



Government of **Western Australia**  
Department of **Mines, Industry Regulation  
and Safety**

## Government Sector Labour Relations

Shaping a contemporary government sector workforce

Jeanette Radcliffe  
Committee Secretary  
By email: eec.sen@aph.gov.au

Dear Ms Radcliffe

### Senate Education and Employment Legislation Committee - Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022

Thank you for providing the opportunity to appear before a Senate Education and Employment Legislation Committee regarding the *Fair Work Amendment (Paid Family and Domestic Leave) Bill 2022*.

Family and domestic violence is devastating families and communities across Australia at an alarming rate. I would like to commend the Committee for considering the benefits of paid FDV leave to support victims in maintaining their employment and participating safely in the workplace.

As committed during the hearing, I now provide the following supplementary materials to the Committee for further consideration, including:

- **Attachment A** – WA Public Sector Paid FDV Leave – Implementation Issues.
- **Attachment B** – WA Public Sector FDV Leave Implementation Guidelines.

Yours sincerely,

Alex Lyon | **Executive Director**  
**Government Sector Labour Relations**

24 August 2022

## ATTACHMENT A - WA PUBLIC SECTOR PAID FAMILY AND DOMESTIC VIOLENCE LEAVE

### Background

1. In August 2017, the WA Government introduced ten days of non-cumulative paid FDV leave for all public sector employees. The leave entitlement was first established via government policy.<sup>1</sup>
2. Full time, part time and casual public sector employees experiencing FDV can access up to ten days of paid leave in a calendar year. The leave is paid at the full rate of pay and in addition to other leave entitlements.
3. An employee who uses all of their paid FDV leave entitlement can access up to two days unpaid FDV leave on each further occasion it is needed. There is no requirement for employees to have exhausted other forms of leave in order to access unpaid FDV leave. Employees in this situation can instead choose to access other forms of paid leave where accrued.
4. In addition to the paid leave entitlement, the WA Government introduced:
  - a. a model clause<sup>2</sup> for subsequent incorporation into public sector industrial agreements as they were replaced; and
  - b. implementation guidelines that reinforce flexible work arrangements and safety plan agreements, and continued access to employer-sponsored confidential counselling services.
5. FDV leave provisions have since been incorporated into almost all public sector industrial agreements.

### Implementation Issues and Responses

6. The following implementation issues were encountered in the introduction of FDV leave:
  - a. encouraging employees to access FDV leave
  - b. access to FDV leave by alleged perpetrators
  - c. evidentiary requirements to take leave
  - d. establishing internal HR systems and processes that maintain confidentiality
  - e. data recording and reporting (usage and costs)
  - f. timing of industrial agreement negotiations and ensuring a consistent entitlement across all occupational groups
  - g. occupational-specific statutory requirements relating to the investigation of family violence
  - h. identifying appropriate FDV training providers.
7. Further details are as follows:

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<sup>1</sup> [Family and Domestic Violence, Paid Leave and Workplace Support – Premier’s Circular 2021/11](#)

<sup>2</sup> The FDV leave model clause also requires employers to identify contacts who will be trained in FDV and associated privacy issues.

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### Access to paid FDV leave by alleged perpetrators

8. In drafting the template industrial agreement clause, the WA Government ensured paid leave was only available to victims of FDV. Therefore, alleged perpetrators are unable to access to this form of leave.
9. To date –and despite some countervailing views – this approach has not been challenged industrially.

### Evidentiary Requirements

10. An employee shall give his or her employer notice as soon as reasonably practicable of their request to take leave under the public sector provision. Supporting evidence of FDV may be required to access paid leave entitlements however, this should not be onerous on the employee.
11. Leave can be granted without supporting documentation when the manager/supervisor is satisfied that it is not required.
12. Evidence may include:
  - a. a document issued by the police, a court, legal service, a health professional, a counsellor, a financial institution, a family and domestic violence support service or a refuge service;  
or
  - b. a statutory declaration.
13. No public sector employer has reported issues related to evidentiary requirements or identified ‘roting’ of the leave entitlement.

### Data recording and reporting (usage and costs)

14. The WA Health System accounts for approximately 54,700 employees or 35% of the overall public sector workforce.
15. The WA Health System uses a special payroll leave code for FDV leave which is shared with other categories of leave. The Department of Health is unable to determine what proportion of time recorded as special leave is attributable to FDV.
16. The financial implications for introducing paid FDV leave was difficult to assess given the sensitive and complex nature of FDV. In 2017, the Department of Treasury had initially assessed the cost implications on a range of assumptions and was of the view that ten days additional non-cumulative paid leave had minimal cost implications.
17. The low level of leave accessed (relative to the total amount of leave available) suggests the cost to employers is negligible.

### Timing of industrial agreement negotiations

18. Implementing the additional leave through individual agreement negotiations may have led to disparate outcomes for different occupational groups.
19. Concerns were also raised about the time it would take to embed FDV in agreements, noting WA public sector industrial agreements typically operate for a term of two-three years.
20. Introducing the entitlement via WA Government policy (i.e. a Premier’s Circular) in the first instance established sector-wide access immediately. Inclusion in industrial instruments then occurred as agreements expired and were renegotiated.

### Identifying appropriate FDV training providers

21. The public sector industrial provisions require public sector employers to identify contacts who will be trained in family and domestic violence and associated privacy issues.
22. In 2019 an interagency FDV working group sought to establish a panel of training providers as a resource for public sector employers.
23. Following extensive consideration, the Department of Finance (DoF) advised a panel tender was not an appropriate mechanism, given:
  - a. lack of guaranteed demand, as agencies reported a larger proportion of contact officers already having received training of some kind, and
  - b. the need for a central contract management agency to be accountable for the financial and performance aspects of each individual training contract without day-to-day oversight over the training provided.
24. DoF also advised that a Common Use Arrangement would be inappropriate for services likely to experience low to moderate demand over time.
25. Instead, the Department of Communities identified a FDV peak body – the Women’s Council for Domestic and Family Violence Services (Women’s Council) - as an appropriate contact for agencies seeking information on suitable training providers.

### Occupational-specific statutory requirements relating to the investigation of family violence

26. Section 62A of the *Restraining Orders Act 1997* (WA) requires police officers to investigate instances where the officer reasonably suspects that a person is committing, or has committed, family violence.
27. This requirement created an issue where employees requesting to access FDV leave would have the matter responded to by a police officer in accordance with their legislative obligations.
28. In some instances where FDV is reported, the victim can request that no further investigation be conducted. However, in instances where there has been bodily harm, or in circumstances where children are involved, WA Police can investigate without the victim’s express permission.
29. Given the sensitive and personal nature of FDV, automatic investigation may be deterring police officers from applying for FDV leave. This point has been raised by the WA Police Union, which has expressed its concern that the entitlement may be rendered useless for this occupational group.
30. Government Sector Labour Relations is engaging with WA Police to determine if there is a workable process that facilitates access to FDV leave without invoking legal obligation.

### Data Collection

31. Government Sector Labour Relations undertakes six-monthly reporting on the use of FDV leave across the WA public sector.
32. Figure 1.1 shows the number of paid FDV leave days accessed by WA public sector employees since the leave type was first introduced.
33. In the six months from August 2021 to February 2022:

- a. 39% of employers reported that at least one employee accessed FDV leave during the current reporting period – a 3% increase from the previous period;
  - b. 95% of FDV leave in the current reporting period was accessed by women, compared to 98% in the previous six months; and
  - c. FDV leave patterns for men are inconsistent, with the last six reporting periods showing irregular increases and decreases from one period to the next.
34. The COVID-19 pandemic does not seem to have significantly impacted the uptake of FDV leave.

**Figure 1.1 - Total number of FDV leave days accessed by WA public sector employees**

Reporting period	Whole days (whole and part days combined)		
	Male	Female	Not specified
Aug 17 – Feb 18	10.33	131.8	2
Feb 18 – Aug 18	6.47	247.4	0
Aug 18 – Feb 19	17	460.9	0
Feb 19 – Aug 19	49.07	441.2	0
Aug 19 – Feb 20	5.17	433.8	2.4
Aug 20 – Feb 21	18	395.95	0
Feb 21 – Aug 21	10.73	444.01	0
Aug 21 – Feb 22	15.27	439.08	6



## Implementation Guidelines

### Premier's Circular 2017/07

### Family and domestic violence - paid leave and workplace support

**Issued by:** A/Executive Director, Labour Relations

**Date:** 29 September 2017

### Introduction

The Western Australian Government is committed to supporting Public Sector employees experiencing family and domestic violence (FDV) by helping them to maintain their employment and participate safely in the workplace.

The Premier's Circular 2017/07 Family and Domestic Violence – Paid Leave and Workplace Support (Premier's Circular) requires public sector employers to implement FDV paid leave and workplace initiatives. Agencies will work to provide supportive work environments where their employees are comfortable in disclosing family and domestic violence related concerns which may impact on their work-life.

All employees, including casuals, can access up to an additional 10 days, non-cumulative paid leave per calendar year. Other leave entitlements do not need to be exhausted to access FDV leave. If an employee uses all of the 10 days paid FDV leave, they can access an extra two days unpaid FDV leave on each occasion if required.

These Implementation Guidelines assist agencies in developing their own agency specific arrangements and procedures. Each instance of FDV will have its own unique circumstances and should be managed with administrative compassion.

### Family and Domestic Violence

FDV is defined in accordance with Section 5A of the *Restraining Orders Act 1997*.

FDV occurs when a person uses violence, or a threat of violence, or any other behaviour towards a family member that coerces or controls that family member or causes them to be fearful.

This can include behaviour that is physically, sexually, emotionally, psychologically or economically abusive, threatening, coercive, or aimed at controlling or dominating the other person through fear.

There are other forms of violence/abuse that are not covered by the Premier's Circular. For example, being a victim of crime by an unknown person, or a person not intimately known, while distressing, is not considered family or domestic violence.

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## **Paid and unpaid leave entitlement**

The Premier's Circular is to be read and applied in conjunction with the relevant industrial instrument/s.

Full time and part-time Public Sector employees experiencing FDV can access up to 10 days paid FDV leave in a calendar year. FDV leave will be paid at the full rate of pay as if the day was worked.

Payment for FDV leave shall only be made for those hours that would normally have been worked had the employee not been on FDV leave.

Paid FDV leave is in addition to other leave entitlements.

FDV leave can be used for activities related to family and domestic violence. Such activities may include but are not limited to:

- Medical and/or legal appointments;
- Attending to financial matters;
- Relocation and moving;
- Attendance at court or legal proceedings;
- Matters that arise that are compassionate or pressing nature that arise without notice and require immediate attention.

If an employee uses all of their paid FDV leave entitlement they are entitled to up to two days unpaid FDV leave on each occasion that they need it. There is no requirement for employees to have exhausted other forms of leave in order to access the two days unpaid FDV leave. Employees can instead choose to access paid personal leave or other forms of paid leave in this situation.

## **Casual employees**

A casual employee who is not able to attend scheduled work because of FDV related activities will be entitled to up to 10 days FDV paid leave according to their regular work patterns on a case-by-case basis.

It is not possible to have fixed policies and systems that cover every FDV leave circumstance that may arise. Agencies will need to be compassionate when dealing with requests from casual employees. For employees with an intermittent or infrequent work pattern, the entitlement would need to be determined by the chief executive (or delegate) taking into account the circumstances of the case.

Casual workers should not be overlooked or denied future work because of an application for FDV leave.

## **Applying for FDV leave and disclosure**

Employee requests for FDV leave are to be treated with sensitivity, compassion and confidentiality.

Employers should consider the personal circumstances of the employee seeking the leave in a non-judgmental manner. It is important to recognise and have respect for employees' cultural and ethnic background, sexual orientation, disability and age.

Supporting documentation outlining reasons for absence due to FDV may be required and can be in the form of a document issued by WA police, a Court, a registered health practitioner, district nurse, maternal and child health care nurse, a

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family violence support service or lawyer. Where it is not reasonably practicable to provide this, a statutory declaration may be accepted.

Employees experiencing FDV may not be in a position to immediately provide supporting documentation; however they should not be denied FDV leave in the absence of evidence.

## **Confidentiality**

All employees including managers must ensure that they deal with an employee's application for FDV leave with sensitivity and respect the privacy of the employee.

While the privacy of employees will be respected, disclosure within the organisation may occur on a need-to-know basis, or, where there are concerns for the safety of any employee. Where possible, disclosure to third parties will only occur with the prior consent of the employee. An employee who discloses FDV should be made aware of how their information will be managed internally with other areas (for example, human resources (HR) services, or where safety plans are involved, occupational health and safety).

## **Record keeping**

FDV disclosure and leave request records must be managed in a similar way to other sensitive employee-related records such as grievances or disciplinary matters.

Records related to FDV must be marked confidential and access confined to those employees who have been authorised through the agency's delegation schedule.

Where written evidence is provided, the sighting of evidence by managers or FDV Contact Officers may be manually recorded for reporting purposes. Recording and monitoring FDV leave should be appropriately allocated within the agency e.g. the responsibility of the Director of Human Resources or equivalent (DHR).

## **Payroll**

Agencies may create codes within their leave and payroll systems to record FDV leave, but should ensure that only the employee and the relevant managers/HR staff are able to access these details on a need-to-know basis.

If it is not possible to isolate the level of access to a specific FDV leave payroll code, then FDV leave should not be recorded in the payroll system. FDV leave can be recorded and monitored outside the payroll system. An appropriate manual system of recording information on a confidential file can be utilised.

## **Roles and responsibilities**

### **Agencies as Employers**

Agencies are encouraged to consider ways to:

- provide a supportive workplace for employees who are experiencing and/or disclosing FDV;
- put in place procedures for managing leave applications and disclosure;
- protect the privacy of employees, and maintain confidentiality; and
- establish the underpinning internal administrative arrangements required to put in place FDV Leave and support.



### Steps towards a supportive workplace

Ensure that staff and managers are made aware of the Premier's Circular and of the support available for all employees;

Review existing internal policies to ensure they are consistent with the Premier's Circular and these Implementation Guidelines;

Develop procedures to support the implementation of the Premier's Circular, and introduction of paid FDV leave, consistent with any existing FDV clauses in relevant industrial instruments;

Work towards making FDV training and development available to all employees to improve workplace understanding of FDV and the agency's implementation procedures;

Nominate internal FDV Contact Officers, which may include HR Managers, other managers/case managers, or interested available officers (e.g. grievance officers, OHS officers, sexual harassment officers) who have been suitably trained;

Consider the level of delegation required for the FDV Contact Officers; and

Be prepared to provide reasonable alternative work arrangements, if required, for employees experiencing FDV.

Agencies should ensure that employees are offered the appropriate level of advice and support, including access to employee assistance programs, but should not act or advocate on behalf of employees.

It is recognised that the take up of FDV leave is unknown. It is anticipated that over time agencies will build capacity to manage FDV disclosure, leave and workplace support. Capacity building goes beyond training or providing assistance. It also involves assisting people to gain the knowledge and experience that is needed to solve problems, implement change, build effective actions and create workplaces as safe spaces for employees and colleagues experiencing FDV.

Dependent on the agency's size, location, and the capability of available resources, agencies can implement procedures through managers, a centralised FDV unit or contact point that is part of, or sits outside of HR. Agencies should consider ways to implement appropriate responses (e.g. including access to centralised support available through the agency's HR branch) for employees at decentralised workplaces (e.g. schools, prisons or hospitals).

It is suggested that agencies work towards the provision of suitable training for FDV Contact Officers (who may be existing Equity, Occupational Health and Safety or Grievance Officers), and where possible managers.

FDV Contact Officers would generally have received staff development or training in:

- understanding confidentiality and privacy;
- applying relevant internal policies;
- overcoming unconscious bias;
- developing objectivity and impartiality; and
- maintaining professional distance and resilience.

This training could be incorporated into training provided in-house by staff development teams or external training providers for Equal Employment Opportunity Contact Officers, or included with or connected to other Equity, Occupational Health and Safety or Grievance Officer training.

Information, education or training may be made available to employees through websites and other communication channels (e.g. display posters with information about FDV support and/or have information available on the intranet; or point employees to free on-line resources).

Examples of on-line resources include:

Recognise, Respond, Refer program developed by Australia's CEO Challenge  
<http://www.australiasceochallenge.org/what-we-do/online-learning/>

Australia's National Research Organisation for Women's Safety Limited (ANROWS)  
<https://anrows.org.au/publications/fast-facts-0>

White Ribbon Australia

<https://www.whiteribbon.org.au/>

## **Managers**

Managers' responsibilities include:

- understanding the objectives of the FDV leave clause and the importance of reasonable workplace adjustments and flexibilities in achieving the objectives;
- respecting privacy of employees experiencing FDV and understanding the confidential and private nature of leave applications and/or disclosures;
- providing information when required about accessing employee assistance programs and other avenues of help and assistance;
- working with FDV Contact Officers, where appropriate, in the management of FDV leave and workplace support. For example, understanding that the employee may only feel comfortable speaking with the FDV Contact Officer; and working with the FDV Contact Officer to put in place delegation to approve FDV leave; or work with the FDV Contact Officer in the communication and implementation of specific workplace accommodations;
- if required, accessing manager assistance schemes provided by their employment assistance program, or training; and
- supporting FDV leave and workplace support training for employees.

Where an employee tells a manager that they are experiencing or have experienced FDV, the manager should:

- consider the workplace safety of the employee;
- offer confidential workplace support to the employee;
- consider an employee's request for FDV leave, keeping in mind that the specific intention of the clause is to provide leave and workplace support;
- provide the employee with contact details for the agency's employee assistance program and FDV Contact Officer; and
- obtain the approval of the employee prior to speaking to other employees about the employee's personal circumstances and/or private details.

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## **FDV Contact Officers**

FDV Contact Officers do not provide counselling or legal advice.

FDV Contact Officers will work with managers, employees and HR in the operation of these Implementation Guidelines and agency specific procedures including providing advice to the agency about accessing services, applying for FDV leave and appropriate record keeping and confidentiality. The role of FDV Contact Officers may be found to fit within existing responsibilities, for example suitably skilled HR or occupational safety and health/well-being areas within agencies.

FDV Contact Officers should:

- undertake appropriate training or refresher training;
- provide advice about workplace options and support services;
- work with managers to provide support for employees and information on a need-to-know basis if necessary; and
- work with managers and/or internal Occupational Safety Health representatives or seek advice, if appropriate, in relation to individual safety plans for employees at risk of FDV in the workplace.

Where an employee has sought assistance from an agency FDV Contact Officer instead of their manager, the FDV Contact Officer should advise the employee that their manager may need to be informed in-confidence of any arrangements made to support the employee. The employee's consent to share information should be obtained. An employee may consent to partial disclosure to their manager.

However, in instances where there is an inherent safety risk to either the employee or other employees, information may be released on a need-to-know basis. This should be limited to relevant information only. The employee should be made aware of who has received information.

## **Employees**

Employees experiencing FDV can:

- seek support from the employee assistance program;
- seek workplace support from their manager or agency FDV Contact Officer; and/or
- discuss the range of workplace support available with their manager or agency FDV Contact Officer.

Employees should be mindful of the expectations and limitations of confidentiality. For example, FDV Contact Officers and managers may have to reveal that an employee is unavailable to work to accommodate workplace arrangements that impact on workloads or work arrangements of colleagues.

Employees experiencing FDV have the option of consulting their agency FDV Contact Officer (if this is more comfortable) instead of their direct manager to progress FDV leave requests or make alternative working arrangements. A manager may need-to-know that an employee is accessing FDV leave but the details and circumstances of the FDV leave do not need to be revealed by the FDV Contact Officer to the manager. In some agencies, FDV Contact Officers may have delegated authority to approve leave requests, or to work with the appropriate manager to arrange approval of leave on behalf of the employee.

It is understood that employees may have difficulty meeting usual notification of absence requirements due to their circumstances; however notification should occur as soon as reasonably practicable.

## **Workplace safety planning**

Where there is concern for the safety in the workplace of an employee experiencing FDV or their colleagues, the agency should undertake a risk assessment in consultation with the employee. Advice should be sought from the DHR or the FDV Contact Officer, or other appropriate resource, in the development of a workplace safety plan and/or emergency management plan.

Safety plans need to reflect usual workplace safety measures as well as the specific plans tailored to the nature of the workplace and the work patterns of individuals.

Examples of online resources include:

1800RESPECT

<https://www.1800respect.org.au/get-help/staying-safe-understanding-safety-planning/>

Australian Human Rights Commission

<https://www.humanrights.gov.au/domestic-violence-and-workplace-employee-employer-and-union-resources-2012>

Government of Western Australia Department of Communities (Child Protection and Family Support)

<https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Pages/CRARMF2.aspx>

## **Temporary workplace and role adjustments**

Employees experiencing FDV may also be supported with reasonable workplace and role adjustments for a period of time, such as:

- job redesign or changes to duties;
- changes to working hours or patterns of work;
- alternative suitable employment in other teams, offices and locations;
- changes to email address and telephone numbers; and /or
- secure parking.

## Guideline version control

Version	Date approved	Amendment
1.0	29 September 2017	Initial guidelines
1.1	30 April 2018	Section title change: 'Workplace performance' to 'Temporary workplace and role adjustments' and content revision.