



Australian Government

# WorkChoices

## **Personal/carer's leave and the Australian Fair Pay and Conditions Standard**

Under WorkChoices, personal/carer's leave will be protected by the Australian Fair Pay and Conditions Standard (the Standard).

The Standard applies to all new workplace agreements made after 27 March 2006. The Standard overrides an agreement or contract of employment if the agreement or contract of employment provides less favourable entitlements to an employee.

Employees covered by existing state or federal agreements are not covered by the Standard until their agreement is terminated or they enter into a new workplace agreement.

All full-time and part-time employees covered by WorkChoices will be entitled to personal/carer's leave. Casual employees are not entitled to paid personal/carer's leave (but are entitled to unpaid carer's leave – see below).

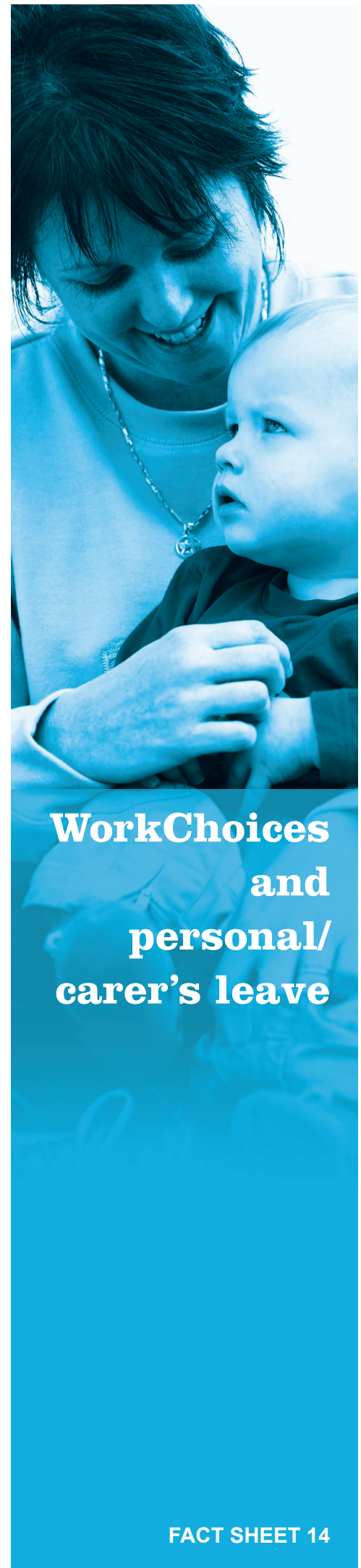
For more information on whether you are covered by the new federal system see the 'WorkChoices and who is covered' fact sheet.

Under WorkChoices eligible employees are entitled to:

- ten days of paid personal/carer's leave per year (including sick leave and carer's leave);
- two days of unpaid carer's leave per occasion; and
- two days of paid compassionate leave per occasion.

Paid personal/carer's leave can be taken:

- due to personal illness or injury (sick leave); or



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and  
personal/  
carer's leave**

- to provide care or support for a member of the employee's immediate family or household who requires care or support due to personal illness or injury, or an unexpected emergency (carer's leave).

Up to ten days of paid personal/carer's leave in any given year can be used as carer's leave and personal/carer's leave is cumulative.

In addition to this paid compassionate leave can be taken upon the death of a member of the employee's immediate family or household, or to spend time with a seriously ill, injured or dying person who is a member of the employee's immediate family or household.

The Standard provides the minimum amount of paid personal/carer's leave all agreements must contain. This means employers and employees can use agreement making to provide for more favourable personal/carer's leave arrangements.

## **Personal/carer's leave and awards**

Existing terms of a federal award or notional agreement preserving state award (NAPSA) relating to personal/carer's leave are 'preserved' under WorkChoices. Preserved terms cannot be varied. If an employee's preserved entitlement to personal/carer's leave is more generous than the Standard, the preserved entitlement applies. The preserved term will be considered more generous where the employee is entitled to a greater amount of paid personal/carer's leave than they would be entitled to under the Standard. In that circumstance, the preserved term will apply to the employee. Any administrative clauses relating to the personal/carer's leave entitlements in the award or NAPSA (e.g. how leave is accrued) will also apply to the employee.

## **Calculating personal/carer's leave**

Personal/carer's leave is calculated on the basis of nominal hours worked by the employee in the previous completed four week period.

An employee is entitled to accrue 1/26 of the number of nominal hours worked during that four week period.

For example:

- a full-time employee engaged to work for 38 hours a week, will accrue 1/26 of the number of nominal hours worked by the employee during the previous completed four week period (in this case 1/26 of 152 hours). After 12 months, this employee will have accrued 76 hours of paid personal/carer's leave (which the equivalent of 10 days).
- a part-time employee engaged to work for 19 hours a week, will accrue 1/26 of the number of nominal hours worked by the employee during the previous completed four week period (in this case 1/26 of 76 hours). After 12 months, this employee will have accrued 38 hours of paid personal/carer's leave.

Personal/carer's leave is credited to the employee's leave balance each month and may vary if working hours vary from month to month.

When an employee takes a period of personal/carer's leave, the employer must pay the employee an amount that is equal to what the employee would reasonably have expected to receive had the employee worked over that period.

## **Employee responsibilities**

When taking personal/carer's leave, an employee must notify their employer as soon as reasonably practicable that they are unable to attend work.

An employer can request an employee to provide a medical certificate for a period of sick leave taken. An employee can obtain a medical certificate from a health practitioner registered or licensed under a law of a state or territory.

Under the Workplace Relations Regulations, a registered health practitioner can only issue

a medical certificate in respect of the area of practice in which that practitioner is registered or licensed under a state or territory law.

If it is not reasonably practicable for an employee to obtain a medical certificate for a period of sick leave, then a statutory declaration may be provided to the employer. For example, a statutory declaration could be provided where an employee is unable to make an appointment with their medical practitioner on a particular day.

The documentary requirements are slightly different for carer's leave - an employee can provide either a medical certificate or a statutory declaration if requested by their employer.

These notice and documentation requirements do not apply to an employee who could not comply due to circumstances beyond his or her control, such as an employee suffering severe mental or physical impairment.

An employee is not entitled to take paid sick leave if the employee is receiving workers' compensation payments, unless expressly provided for in an applicable law of a Commonwealth, state or territory relating to workers' compensation.

## Unpaid carer's leave

Under WorkChoices, all eligible employees (including casual employees) are entitled to an additional two days of unpaid carer's leave on each occasion that a member of the employee's immediate family or household requires care and support due to illness, injury, or an unexpected emergency.

Full-time and part-time employees are only eligible for unpaid carer's leave if they do not have any paid personal/carer's leave credit available.

Unpaid carer's leave can be taken in one continuous period (e.g. two consecutive working

days) or in separate periods as agreed between the employee and employer (e.g. four consecutive half-days could be taken, so that the employee can share caring duties with someone else).

As with paid personal/carer's leave, an employer can request a medical certificate or a statutory declaration when an employee is taking, or has taken, unpaid carer's leave.

## Compassionate leave

All eligible full-time and part-time employees are entitled to compassionate leave.

An employee is entitled to take two days of paid compassionate leave for each permissible occasion when a member of his or her immediate family or household is suffering from a serious or life-threatening personal injury or illness.

As with paid personal/carer's leave, an employer can request that an employee provide reasonable evidence of the illness, injury or death.

Immediate family means the employee's spouse (including de facto spouse, former spouse, or former de facto spouses), child, parent, grandparent, grandchild or sibling. In addition, immediate family includes the child, parent, grandparent, grandchild or sibling of the employee's current or former spouse (including de facto spouses).

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website **[www.workchoices.gov.au](http://www.workchoices.gov.au)**



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