



Fair Work Amendment (Family and Domestic Violence Leave) Act 2018

No. 169, 2018

An Act to amend the *Fair Work Act 2009* to provide for unpaid family and domestic violence leave, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Fair Work Amendment (Family and Domestic Violence Leave) Act 2018

No. 169, 2018

An Act to amend the *Fair Work Act 2009* to provide for unpaid family and domestic violence leave, and for related purposes

[Assented to 11 December 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018*.

No. 169, 2018 *Fair Work Amendment (Family and Domestic Violence Leave) Act* 1
2018

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	12 December 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Fair Work Act 2009

1 Section 12

Insert:

close relative: see subsection 106B(3).

family and domestic violence: see subsection 106B(2).

unpaid family and domestic violence leave means unpaid family and domestic violence leave to which a national system employee is entitled under section 106A.

2 Subsection 17(2) (note)

Omit “and compassionate leave”, substitute “, compassionate leave and unpaid family and domestic violence leave”.

3 Paragraph 61(2)(e)

Omit “and compassionate leave”, substitute “, compassionate leave and unpaid family and domestic violence leave”.

4 Division 7 of Part 2-2 (heading)

Omit “and compassionate leave”, substitute “, **compassionate leave and unpaid family and domestic violence leave**”.

5 After Subdivision C of Division 7 of Part 2-2

Insert:

Subdivision CA—Unpaid family and domestic violence leave

106A Entitlement to unpaid family and domestic violence leave

- (1) An employee is entitled to 5 days of unpaid family and domestic violence leave in a 12 month period.
- (2) Unpaid family and domestic violence leave:

- (a) is available in full at the start of each 12 month period of the employee's employment; and
 - (b) does not accumulate from year to year; and
 - (c) is available in full to part-time and casual employees.
- (3) For the purposes of subsection (2), if an employee is employed by a particular employer:
- (a) as a casual employee; or
 - (b) for a specified period of time, for a specified task or for the duration of a specified season;
- the start of the employee's employment is taken to be the start of the employee's first employment with that employer.
- (4) The employee may take unpaid family and domestic violence leave as:
- (a) a single continuous 5 day period; or
 - (b) separate periods of one or more days each; or
 - (c) any separate periods to which the employee and the employer agree, including periods of less than one day.
- (5) To avoid doubt, this section does not prevent the employee and the employer agreeing that the employee may take more than 5 days of unpaid leave to deal with the impact of family and domestic violence.

106B Taking unpaid family and domestic violence leave

- (1) The employee may take unpaid family and domestic violence leave if:
- (a) the employee is experiencing family and domestic violence; and
 - (b) the employee needs to do something to deal with the impact of the family and domestic violence; and
 - (c) it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

Note 1: Examples of actions, by an employee who is experiencing family and domestic violence, that could be covered by paragraph (b) are arranging for the safety of the employee or a close relative (including relocation), attending urgent court hearings or accessing police services.

Note 2: The notice and evidence requirements of section 107 must be complied with.

- (2) ***Family and domestic violence*** is violent, threatening or other abusive behaviour by a close relative of an employee that:
 - (a) seeks to coerce or control the employee; and
 - (b) causes the employee harm or to be fearful.
- (3) A ***close relative*** of the employee is a person who:
 - (a) is a member of the employee's immediate family; or
 - (b) is related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

Note: ***Immediate family*** is defined in section 12.

106C Confidentiality

- (1) Employers must take steps to ensure information concerning any notice or evidence an employee has given under section 107 of the employee taking leave under this Subdivision is treated confidentially, as far as it is reasonably practicable to do so.
- (2) Nothing in this Subdivision prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information covered by this section that is personal information may also be regulated under the *Privacy Act 1988*.

106D Operation of unpaid family and domestic violence leave and leave for victims of crime

- (1) This Subdivision does not exclude or limit the operation of a law of a State or Territory to the extent that it provides for leave for victims of crime.
- (2) If an employee who is entitled, under a law of a State or Territory, to leave for victims of crime is also entitled to leave under this Subdivision, that law applies in addition to this Subdivision.
- (3) A person who is a national system employee only because of section 30C or 30M is entitled to leave under this Subdivision only

to the extent that the leave would not constitute leave for victims of crime.

Note: Leave for victims of crime is a non-excluded matter under paragraph 27(2)(h).

106E Entitlement to days of leave

What constitutes a day of leave for the purposes of this Subdivision is taken to be the same as what constitutes a day of leave for the purposes of section 85 and Subdivisions B and C.

6 At the end of subsection 107(3)

Add:

- ; or (d) if it is unpaid family and domestic violence leave, and the employee has met the requirement specified in paragraph 106B(1)(a)—the leave is taken for the purpose specified in paragraph 106B(1)(b), and the requirement specified in paragraph 106B(1)(c) is met.

7 In the appropriate position in Schedule 1

Insert:

Part 8—Amendments made by the Fair Work Amendment (Family and Domestic Violence Leave) Act 2018

39 Entitlement to unpaid family and domestic violence leave

- (1) Subdivision CA of Division 7 of Part 2-2, as inserted by the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018*, applies in relation to an employee whose employment started before the commencement of that Act as if the period:
 - (a) starting on that commencement; and
 - (b) ending on the first day after that commencement that is an anniversary of the day the employment started;were a 12 month period.

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- (2) For the purposes of this clause, if an employee is employed by a particular employer:
- (a) as a casual employee; or
 - (b) for a specified period of time, for a specified task or for the duration of a specified season;
- the start of the employee's employment is taken to be the start of the employee's first employment with that employer.

40 Resolving uncertainties and difficulties about interaction between enterprise agreements and unpaid family and domestic violence leave

- (1) On application by an employer, employee or employee organisation covered by an enterprise agreement that was made before the commencement of the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018*, the FWC may make a determination varying the agreement:
- (a) to resolve an uncertainty or difficulty relating to the interaction between the agreement and the following (the ***unpaid family and domestic violence leave provisions***):
 - (i) the provisions of Subdivision CA of Division 7 of Part 2-2;
 - (ii) section 107, to the extent that it relates to taking leave under that Subdivision; or
 - (b) to make the agreement operate effectively with the unpaid family and domestic violence leave provisions.
- (2) A variation of an enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the determination is made.

[Minister's second reading speech made in—
House of Representatives on 13 September 2018
Senate on 5 December 2018]

(190/18)
