterprise Agreement

### Clause 47. Personal/ Carer's Leave

#### 47.1 Amount of paid personal/carer's leave

- (a) An Employee, other than a casual Employee, is entitled to paid personal/carer's leave when they are absent because of:
- (i) personal illness or injury; or
  - (ii) personal illness or injury of an Employee's immediate family or household member who requires the Employee's care or support; or
  - (iii) an unexpected emergency affecting an Employee's immediate family or household member.
- (b) A full time Employee is entitled to paid personal/carer's leave of 114 hours (120 hours for Employees whose ordinary hours of duty average 80 hours per fortnight). A part time Employee is entitled to a pro rata amount of paid personal/carer's leave based on the part-time Employee's hours of work.
- (i) Leave will be credited on commencement of employment and subsequently on the anniversary date of the Employee's employment.

- (ii) Employees appointed for a fixed term period will accrue on a pro rata basis paid personal/carer's leave according to length of their service.
  - (iii) Leave without pay will not count as service for personal/carer's leave accrual purposes.
  - (iv) Unused paid personal/carer's leave accumulates from year to year.
  - (v) Accrued personal/carer's leave will not be paid out on termination of employment.
- (c) In this **clause 47**, the term "immediate family" means:
- (i) a spouse (including a former spouse, a de facto partner and a former de facto partner) of the Employee. A de facto partner means a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes);
  - (ii) a child or an 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.

#### **47.2 Payment for personal/carer's leave**

An Employee, other than a casual Employee, who takes paid personal/carer's leave, is entitled to be paid at his or her Salary rate of pay for their ordinary hours of work in the period during which the personal/carer's leave is taken.

#### **47.3 Personal/Carer's leave at half pay**

- (a) In exceptional circumstances, an Employee may be granted approval to convert any or all of their accrued paid personal/carer's leave entitlement to half pay for a period equal to twice the period to which the Employee would otherwise be entitled.
- (b) Approval of half-pay personal/carer's leave will only be granted in relation to an absence of 4 weeks or more.
- (c) To be eligible for personal/carer's leave at half pay under this clause, the Employee must comply with all notice and documentary evidence requirements stipulated in this clause.

#### **47.4 Notice**

An Employee must give his or her Employer notice of the taking of personal/ carer's leave under this clause. The notice:

- (a) must advise the Employer of the period, or expected period, of the leave; and
- (b) must be given to the Employer as soon as practicable, which may be a time after the personal/carer's leave has started.

## 47.5 Documentary Evidence Requirements

### (a) Personal leave

In the case of personal leave, the Employee must provide the Employer with a medical certificate from a Registered Practitioner.

### (b) Carer's leave

(i) In the case of carer's leave, the Employee must provide the Employer with appropriate documentary evidence.

(ii) The form of evidence required by the Employer will depend on the circumstances of the carer's leave request, and may include a medical certificate from a Registered Practitioner or statutory declaration stating that the condition of the person concerned requires the Employee's care or support or other relevant documentary evidence.

(c) **Registered Practitioner** means one of the following: Aboriginal and Torres Strait Islander health practitioner, Chinese medicine practitioner, Chiropractor, Dental care practitioner, Medical practitioner, Nurse practitioner, Midwife, Optometrist, Osteopath, Pharmacist, Physiotherapist, Podiatrist or Psychologist.

## 47.6 Exception

(a) An Employee entitled to take personal/carer's leave for the purposes set out in **clause 47.1(a)** may, subject to **clauses 47.6(b)** and **47.6(d)**, take up to an aggregate of 38 hours (40 hours for Employees whose ordinary hours of duty average 80 hours per fortnight) or equivalent pro rata amount accrued personal/carer's leave in each year of employment without having to provide the Employer with the documentary evidence required by **clause 47.5**.

(b) If the period of absence referred to in **clause 47.6(a)** is for a continuous period exceeding 22.8 hours (24 hours for Employees whose ordinary hours of duty average 80 hours per fortnight), the Employee must provide appropriate documentary evidence to the Employer as set out in **clause 47.5**.

(c) Where an Employee cannot reasonably provide documentary evidence from a Registered Practitioner, the Employee may provide a statutory declaration. The statutory declaration must include information as to why the Employee was unable to attend a Registered Practitioner and the reason why they were unable to attend work. A statutory declaration can only be used for single day absences, on no more than three occasions.

(d) Despite **clause 47.6(a)**, the Employee may be required to provide appropriate documentary evidence as required by the Employer in accordance with **clause 47.5**.

#### **47.7 Further documentary evidence**

- (a) The Employer may require that an Employee provide a further medical certificate from an independent Registered Practitioner where an Employee has been on personal leave for at least six weeks and has a medical certificate indicating on going need for personal leave. The employee will select a Registered Practitioner from a list of at least three Registered Practitioners nominated by the Employer. The nominated Registered Practitioners will not include a Registered Practitioner employed by the Employer in the VPS.
- (b) The Employer may require that an Employee provide further documentary evidence to the satisfaction of the Employer where an Employee has been on carer's leave for at least two weeks including evidence stating that the condition of the person concerned requires the continued care or support of the Employee.

#### **47.8 Documentary evidence to facilitate return to work**

Where the Employee has been on personal leave for at least six weeks the Employer may request that the Employee obtain other documentary evidence from the Employee's treating Registered Practitioner for the purposes of determining when the Employee can return to work and any reasonable adjustments that may be necessary in the workplace.

#### **47.9 Employee's incapacity to undertake duties**

If the Employer has a genuine concern about an Employee's capacity to undertake their duties, the Employer may require that the Employee provide a medical report from an independent Registered Practitioner. The employee will select a Registered Practitioner from a list of at least three Registered Practitioners nominated by the Employer. The nominated Registered Practitioners will not include a Registered Practitioner employed by the Employer in the VPS.

#### **47.10 Failure to provide relevant documentary evidence**

Failure by the Employee to provide documentary evidence as required by the Employer within a reasonable period of time may render the Employee ineligible for payment for personal/carer's leave.

#### **47.11 Absence on Public Holidays**

- (a) If the period during which an Employee takes paid personal/carer's leave includes a day or part day that is a Public Holiday in the place where the Employee is based for work purposes, the Employee is taken not to be on paid personal/carer's leave on that Public Holiday.
- (b) Despite **clause 47.11(a)**, a Shift Worker credited with substitute leave in accordance with **clause 35.4** who is rostered to perform ordinary duty on a Public Holiday and who takes paid personal/carer's leave on that day or part of that day, will be taken to be on paid personal/carer's leave.

#### **47.12 Unpaid personal leave**

An Employee who has exhausted all paid personal/carer's leave entitlements may, with the consent of the Employer, take unpaid personal leave. The Employer will require that the Employee provide documentary evidence to support the unpaid personal leave to the satisfaction of the Employer.

#### **47.13 Unpaid carer's leave**

- (a) An Employee who has exhausted all paid personal/carer's leave entitlements may take unpaid carer's leave to provide care or support in the circumstances outlined in **clauses 47.1(a)(ii) or 47.1(a)(iii)** providing the Employee complies with the notice and evidence requirements outlined in **clause 47.5(b)**. The Employer and the Employee will agree on the period of unpaid leave. In the absence of agreement, the Employee may take up to two days unpaid carer's leave per occasion.
- (b) Alternatively, the Employee may, with the consent of the Employer, elect to work make up time, under which the Employee takes time off during ordinary hours and works those hours at a later time during the Employee's spread of ordinary hours.

#### **47.14 Casual Employees – Caring responsibilities**

- (a) Casual Employees may be unavailable to attend work or may be required to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The Employer and a casual Employee will agree on the period for which the casual Employee may be unavailable to attend work. In the absence of agreement, a casual Employee is permitted to be absent from work for up to two days per occasion. A casual Employee is not entitled to any payment for the period of non-attendance.
- (c) A casual Employee must comply with the notice and evidence requirements outlined in this **clause 47**.

## Specific arrangements for Employees of Department of Health and Human Services (Appendix 4)

### **4. Leave at Half Pay**

The Employee may apply for annual leave, personal leave, parental leave, compassionate leave or long service leave at half pay. Employer approval for such leave arrangements will be subject to capacity to maintain workplace activities in the Employee's absence. Any public holiday that falls during a period of leave on half pay will be paid at full pay.

# Supplementary Guidance Information

## 1. Amount of leave

### 1.1. Full-time ongoing 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 ongoing 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 and the ordinary hours of work.

## 2. Leave management

2.1. Personal/Carers 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. For each day that an Employee is absent on Personal/Carer's Leave, the Employer will deduct from the Employee's leave balance the number of hours leave equivalent to the ordinary hours of work that the Employee would have worked on that day but for the absence.

2.3. By agreement with the Employer, if an Employee has exhausted their Personal/Carer's Leave credits then the Employee may apply to access the other accrued leave entitlements in lieu of Personal/Carer's Leave or leave without pay, provided that the Employee meets the evidence requirements outlined in clause 47.5 of the Agreement.

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

3.1. Where an Employee is on a period of paid annual or long service leave and an entitlement to Personal/Carer's Leave (clause 47) arises, the Employee may request that they be granted that Personal/Carer's Leave and re-credited their annual or long service leave.

3.2. An application to substitute leave must include documentary evidence as required by the Agreement.

3.3. If the application is granted, the applicable annual or long service leave amount will be re-credited, and the Employee will access their Personal/Carer's Leave.

- 3.4. 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.
- 3.5. 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.

#### **4. Evidence requirements**

- 4.1. Clause 47.5 of the Agreement requires that Employee's 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 in the case of Carers Leave either a medical certificate from a Registered Practitioner (as defined in clause 47.5(c) of the Agreement) or a statutory declaration or other relevant documentary evidence in accordance with clause 47.5(b)(ii) of the Agreement.
- 4.2. An Employee may take Personal/Carer's leave without providing the relevant documentation for:
  - 4.2.1. up to 38 hours (or 40 hours for full-time Employees whose ordinary hours of work are 80 hours per fortnight) over the year; and
  - 4.2.2. no more than 22.8 consecutive hours (or 24 hours for full-time Employees whose ordinary hours of work are 80 hours per fortnight).
- 4.3. Where the consecutive period of Personal/Carer's Leave exceeds 22.8 hours (or 24 hours for full-time Employees whose ordinary hours of work are 80 hours per fortnight), the Employee must provide the relevant documentation as prescribed by clause 47.5 of the Agreement to support their application for Personal/Carer's Leave.
- 4.4. Where it is not reasonable to provide documentary evidence from a Registered Practitioner, the Employee may provide a statutory declaration. In accordance with clause 47.6(c) of the Agreement, statutory declarations can only be used for single day absences on no more than three occasions in the accrual year.
- 4.5. 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.
- 4.6. Failure to provide documentary evidence  
Employees are required to provide the relevant documentary evidence (as set out in clause 47.5 of the Agreement) within a reasonable period of time. If an Employee fails to comply with a direction to provide the relevant documentary evidence (as required by the Agreement) within a reasonable timeframe, the absence may be regarded as unauthorised leave without pay. Leave taken without approval and without reasonable

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cause may be managed in accordance with the Management of Misconduct processes outlined in clause 21 of the Agreement.

## **5. Cessation of employment**

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

## **6. Movement between Employers covered by the Agreement**

- 6.1. Personal/Carer's Leave entitlements will be transferred between departments and agencies covered by the Agreement where there is no break in service.
- 6.2. 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 and Agency so appropriate arrangements can be made to transfer the Employee's service and accrued leave entitlement to their new Department or Agency.

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

- 7.1. 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 47 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.

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## 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
- Leave Without Pay

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