

A legal look at sick leave entitlements

As we're heading into the flu season, employers must not only brace themselves for the inevitable wave of flu but also for the intricacies of managing personal leave.

Understanding legal rights and entitlements can help you to navigate the season with ease.

Leave entitlements

Employees are entitled to 10 days of paid personal leave per year. This is a pro-rata entitlement for part time employees, but casual employees aren't entitled to paid personal leave.

Personal leave accrues progressively during each year of service and accumulates from year to year. Staff can take personal leave when they are sick and also when they need to care for an immediate family member or member of their household who is sick or in an unexpected emergency.

An immediate family member includes the employee's husband, wife, partner, kids, parents, grandparents, grandkids, brothers and sisters.

Notice requirements

Employees must provide notice of taking personal/carer's leave as soon as practicable. In practical terms this means that employees need to let their boss know as soon as they can. This can sometimes be after the leave has already started.

The Fair Work Act doesn't require notice to be given in a particular way. So unless you have a policy (or have given a direction) requiring otherwise, notice can be given in any way: like a call, a text message, an email or voicemail.

If an employee doesn't give notice, then they aren't entitled to be paid for the time off.

Evidence requirements

Employees don't automatically have to provide evidence. They only have to give evidence if the employer requires it (usually through a workplace policy or by request).

If you think it's necessary, you can ask an employee to show evidence that they were really sick or needed to look after someone. This could be:

- a medical certificate from a doctor or pharmacist; or
- a statutory declaration (stat dec).

Doctors get really busy, so to avoid adding to their workload you might decide not to ask for proof if your employee is only out for a day or two.

If the employee doesn't give you the proof you've asked for, you don't have to pay them for the time off.

Tackling misuse of leave

Keep an eye out for patterns that suggest misuse of leave. If social media reveals that an employee is at the footy when they claimed to be sick in bed, it's time for a serious conversation.

If you catch an employee who wasn't really sick taking paid leave, you've got a good reason to take disciplinary action. It's even more serious if they gave you a medical certificate or signed a stat dec that wasn't true. That's not just being off when they shouldn't be; it's lying, and that's a big deal.

Dealing with hangovers

There is no prohibition on employees taking sick leave to deal with a hangover. However, if Monday morning's 'flu' is a regular occurrence, it might be time to discuss responsible drinking and its impact on work.

What can employers do?

- (1) **Prevention is better than cure.** Encourage staff to stay home when they are sick, keep up to date with their flu vaccinations and maintain good standards of hygiene.
- (2) **Clear communication is key.** Having straightforward policies for notice and evidence requirements will help to set expectations. Whether it's a phone call or an email, make sure your team knows how to inform you of their absence. And remember, while trust is important, don't shy away from asking for evidence if the absence stretches beyond a couple of days.

More information

If you've got a tricky sick leave situation, please don't hesitate to reach out to Peter Foster or Emily Creak.

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