

# What are the school's obligations to employees experiencing family and domestic violence?

## Family and Domestic Violence Leave – 2017 MOU

Section 3.15 of the 2017 MOU provides employees (other than casual and casual relieving employees and emergency teachers) experiencing family and domestic violence paid leave for specific purposes. The section states:

### 3.15 Family and Domestic Violence Leave

3.15.1 Upon and from the 8 October 2017, an employee experiencing family violence (as defined in the Family Violence Protection Act 2008 (Vic)) will be entitled to Family and Domestic Violence Leave as follows:

- (i) 10 days for a Primary School Principal, Deputy Principal, Teacher, Category B Education Support Employee, Category B School Services Officer, School Adviser, Visiting Teacher or Category B Placed Teacher
- (ii) 13 days for Category C employees
- (iii) 15 days for all other employees.

3.15.2 The CECV will, in consultation with the IEU, issue guidance to schools on the implementation of this entitlement.

### The purpose of the leave

The leave enables employees experiencing family and domestic violence time off to attend to activities that may be associated with the family or domestic violence, including:

- organising safe housing or to move home
- finding emergency accommodation
- attending medical or counselling appointments
- accessing police services
- attending court hearings
- attending legal appointments
- addressing financial matters
- organising family matters, including changing children's caring arrangements, such as changing a child's schooling
- caring for children affected by family and domestic violence.

### Paid Family and Domestic Violence Leave (FDVL)

The paid leave outlined in the 2017 MOU is non-cumulative and is for employees other than casuals.

From 8 October 2017, an employee will have access to the paid leave amounts according to their category of employment. From the commencement of the 2018 school year, the employee will have access to a further period of non-cumulative paid leave.

### Casuals

Casual employees are not entitled to paid leave; however, a casual employee should be entitled to not be available to

attend work, or to leave work, due to being subjected to family and domestic violence. Employers should not fail to re-engage a casual worker because they were unable to work due to family or domestic violence.

### Support persons

It is at the discretion of the employer to provide leave (paid or unpaid) for an employee supporting a person subjected to family and domestic violence (accompanying the person to court, to work, or to mind children). Employers are encouraged to approve these requests.

### Notice

Given the nature of family and domestic violence, it may not always be possible for an employee to provide prior notice of taking the Family and Domestic Violence Leave. However, as soon as reasonably practicable, the employee must request to take the leave and advise the employer of the period, or expected period, of the leave.

### Evidence

An employer may require an employee to provide evidence that would satisfy a reasonable person that the Family and Domestic Violence Leave is taken for the reasons listed above. However, the leave can be approved without evidence, or approved in advance of the evidence being provided.

Where an employee is disclosing exposure to family violence and is seeking to take leave, they may be required to provide suitable evidence. This may take the form of a document indicating the employee is experiencing family violence, issued by one of the following:

- Victoria Police or another police service
- a court
- a general practitioner, nurse or other registered health practitioner
- a family violence support service
- a maternal and child health nurse
- a lawyer.

A signed statutory declaration can also be offered as evidence.

### Record keeping

As with all other leave, a school will need to keep a record of the Family and Domestic Violence Leave taken.

When you have a discussion with an employee regarding family and domestic violence it can be a good idea to take down a few notes after the meeting for your records. This can be an important piece of evidence for the employee and the school if either of you require evidence of a conversation. Keep these notes strictly confidential.

## Confidentiality

Employers and school leaders should keep a disclosure of family and domestic violence confidential (as far as it is possible). Confidentiality in this area is important, as the spread of the information could put the employee at risk.

Below are some suggestions on how you can ensure confidentiality:

- If evidence is requested, ask yourself if you need to keep a copy or just sight the document.
- Seek the consent of the employee before you share the information. Breaching confidentiality can potentially jeopardise the safety of the person subjected to family and domestic violence, children and anyone supporting them, including family and service workers.
- If evidence is requested and kept, ensure it is placed in a secure location (for example, not in a place that other employees, such as administration staff, have access to). This may be in the principal's office, in a sealed envelope and stating that it should only be opened by the principal.
- Lock personnel files.
- The person recording any leave should be informed they are to keep the matter confidential.
- The person processing any leave should find a discreet time to process the request.
- The computer should be positioned so that visitors or other employees cannot see the screen.
- When other employees are notified of an employee's absence, often through daily organisers or internal communication, it is just noted as 'leave', not Family and Domestic Violence Leave. To make this easier, it is a good idea to state all leave other than long service leave as 'leave', as only payroll and managers may need to know the type of leave.
- Ensure that you conduct conversations with employees in a private setting.
- Do not continue a conversation as you leave the office.

**You can assure employees that disclose family and domestic violence that their information will be kept confidential and used to support them, except as required or permitted by law.**

For example:

- the Occupational Health and Safety Act 2004 (Vic) requires the employer to notify WorkSafe immediately of serious workplace incidents
- where a criminal act has occurred, or is threatened to occur, the police must be notified.

There may be situations where other employees need to know certain information to protect the employee or others at work, for example to stop threatening phone calls. If there is a need to disclose information, it should be limited to what is needed to maintain safety in the workplace and support the employee.

## Access to other paid leave

A principal can grant an additional period of paid leave in circumstances where an employee is experiencing family and domestic violence. Any decision to grant such leave is at the discretion of the principal and on a case-by-case basis.

It is important to note that in addition to the Family and Domestic Violence Leave that an employee may access, they may, depending on the circumstances, be entitled to access their personal leave under clause 30 of the *Victorian Catholic Education Multi Enterprise Agreement 2013*, due to family and domestic violence.

## OH&S

Principals have a **non-delegable** duty under the Victorian Occupational Health and Safety Act 2004 (the OHS Act) to institute measures to either eliminate the health and safety risk to employees or reduce the risk as far as is practicable. See *Family and Domestic Violence: A Guide to Supporting Staff (the Guide)* for more information.

### Responding to danger

Sometimes family and domestic violence can occur in the workplace. If this happens, keep your personal safety and that of other employees in mind before taking any action. Do not physically intervene in a violent situation and do not try to mediate.

**If a family and domestic violence situation occurs at your school, call 000 and enact your critical incident and emergency management plans.**

### Risks at work

If an employee reveals that they are experiencing family and domestic violence you should not only ask:

*Are you safe at home?*

but also

*Do you feel safe at work?*

If there is a risk for the employee at work, you should conduct a risk assessment and put in place a workplace and/or person safety plan to reduce the risk for the employee.

**If you need assistance to complete the risk assessment or compile a workplace safety plan, contact the IR Unit on (03) 9267 0431 or [ceoir@cem.edu.au](mailto:ceoir@cem.edu.au).**

## Employee Assistance Programs

Schools that currently have Employee Assistance Programs (EAPs) in place can make these programs available for employees who are affected by family and domestic violence.

While an EAP is an appropriate service in most circumstances, in the case of an employee experiencing family and domestic violence, if they ask for assistance it may be more appropriate to give them the details of specific family and domestic violence support services, which are outlined in section 6 (Referrals) of [the Guide](#). These are services that have expertise in dealing with family and domestic violence and are in the best position to help an employee if they are seeking support.