



Small Business Survival Guide

Personal/Carer's Leave changes.

[employsure.com.au](https://www.employsure.com.au)

 **employsure**
workplace confidence

Introduction



Personal/Carer's Leave has changed - have you?

If you're an employer, then at some stage you're going to have to deal with sick leave. More formally, it's known as Personal/Carer's Leave, but in workplaces around Australia it's known more colloquially as *sickies*. Every employee, at some stage, is going to take a sick day. Or in some cases they will have to take some time off to care for someone.

While there have been generally accepted practices in managing Personal/Carer's leave, a Federal Court decision fundamentally changed how it is calculated. Traditionally calculated in hours, this no longer necessarily applies to some employees.

The change is intended to recognise that the ordinary hours in 1 day of work can vary amongst employees, and their Personal/Carer's Leave entitlements should reflect this.

It's all a bit confusing, which is why we've written this guide. We want to help you understand the new calculation, so you can meet your obligations and protect your business.

And don't forget, we have representatives

who can help you 24/7. Whether it's calculating Personal/Carer's Leave or understanding pay rates, you can call 1300 651 415 for free initial support.

Note to reader:

This guide is tailored for the Fair Work Act 2009 and the businesses covered under this legislation. This guide is written to provide employers with general guidance and an overarching understanding of Personal/Carer's Leave. Every business is unique, and often similar situations can warrant different modes of action due to different circumstances.

If you are unsure or if you find yourself confronted with a complicated situation, we recommend that you consult a workplace specialist, so you can be confident in your decisions and actions.

As at date of publication (6 November 2019) the Federal Court decision is being appealed to the High Court. The High Court decision may impact some of the information provided in this guide.

The Fundamentals

It's unavoidable: employees are going to get sick and need time off work. But there are also times when they might need to care for someone in their immediate family or household. The entitlement that typically covers this type of leave for full-time and part-time employees is called Personal/Carer's Leave.

Personal/Carer's Leave will accrue throughout the year, meaning employees are not automatically credited with 10 days when they start with a business. Any unused entitlements will carry over to each new year.

When is Carer's Leave applicable?

Carer's leave is only applicable to employees who need to care for those in their immediate family or household. While there may be some cases in which employees would like to care for their friends or close acquaintances, carer's leave is only applicable to the immediate family, or household.

So, who falls into the category of immediate family? Immediate family can be defined as any of the below:

- spouse or former spouse
- de facto partner or former de facto partner
- child
- parent
- grandparent
- grandchild
- sibling or
- a child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse/de facto partner)



If an employee requests to take carer's leave to care for someone who does not fit into the above, the employee is not entitled to paid carer's leave and it is at the business' discretion to provide time off.

Giving evidence for Personal Leave or Carer's Leave

To ensure employees are taking Personal/Carer's Leave for a permitted reason, the employer may request that the employee provides evidence in support of their absence. Evidence does not have to come in the way of a medical certificate or 'letter from the Doctor' – though each of these would suffice.

The legislation requires that reasonable evidence be supplied when requested by the business. This could come in the form of a statutory declaration or pharmacy certificate, for example.

While in most cases this goes without saying, it is important for employers to know that employees must give reasonable notice as soon as possible of their intention to take the leave. This notice should include the reason for leave as well as how likely they are going to be on leave for.

The change explained



What's the change?

In Australia, full time and part time national system employees are entitled to 10 days of paid Personal/Carer's Leave for each year of service. Historically, this leave had been calculated in hours. However, after the Federal Court decision, this leave must be accrued, and taken, in days for both full-time and part time employees.

At the time of publishing this guide, the decision has been slated to be reviewed via appeal, and if successful may change the information provided. However, until the High Court has made a ruling, the new calculation mechanism for Personal/Carer's Leave will still apply.

What does this mean?

Full-time and part time employees are entitled to accrue 10 full days of Personal/Carer's leave per 12 months of service. If an employee is absent on a day they would normally work, one day is required to be deducted from their leave balance. This applies regardless of the number of ordinary hours the employee works, whether

that is 6, 8, 10 or 12 ordinary hours. Note the deduction is still one day.

So, how much do I pay an employee on Personal/Carer's Leave?

Provided they have sufficient leave accrued, employees are entitled to be paid for the ordinary hours they would have worked that day, had they not been on paid Personal/Carer's Leave. If they were due to work 4 ordinary hours, you pay 4 hours. If they were due to work 12 ordinary hours, you pay 12 hours.

How should I accrue Personal/Carer's Leave?

- The accrual rate is one day of Personal/Carer's Leave for every 5.2 weeks of service
- Any unused Personal/Carer's Leave in a year carries over into the next year
- Unused Personal/Carer's Leave is not paid on termination of employment, unless specified in an applicable industrial instrument, contract or policy.

The change explained



Key takeaways

- Personal/Carer's Leave is now calculated in days, not hours
- The old '7.6 hour rule' no longer applies to some employees
- An employee who takes a full day of paid Personal/Carer's Leave is entitled to be paid for all ordinary hours falling on that day (even if this exceeds 7.6 hours)
- An employee who takes a part-day of paid Personal/Carer's Leave is entitled to be paid for all unworked ordinary hours falling on that day, and should have an equivalent part-day deducted from their leave balance
- This leave is not pro-rated for part time employees, meaning part time employees are entitled to the full 10 days per year regardless of how many days or hours they work per week

Is this decision being appealed?

Yes, the Federal Court decision is being appealed to the High Court.

However, it may take some time for the High Court to decide this appeal. In the meantime, the findings of the Federal Court decision stand and should be applied.

Failing to accrue, deduct and pay Personal/Carer's Leave as outlined in this guide could lead to a breach of the Fair Work Act 2009, which could in turn lead to fines and/or an underpayment of entitlements.

What should I do?

As an employer, you must ensure that employees other than casuals are provided with Personal/Carer's Leave in accordance with the Fair Work Act 2009 and this decision. Failure to do so may lead to underpayment of wages claims, and penalties against yourself and/or your business.

Putting it into practice

The below simple steps will assist in converting Personal/Carer's Leave into days.



Don't Forget!

This decision is being appealed and as such may change once a decision is made.

Step 1

Determine the number of weeks since your employee commenced employment with you, as a decimal (free online calculators can help with this).

Step 2

If the employee has taken any unpaid leave during their employment, deduct this from the total number of weeks worked by the employee – this gives you the total weeks in paid employment.

Step 3

Divide the total number of weeks in paid employment for the employee by 5.2. This is the total number of paid Personal/Carer's Leave days the employee has accrued during their employment.

Step 4

If the employee has taken any paid Personal/Carer's Leave during their employment, subtract this from the total days the employee has accrued during employment. This will give you the employee's Personal/Carer's Leave balance.

Let's see how this applies to Sarah.

Let's say Sarah started with your business on **14 January 2015**.

These are the calculations for Sarah's Personal/Carer's Leave balance as at **1 September 2019**, following the above steps.

Step 1

Number of weeks between 14 January 2015 and 1 September 2019
= 241 weeks, 5 days or 241.714 weeks

Step 2

241.714 weeks minus the 40 weeks of unpaid parental leave Sarah has taken
= 201.714 weeks is the length of Sarah's paid employment

Step 3

201.714 weeks, divided by 5.2
= 38.79 days of Personal/Carer's Leave have accrued during Sarah's paid employment

Step 4

38.79 days of Personal/Carer's Leave minus 24 days of Personal/Carer's Leave taken during Sarah's employment
= 14.79 is Sarah's Personal/Carer's Leave balance as at 1 September 2019

EmploySURE is the largest provider of employment relations and workplace health and safety services in Australia - servicing over 24,000 clients nationally.

Why EmploySURE?

At EmploySURE, we believe all Australian employers, no matter the size, deserve access to comprehensive, quality, honest advice and support that is scalable to the needs of their business.

Since the introduction of the Fair Work Act in 2009, workplace obligations have become more complex and difficult to manage, especially for overstretched small business owners.

EmploySURE was established in response to these challenges. It is our aim to ensure Australian business owners have access to cost-effective, professional advice on all employment relations and work health and safety matters.

What we offer

EmploySURE provides customised documentation, unlimited advice, policy and procedure review, insurance and legal representation for small business owners.

Being an EmploySURE client means no surprises – we keep our clients updated on Award changes, wage updates and essential compliance issues. Our expert advisers are available 24 hours a day to guide employers through any difficulties they may face.

1300 651 415
employsure.com.au



EmploySURE has given me the freedom to run my business in a way that I need to. It's given me the time and it's actually taken away a lot of worry that I previously had.

Kieran Syme | **DentFree AutoTree**



Google can only help you so far. Sooner or later you need to actually talk to somebody who is an expert in the field and that's where I found EmploySURE.

Ursula Zajaczkowski | **The Source Bulk Foods**



Biggest thing from EmploySURE, it gives us certainty. Where we have guidance and help of what we need in place, how to put it in place, and how to implement the systems for HR.

Jonathon Grealy | **Niche Reform**