VPS Enterprise Agreement Common Policies

ABANDONMENT OF EMPLOYMENT & ABSENCE WITHOUT LEAVE (UNAUTHORISED ABSENCES)

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Authority and Application

Clause 16.4 of the *Victorian Public Service Enterprise Agreement 2016* (Agreement) applies to the Victorian Public Service Departments and Agencies (Employers) covered by the Agreement.

Overview

Abandonment of employment may arise in circumstances where an Employee is absent from work without a reasonable explanation for an unreasonable period of time, without appropriately communicating why, or gaining authorisation for the absence.

Clause 16.4 of the Agreement outlines the circumstances in which an Employee may be considered to have abandoned their employment.

Relevant provisions of the VPS Enterprise Agreement

Clause 16.4 – Abandonment of Employment

**16.4** If an Employee is absent for more than 20 working days:

1. in circumstances where the Employer could not reasonably, after due enquiry, have been aware of any reasonable grounds for the absence;
2. without the permission of the Employer; and
3. without contacting the Employer to provide a reasonable explanation for the absence
4. the Employer is entitled to treat the Employee as having resigned and the employment as having been terminated by the Employee at his or her initiative.

Supplementary guidance information

1. Employee requirement to notify Employer of reason for an absence from work
   1. An Employee that is absent from work due to:
      1. personal illness or injury; or
      2. being required to provide care or support to an immediate family or household member due to illness or injury; or
      3. an unexpected emergency affecting an immediate family or household member,

must give the Employer notice of the period, or expected period, of the absence and their likely return date as soon as practicable, which may be a time after the absence has started.

* 1. An Employee that is unable to attend for work for any other reason must provide a reasonable explanation for the absence. Employees must comply with the notice and evidence requirements in the Agreement if they intend to apply for a form of leave to cover the absence.
  2. Where an Employee does not attend work and has not contacted their Employer, it will generally be appropriate for the Employer to try and contact the Employee the same day or the following day, for the purpose of enquiry about the Employee’s welfare.

1. Attempts to contact an absent Employee
   1. As soon as the Employer becomes aware of an unexplained absence, it is recommended that they:
      1. seek advice from the local Human Resources or People and Culture team (however termed);
      2. access the Employee’s contact details; and
      3. make all reasonable attempts to contact the Employee by telephone, email or text message, to enquire about the Employee’s welfare and the reason for the absence.
   2. If the Employee does not respond within a reasonable time, it is recommended the Employer attempt to contact the Employee’s emergency contact to enquire about the Employee’s welfare.
   3. If the Employer is concerned that the unexplained absence is due to serious illness or accident, it is recommended the Employer report the Employee’s absence to Victoria Police to request a welfare check be undertaken.
   4. Actions under this policy should be handled sensitively, particularly if the circumstances or reasons for the absence are unknown. The Employee may not be able to contact the Employer if they or a member of their immediate family are suffering from an illness or injury, or the Employee could be travelling in an area experiencing a natural disaster, or another unforeseen or unpredictable event may have occurred.
2. Notification of unauthorised absence
   1. If an Employee does not respond to attempts to make contact, the Employer should write to the Employee and ask that they contact the Employer within a reasonable specified timeframe to advise of the reason for the absence and, if possible, the expected period of any further absence.
   2. It is also recommended that the Employer advise the Employee that, at the time of sending the correspondence, the absence is unauthorised until a form of leave is approved or the Employer otherwise provides permission for the Employee to be absent from work.
   3. All reasonable attempts should be made to ensure the Employee receives the correspondence. It is recommended the letter be sent by a delivery method that registers receipt (for example, registered mail or express post) to the Employee’s home address. This action should be taken in conjunction with the Employer’s Human Resources or People and Culture Unit (however termed).
3. Contact made within specified timeframe – reasonable explanation provided
   1. Where the absent Employee, or another person on the Employee’s behalf:
      1. makes contact with the Employer within the specified timeframe referred to in section 3; and
      2. provides a reasonable explanation for the absence;

an appropriate form of leave (if any) should be applied to the period of the absence. The leave must comply with any requirements of the Agreement.

* 1. If appropriate, the Employee should be reminded of the need to report any future absences in accordance with the Employer’s requirements for leave requests and/or notification of absences.
  2. Where the Employee does not feel comfortable discussing the reasons for their absence with their immediate manager, the Employee should contact a more senior manager, the Department or Agency’s Human Resources or People and Culture Unit (however termed) or, where relevant, their injury management consultant to discuss the reasons for their absence.

1. Confirmation of unauthorised absence
   1. If the Employee:
      1. does not contact the Employer within the specified timeframe referred to in section 3; or
      2. makes contact with the Employer and does not provide a reasonable explanation for the absence;

the Employer should confirm in writing to the Employee that the absence is unauthorised and that, by a further specified date, they are required to report for duty or provide a reasonable explanation for their absence.

* 1. The correspondence should state that:
     1. a failure to report for duty or provide a reasonable explanation for the absence may result in the Employer taking further action, which may include action under the misconduct procedures or the Employer treating the unauthorised absence as the Employee having abandoned their employment; and
     2. outline the terms of clause 16.4 of the Agreement.
  2. All reasonable attempts should be made to ensure the Employee receives the correspondence. It is recommended the letter be sent by a delivery method that registers receipt (for example, registered mail or express post) to the Employee’s home address. This action should be taken in conjunction with the Employer’s Human Resources or People and Culture Unit (however termed).
  3. At this point, it is appropriate to consult with the Employer’s People and Culture or Human Resources Branch (however termed) about what additional action (if any) should be considered, including whether the Employer should stop paying the Employee for the period of the absence.

1. Employee fails to contact Employer by specified date
   1. Where the Employee fails to respond to attempts to make contact by the date specified in the correspondence referred to in section 5.1 above, it is recommended that the Employer make a final written attempt to contact the Employee to:
      1. confirm the absence is unauthorised and that they are required to report for duty or provide a reasonable explanation for their absence;
      2. inform them the unauthorised absence is inconsistent with the continuation of their employment and is being treated as an abandonment of employment;
      3. confirm that the Employer accepts the abandonment of employment and their employment will terminate; and
      4. provide a final specified date the Employee may attend for duty, or provide a reasonable explanation for the absence, before their employment is terminated.
   2. All reasonable attempts should be made to ensure the Employee receives the correspondence. It is recommended the letter be sent by a delivery method that registers receipt (for example, registered mail or express post) to the Employee’s home address. This action should be taken in conjunction with the Employer’s Human Resources or People and Culture Unit (however termed).
   3. Any such action should be taken in consultation with the Employer’s Human Resources or People and Culture Unit (however termed) and in accordance with the organisation’s delegations.
2. Abandonment of employment – Confirmation of termination of employment
   1. At common law, in the circumstances of an abandonment of employment, the employment relationship usually comes to end when the employer relies on the abandonment to affect a termination. Decisions of the Fair Work Commission indicate this may still be the case notwithstanding provisions in industrial instruments that deem particular circumstances to be an abandonment of employment. This policy recommends the Employer take steps to terminate employment, rather than rely on a deemed resignation.
   2. If, in a particular instance of abandonment of employment, the Employer treats an abandonment of employment as a resignation, it is recommended that the Employer obtains legal advice about its obligations.
   3. If an Employee is absent for more than 20 working days:
      1. without the permission of the Employer;
      2. the Employee has not contacted the Employer to provide a reasonable explanation for the absence by the date specified in section 6;
      3. the Employer could not reasonably, after due enquiry, have been aware of any reasonable grounds for the absence; and
      4. the Employer is entitled to treat the Employee as having abandoned their employment;

it is recommended that the Employer write to the Employee to confirm that it accepts the abandonment and that the employment is terminated effective from the date specified in the correspondence.

* 1. If applicable in the circumstances, the Employer must provide the minimum period of notice of termination, or make a payment in lieu of notice, under clause 16.2 of the Agreement. The Employer must pay the Employee accrued leave entitlements that are payable on termination under the Agreement.
  2. If the Employer makes a payment in lieu of notice, payment should be from the date the letter is signed or the date it is received by the employee, whichever is the later. If the correspondence is sent by post, the date the termination takes effect should be the date the letter is expected to be delivered to the Employee.
  3. The Employer should make all reasonable attempts to ensure the Employee receives the correspondence and, where possible, should include a delivery receipt for record keeping purposes.
  4. There may be additional legal obligations for dealing with a termination of employment that are not dealt with by clause 16.4 of the Agreement. The Employer should ensure that the reasons, and process leading to, the termination are consistent with their obligations under unfair dismissal, general protections, the National Employment Standards and other employment and industrial laws.
  5. A decision to declare an Employee as having abandoned their employment should be taken by the authorised delegate in conjunction with the Department or Agency’s People and Culture unit (however termed).

1. Record keeping
   1. It is recommended the Employer keep records of their attempts to contact the Employee, for example, diary or file notes, email delivery receipts, registered mail receipts, screenshots of text messages and courier documents.
   2. Copies of letters and all formal correspondence should be placed on the Employee’s personnel file.

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. Managers should ensure any actions under this policy are only taken by an employee with the delegation to do so.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 16.4 may apply for a review of actions under the Review of Actions/Grievance Policy. An Employee may seek to resolve a dispute through the dispute resolution procedure at clause 12 of the Agreement if the dispute is raised prior to any termination of employment taking effect.

Further Information

For further information and advice please contact your local Human Resources or People and Culture Unit (however named).

Related policies or documents

**VPS Enterprise Agreement Common Policies**

* Personal/Carer’s Leave
* Review of Actions

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